Wildlife and Fisheries

Containing a codification of documents of general applicability and future effect

As of October 1, 2010

With Ancillaries

Published by
Office of the Federal Register
National Archives and Records Administration

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

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

- Title 1 through Title 16..............................................................as of January 1
- Title 17 through Title 27 .................................................................as of April 1
- Title 28 through Title 41 ............................................................as of July 1
- Title 42 through Title 50.............................................................as of October 1

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To determine whether a Code volume has been amended since its revision date (in this case, October 1, 2010), consult the “List of CFR Sections Affected (LSA),” which is issued monthly, and the “Cumulative List of Parts Affected,” which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

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

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

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

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An index to the text of “Title 3—The President” is carried within that volume.
The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.
October 1, 2010.
Title 50—FISH AND WILDLIFE is composed of nine volumes. The parts in these volumes are arranged in the following order: Parts 1–16; part 17 (17.1 to 17.95(b)), part 17 (17.95(c) to end of 17.95), part 17 (17.96 to 17.99(h)), part 17 (17.99(i) to end of part 17), parts 18–199, parts 200–599, parts 600–659, and part 660 to end. The first six volumes consist of parts 1–16, part 17 (17.1 to 17.95(b)), part 17 (17.95(c) to end of 17.95), part 17 (17.96 to 17.99(h)), part 17 (17.99(i) to end of part 17), and parts 18–199 and contain the current regulations issued under chapter I—United States Fish and Wildlife Service, Department of the Interior. The seventh volume (parts 200–599) contains the current regulations issued under chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; chapter III—International Fishing and Related Activities, chapter IV—Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee regulations; and chapter V—Marine Mammal Commission. The eighth and ninth volumes (parts 600–659 and part 660 to end) contain the current regulations issued under chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 2010.

Alphabetical listings of endangered and threatened wildlife and plants appear in §§17.11 and 17.12.


For this volume, Jonn V. Lilyea was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.
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Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

Source: 39 FR 1852, Jan. 15, 1974, unless otherwise noted.
§ 216.1 Purpose of regulations.


§ 216.2 Scope of regulations.

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


§ 216.3 Definitions.

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


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

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

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

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

Albacore tuna means the species Thunnus alalunga.

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

1. Were commonly produced by Alaskan Natives on or before October 14, 1983;
2. Are composed wholly or in some significant respect of natural materials, and;
3. Are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.
Assistant Administrator means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910, or his/her designee.

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

Bigeye tuna means the species Thunnus obesus.

Bluefin tuna means the species Thunnus thynnus or Thunnus orientalis.

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

(i) Likely would be accepted for publication in a refereed scientific journal;
(ii) Are likely to contribute to the basic knowledge of marine mammal biology or ecology. (Note: This includes, for example, marine mammal parts in a properly curated, professionally accredited scientific collection); or
(iii) Are likely to identify, evaluate, or resolve conservation problems.

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

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

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

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

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

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

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

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

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

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


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

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

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

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

Fisheries Certificate of Origin, or FCO, means NOAA Form 370, as described in §216.24(f)(4).

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


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

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

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

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

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

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

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

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


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

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

1. A procedure conducted by the professional staff of the holding facility or an attending veterinarian for purposes of animal husbandry, care, maintenance, or treatment, or a routine medical procedure that, in the reasonable judgment of the attending veterinarian, would not constitute a risk to the health or welfare of the captive animal; or

2. A procedure involving either the introduction of a substance or object (i.e., as described in this definition) or a stimulus directed at animals that, in the reasonable judgment of the attending veterinarian, would not constitute a risk to the health or welfare of the captive animal.

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

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

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

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

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

*Longtail tuna* means the species *Thunnus tonggol*.

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

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


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

*Optimum sustainable population* is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity.

*Maximum net productivity* is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

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

Pregnant means pregnant near term.

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

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

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

Regional Director means the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930; or Regional Administrator, Northwest Regional Office, NMFS, 7600 Sandpoint Way, N.E., Building 1, Seattle, WA 98115; or Regional Administrator, Southeast Regional Office, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; or Regional Administrator, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802; or Regional Administrator, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814; or Regional Administrator, Alaska Regional Office, NMFS, PO Box 21668, Juneau, AK 99802.

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

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

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

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

Skipjack tuna means the species Euthynnus (Katsuwonus) pelamis.

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

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

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

Southern bluefin tuna means the species Thunnus maccoyii.

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

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

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

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

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

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

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

1. For other wildlife or fish or their parts, or
(i) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

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


Tuna means any fish of the genus Thunnus and the species Euthynnus (Katsuwonus) pelamis.

Tuna product means any food product processed for retail sale and intended for human or animal consumption that contains an item listed in §216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days.

Wasteful manner means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence, subsistence uses, or for the making of authentic native articles of handicrafts and clothing, or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

Yellowfin tuna means the species Thunnus albacares (synonymy: Neothunnus macropterus).

§216.4 Other laws and regulations.

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

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

§216.5 Payment of penalty.

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

§216.6 Forfeiture and return of seized property.

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

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

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

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

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

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

§216.7 Holding and bonding.

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

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. Subpart F of 15 CFR part 904 contains additional procedures that govern seized property that is subject to forfeiture or has been forfeited under the MMPA.

§216.8 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the MMPA and may take any actions authorized by the MMPA with respect to enforcement. In addition, the Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this MMPA. Pursuant to the terms of section 107(b) of the MMPA, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this MMPA.
United States to take any marine mammal on the high seas, or
(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States, or
(c) Any person subject to the jurisdiction of the United States to take any marine mammal during the moratorium.

§ 216.12 Prohibited importation.
(a) Except as otherwise provided in subparts C and D of this part 216, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.
(b) Regardless of whether an importation is otherwise authorized pursuant to subparts C and D of this part 216, it is unlawful for any person to import into the United States any:
(1) Marine mammal:
(i) Taken in violation of the MMPA, or
(ii) Taken in another country in violation to the laws of that country;
(2) Any marine mammal product if
(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or
(ii) The sale in commerce of such product in the country of origin if the product is illegal.
(c) Except in accordance with an exception referred to in subpart C and §§ 216.31 (regarding scientific research permits only) and 216.32 of this part 216, it is unlawful to import into the United States any:
(1) Marine mammal which was pregnant at the time of taking.
(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later.
(3) Specimen of an endangered or threatened species of marine mammal.
(4) Specimen taken from a depleted species or stock of marine mammals, or
(5) Marine mammal taken in an inhumane manner.
(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

§ 216.13 Prohibited uses, possession, transportation, sales, and permits.
It is unlawful for:
(a) Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal product; or
(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the MMPA or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.
(c) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this MMPA.
(d) Any person to violate any term, condition, or restriction of any permit issued by the Secretary.

§ 216.14 Marine mammals taken before the MMPA.
(a) Section 102(e) of the MMPA provides, in effect, that the MMPA shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product, consisting of or composed in whole or in part of, any marine mammal taken before that date. This prior status of any marine mammal or marine mammal product may be established by submitting to the Director, National Marine Fisheries Service prior to, or at the time of importation, an affidavit containing the following:
(1) The Affiant’s name and address;
(2) Identification of the Affiant;
(3) A description of the marine mammals or marine mammal products which the Affiant desires to import;
(4) A statement by the Affiant that, to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;
(5) A statement by the Affiant in the following language:

The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of—under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to the effective date of the MMPA. Such records or other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or

(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) No pre-Act marine mammal or pre-Act marine mammal product may be imported unless the requirements of this section have been fulfilled.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to §§216.21, 216.31 or §216.32.

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

It shall be unlawful for any person to:

(a) Provide false information in a letter of intent submitted pursuant to §216.45(b);
§ 216.17 General prohibitions.

It is unlawful for any person to:

(a) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, investigation or seizure in connection with enforcement of the MMPA, DPCIA, or IDCPA.

(b) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the MMPA.

(c) Resist a lawful arrest for any act prohibited under the MMPA.

(d) Make any false statement, oral or written, to an authorized officer concerning any act under the jurisdiction of the MMPA, DPCIA, IDCPA, or attempt to do any of the above.

(e) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the MMPA, DPCIA, or IDCPA.

[70 FR 19008, Apr. 12, 2005]

Subpart C—General Exceptions

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

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


§ 216.22 Taking by State or local government officials.

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

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

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

(1) The animal involved;

(2) The circumstances requiring the taking;

(3) The method of taking;

(4) The name and official position of the State official or employee involved;

(5) The disposition of the animal, including in cases where the animal has
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been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(6) Such other information as the Secretary may require.

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

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

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

(i) The name, address, and any official position of the individual engaged in the taking and salvage;

(ii) A description of the marine mammal specimen salvaged including the scientific and common names of the species;

(iii) A description of the parts salvaged;

(iv) The date and the location of the taking;

(v) Such other information as deemed necessary by the Assistant Administrator.

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

(4) No sale or commercial trade. No person may sell or trade for commercial purposes any marine mammal specimen salvaged under this section.

(5) Transfer without prior authorization. A person who salvages a marine mammal specimen under this section may transfer that specimen to another person if:

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

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

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

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

(6) Other transfers within the United States. Except as provided under paragraphs (c)(5) and (c)(8) of this section, a person who salvages a marine mammal specimen, or who has received a marine
mammal specimen under the provisions of this section, may not transfer that specimen to another person within the United States unless the Regional Director of the appropriate Regional Office of the National Marine Fisheries Service grants prior written authorization for the transfer. The Regional Director may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5)(i), (c)(5)(ii), and (c)(5)(iv) of this section are met.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The name and address of the applicant;
(ii) A description of the applicant’s procedures for receiving, storing, processing, and shipping materials;
(iii) A proposal for a system of bookkeeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;
(iv) Such other information as the Secretary may request;
(v) A certification in the following language:

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

(vi) The signature of the applicant.

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

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

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

(i) Reporting means the collection and delivery of biological data, harvest data, and other information regarding the effect of taking a beluga whale (Delphinapterus leucas) from Cook Inlet, as required by NMFS.

(ii) Whaling captain or vessel operator means the individual who is identified by Alaskan Natives as the leader of each hunting team (usually the other crew on the boat) and who is the whaling captain; or the individual operating the boat at the time the whale is harvested or transported to the place of processing.

(iii) Cook Inlet means all waters of Cook Inlet north of 59° North latitude, including, but not limited to, waters of Kachemak Bay, Kamishak Bay, Chinitna Bay, and Tuxedni Bay.

(2) Marking. Each whaling captain or vessel operator, upon killing and landing a beluga whale (Delphinapterus leucas) from Cook Inlet, Alaska, must remove the lower left jawbone, leaving the teeth intact and in place. When multiple whales are harvested during one hunting trip, the jawbones will be marked for identification in the field to ensure correct reporting of harvest information by placing a label marked with the date, time, and location of harvest within the container in which the jawbone is placed. The jawbone(s) must be retained by the whaling captain or vessel operator and delivered to NMFS at the Anchorage Field Office, 222 West 7th Avenue, Anchorage, Alaska 99513 within 72 hours of returning from the hunt.

(3) Reporting. Upon delivery to NMFS of a jawbone, the whaling captain or vessel operator must complete and mail a reporting form, available from NMFS, to the NMFS Anchorage Field Office within 30 days. A separate form is required for each whale harvested.

(i) To be complete, the form must contain the following information: the date and location of kill, the method of harvest, and the coloration of the
whale. The respondent will also be invited to report on any other observations concerning the animal or circumstance of the harvest.

(ii) Data collected pursuant to paragraph (e) of this section will be reported on forms obtained from the Anchorage Field Office. These data will be maintained in the NMFS Alaska Regional Office in Juneau, Alaska, where such data will be available for public review.

(4) No person may falsify any information required to be set forth on the reporting form as required by paragraph (e) of this section.

(5) The Anchorage Field Office of NMFS is located in room 517 of the Federal Office Building, 222 West 7th Avenue; its mailing address is: NMFS, Box 43, Anchorage, AK 99513.

(f) Harvest management of Cook Inlet beluga whales—

(1) Cooperative management of subsistence harvest. Subject to the provisions of 16 U.S.C. 1371(b) and any further limitations set forth in §216.23, any taking of a Cook Inlet beluga whale by an Alaska Native must be authorized under an agreement for the co-management of subsistence uses (hereinafter in this paragraph “co-management agreement”) between the National Marine Fisheries Service and an Alaska Native organization(s).

(2) Limitations.

(i) Sale of Cook Inlet beluga whale parts and products. Authentic Native articles of handicraft and clothing made from nonedible by-products of beluga whales taken in accordance with the provisions of this paragraph may be sold in interstate commerce. The sale of any other part or product, including food stuffs, from Cook Inlet beluga whales is prohibited, provided that nothing herein shall be interpreted to prohibit or restrict customary and traditional subsistence practices of barter and sharing of Cook Inlet beluga parts and products.

(ii) Beluga whale calves or adults with calves. The taking of a calf or an adult whale accompanied by a calf is prohibited.

(iii) Season. All takings of beluga whales authorized under §216.23(f) shall occur no earlier than July 1 of each year.

(iv) Taking during 2001–2004. The harvest of Cook Inlet beluga whales is restricted during the four-year period of 2001–2004 as follows:

(A) Strike limitations. Subject to the suspension provision of subparagraph (C), a total of six (6) strikes, which could result in up to six landings, are to be allocated through co-management agreement(s).

(B) Strike allocations. Four strikes, not to exceed one per year, are allocated to the Native Village of Tyonek. The remaining two strikes will be allocated over the 4-year period through co-management agreement with other Cook Inlet community hunters, with no more than one such strike being allocated during every other year.

(C) Emergency provisions. Takings of beluga whales authorized under §216.23 will be suspended whenever unusual mortalities exceed six (6) whales in any year. “Unusual mortalities” include all documented human-caused mortality (including illegal takings and net entanglements but excluding all legally harvested whales) and all documented mortality resulting from unknown or natural causes that occur above normal levels, considered for the purposes of this provision to be twelve beluga whales per year. The level of unusual mortalities shall be calculated by documenting mortality for the calendar year and subtracting twelve. The sum of this result and the carry over of unusual mortality from any previous year from which the population has not recovered is the level of unusual mortalities for the current year. If in any year the number of unusual mortalities exceeds six whales, no strikes will be allowed in that year or in subsequent years until the population has recovered from those mortalities through foregone future harvests and natural recruitment.

(v) Taking during 2008 and subsequent years. (A) Co-management agreements pursuant to paragraph (f)(1) of this section may be established for 5-year intervals beginning in 2008. Agreements must include specific provisions regarding the number and allocation of strikes, hunting practices to promote consistency with limitations in paragraph (f)(2)(ii) of this section, and to improve efficiency of the harvest, mitigating measures, and enforcement.
Agreements may include provisions regarding the sex composition of the beluga harvest.

(B) Strike/harvest levels for each 5-year planning interval beginning in 2008 will be determined by the recovery of this stock as measured by the average abundance in the prior 5-year interval and the best estimate of the population growth rate using information obtained in the 10 years prior to each 5-year interval. Criteria for categorizing growth rates are presented below as an algorithm using the estimated abundance, the distribution statistics for growth rates, and the date. Harvest levels are subject to the Expected Mortality Limit. The established strike levels are presented in the Harvest Table and the following algorithm will be used to determine harvest levels for each 5-year period beginning in 2008.

(i) NMFS will calculate the average stock abundance over the previous 5-year period.

(ii) NMFS will calculate a population growth rates from abundance estimates for the most recent 10-year period prior to the next 5-year period.

(iii) Using the abundance and growth information obtained in accordance with paragraphs (f)(2)(v)(B)(1) and (f)(2)(v)(B)(2), NMFS will calculate the probabilities that the growth rate within the population would be less than 1 percent, less than 2 percent, or greater than 3 percent. NMFS will then use paragraphs (f)(2)(v)(B)(3)(i) and (f)(2)(v)(B)(3)(vi) of this section to select the proper cell from the Harvest Table to determine the harvest levels for the next 5-year interval.

(i) Is the average stock abundance over the previous 5-year period less than 350 beluga whales? If yes, the Harvest Table provides that the harvest is zero during the next 5-year period. If no, go to paragraph (f)(2)(v)(B)(3)(ii) of this section.

(ii) Is the current year 2035 or later and is there more than a 20 percent probability the growth rate is less than 1 percent? If yes, the harvest is zero during the next 5-year period. If no, go to paragraph (f)(2)(v)(B)(3)(iii) of this section.

(iii) Is the current year between 2020 and 2034 and there is more than a 20 percent probability the growth rate is less than 1 percent? If yes, the harvest is three whales during the next 5-year period. If no, go to paragraph (f)(2)(v)(B)(3)(iv) of this section.

(iv) Is the current year 2015 or later and is there more than a 25 percent probability the growth rate is less than 2 percent? If yes, go to the harvest table using the “Low” growth rate column. If no, go to paragraph (f)(2)(v)(B)(3)(vi) of this section.

(v) Is the current year prior to 2015 and is there more than a 25–percent probability the growth rate is more than 3 percent? If yes, go to the harvest table using the “High” growth rate column. If no, go to the harvest table using the “Intermediate” growth rate column.

### Harvest Table

<table>
<thead>
<tr>
<th>5-year population averages</th>
<th>“High” growth rate</th>
<th>“Intermediate” growth rate</th>
<th>“Low” growth rate</th>
<th>Expected Mortality Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 350 ............</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>350–399 ..................</td>
<td>8 strikes in 5 years</td>
<td>5 strikes in 5 years</td>
<td>5 strikes in 5 years</td>
<td>21</td>
</tr>
<tr>
<td>400–449 ..................</td>
<td>9 strikes in 5 years</td>
<td>8 strikes in 5 years</td>
<td>5 strikes in 5 years</td>
<td>24</td>
</tr>
<tr>
<td>450–499 ..................</td>
<td>10 strikes in 5 years</td>
<td>8 strikes in 5 years</td>
<td>5 strikes in 5 years</td>
<td>27</td>
</tr>
<tr>
<td>500–524 ..................</td>
<td>14 strikes in 5 years</td>
<td>9 strikes in 5 years</td>
<td>5 strikes in 5 years</td>
<td>30</td>
</tr>
<tr>
<td>525–549 ..................</td>
<td>16 strikes in 5 years</td>
<td>10 strikes in 5 years</td>
<td>5 strikes in 5 years</td>
<td>32</td>
</tr>
<tr>
<td>550–574 ..................</td>
<td>20 strikes in 5 years</td>
<td>15 strikes in 5 years</td>
<td>5 strikes in 5 years</td>
<td>33</td>
</tr>
<tr>
<td>575–599 ..................</td>
<td>22 strikes in 5 years</td>
<td>16 strikes in 5 years</td>
<td>5 strikes in 5 years</td>
<td>35</td>
</tr>
<tr>
<td>600–624 ..................</td>
<td>24 strikes in 5 years</td>
<td>17 strikes in 5 years</td>
<td>6 strikes in 5 years</td>
<td>36</td>
</tr>
<tr>
<td>625–649 ..................</td>
<td>26 strikes in 5 years</td>
<td>18 strikes in 5 years</td>
<td>6 strikes in 5 years</td>
<td>38</td>
</tr>
</tbody>
</table>
### §216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

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

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

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

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

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

(v) It is unlawful for any person subject to the jurisdiction of the United States to intentionally deploy a purse

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### HARVEST TABLE—Continued

<table>
<thead>
<tr>
<th>5-year population averages</th>
<th>“High” growth rate</th>
<th>“Intermediate” growth rate</th>
<th>“Low” growth rate</th>
<th>Expected Mortality Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>650–699</td>
<td>28 strikes in 5 years</td>
<td>19 strikes in 5 years</td>
<td>7 strikes in 5 years</td>
<td>39</td>
</tr>
<tr>
<td>700–779</td>
<td>32 strikes in 5 years</td>
<td>20 strikes in 5 years</td>
<td>7 strikes in 5 years</td>
<td>42</td>
</tr>
<tr>
<td>780 +</td>
<td>Consult with co-managers to expand harvest levels while allowing for the population to grow</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(C) At the beginning of each 5-year period, an Expected Mortality Limit is determined from the Harvest Table using the 5-year average abundance. During the course of each calendar year, the number of beach casts carcasses and carcasses found floating either reported to NMFS or observed by NMFS personnel will be the number of mortalities for that year. If at the end of each calendar year this number exceeds the Expected Mortality Limit, then an unusual mortality event has occurred. The Estimated Excess Mortalities will be calculated as twice the number of reported dead whales above the Expected Mortality Limit. The harvest will then be adjusted as follows:

1. The harvest level for the remaining years of the current 5-year period will be recalculated by reducing the 5-year average abundance from the previous 5-year period by the Estimated Excess Mortalities. The revised abundance estimate would then be used in the harvest table for the remaining years and the harvest adjusted accordingly.

2. For the subsequent 5-year period, for the purpose of calculating the 5-year average, the Estimated Excess Mortalities would be subtracted from the abundance estimates of the year of the excess mortality event so that the average would reflect the loss to the population. This average would then be used in the table to set the harvest level.

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seine net on, or to encircle, dolphins from a vessel operating in the ETP with an assigned DML after a set in which the DML assigned to that vessel has been reached or exceeded.

(vi) Alleged violations of the Agreement on the IDCP and/or these regulations identified by the International Review Panel will be considered for potential enforcement action by NMFS.

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(ii) and (e)(1) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report to the Administrator, Southwest Region, the vessel’s date of exit from or subsequent entry into the permit area.

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

(2) Operator permit. The person in charge of and actually controlling fishing operations (hereinafter referred to as the operator) on a U.S. purse seine fishing vessel engaged in commercial fishing operations under a vessel permit must possess a valid operator permit issued under paragraph (b) of this section. Such permits are not transferable and must be renewed annually. To receive a permit, the operator must have satisfactorily completed all required training under paragraph (c)(5) of this section. The operator’s permit is valid only when the permit holder is on a vessel with a valid vessel permit. Operator permits will be valid through December 31 of each year.

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

(4) Application for vessel permit. ETP tuna purse seine vessel permit application forms and instructions for their completion are available from NMFS. To apply for an ETP vessel permit, a vessel owner or managing owner must complete, sign, and submit the appropriate form via fax to (562) 980–4047, for prioritization purposes as described under §300.22(b)(4)(1)(D)(3) of this title, allowing at least 15 days for processing. To request that a vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active on the Vessel Register under §300.22(b)(4)(1) of this title in the following calendar year, the owner or managing owner must submit the vessel permit application via fax, payment of the vessel permit application fee, and payment of the vessel assessment fee no later than September 15 for vessels for which a DML is requested for the following year, and no later than November 30 for vessels for which a DML is not requested for the following year.

(5) Application for operator permit. An applicant for an operator permit must complete, sign, and submit the appropriate form obtained from NMFS and submit payment of the permit application fee to the Administrator, Southwest Region, allowing at least 45 days for processing. Application forms and instructions for their completion are available from NMFS.
(6) Fees—(i) Vessel permit application fees. Payment of the permit application fee is required before NMFS will issue a permit. The Assistant Administrator may change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook. The amount of the fee will be printed on the vessel permit application form provided by the Administrator, Southwest Region.

(ii) Operator permit fee. The Assistant Administrator may require a fee to be submitted with an application for an operator permit. The level of such a fee shall be determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(iii) Vessel assessment fee. The vessel assessment fee supports the placement of observers on individual tuna purse seine vessels, and maintenance of the observer program, as established by the IATTC or other approved observer program.

(A) The owner or managing owner of a purse seine vessel for which a DML has been requested must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML is requested. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under §300.22(b)(4) of this title.

(B) The owner or managing owner of a purse seine vessel for which active or inactive status on the Vessel Register, as defined in §300.21 of this title, has been requested, must submit payment of the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the vessel assessment fee is required only if the vessel is required to carry an observer. Payment of the vessel assessment fee must be consistent with the vessel’s status, either active or inactive, on the Vessel Register in §300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, prior to obtaining an observer and entering the ETP to fish. Consistent with §300.22(b)(1)(i) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under §300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under §300.22(b)(4) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under §300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status, less the vessel assessment fee associated with inactive status that was already paid, before NMFS will request the IATTC Director change the status of the vessel from inactive to active. Payment of the vessel assessment fee is required only if the vessel is required to carry an observer.

(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under §300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status only if the vessel is required to carry an observer, before NMFS will request the IATTC Director change the status of the vessel to active.

(F) Payments will be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(E) of this section for vessels that were listed as active on the Vessel Register in the calendar year prior to the year for which active
status was requested; or if received after the dates specified in paragraphs (b)(6)(iii)(A) or (b)(6)(iii)(B) of this section for vessels for which active status is requested if the vessel was listed as active during the year the request was made. Payments will not be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(C) or (b)(6)(iii)(D) of this section, or if received under paragraph (b)(6)(iii)(E) of this section for vessels that were not listed as active on the Vessel Register in the calendar year prior to the year for which active status was requested. Payments will also not be subject to a 10 percent surcharge if received after the date specified in paragraph (b)(6)(iii)(B) of this section for vessels for which inactive status is requested, or for vessels for which active status is requested if the vessel was not listed as active during the year the request was made. The Administrator, Southwest Region, will forward all vessel assessment fees described in this section to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

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

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

(ii) Observer placement. By obtaining a permit, the permit holder consents to the placement of an observer on the vessel during every trip involving operations in the ETP and agrees to payment of the fees for observer placement. No observer will be assigned to a vessel unless that vessel owner has submitted payment of observer fees to the Administrator, Southwest Region. The observers may be placed under an observer program of NMFS, IATTC, or another observer program approved by the Administrator, Southwest Region. (iii) Explosives. The use of explosive devices is prohibited during all tuna purse seine operations that involve marine mammals.

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

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

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

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

(c) Purse seining by vessels with Dolphin Mortality Limits (DMLs). In addition to the terms and conditions set
forth in paragraph (b) of this section, any permit for a vessel to which a DML has been assigned under paragraph (c)(9) of this section and any operator permit when used on such a vessel are subject to the following terms and conditions:

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

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

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

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

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

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

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

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

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

(vii) Facemask and snorkel, or viewbox. At least two facemasks and snorkels or viewboxes must be carried.

(viii) Lights. The vessel must be equipped with long-range, high-intensity floodlights with a sodium lamp of at least 1000 watts, or a multivapour lamp of at least 1500 watts, for use in darkness to ensure sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) Vessel inspection—(i) Twice per year. At least twice during each calendar year, purse seine nets and other gear and equipment required under
§ 216.24 (c)(3) must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit. The first such inspection shall be carried out before the vessel’s request for a DML is submitted to the IATTC. The second such inspection shall be carried out before notification of any reallocation of DMLs for vessels with full-year DMLs or during the last quarter of the year for vessels with second-semester DMLs.

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

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

(5) Operator permit holder training requirements. An operator must maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session approved by the Administrator, Southwest Region, in order to obtain his or her permit. At the training session, an attendee will be instructed on the relevant provisions and regulatory requirements of the MMPA and the IDCP, and the fishing gear and techniques that are required for reducing serious injury and mortality of dolphin incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year permit will not be required to attend additional formal training sessions unless there are substantial changes in the relevant provisions or implementing regulations of the MMPA or the IDCP, or in fishing gear and techniques. Additional training may be required for any operator who is found by the Administrator, Southwest Region, to lack proficiency in the required fishing procedures or familiarity with the relevant provisions or regulations of the MMPA or the IDCP.

(6) Marine mammal release requirements. All operators fishing pursuant to paragraph (c) of this section must use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(i) Backdown procedure. Backdown must be performed following a purse seine set in which dolphins are captured in the course of catching tuna, and must be continued until it is no longer possible to remove live dolphins from the net by this procedure. At least one crewmember must be deployed during backdown to aid in the release of dolphins. Thereafter, other release procedures required will be continued so that all live dolphins are released prior to the initiation of the sack-up procedure.

(ii) Prohibited use of sharp or pointed instrument. The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(iii) Sundown sets prohibited. On every set encircling dolphin, the backdown procedure must be completed no later than one-half hour after sundown, except as provided here. For the purpose of this section, sundown is defined as the time at which the upper edge of the sun disappears below the horizon or, if the view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory or other authoritative source approved by the Administrator, Southwest Region. A sundown set is a set in which the backdown procedure has not been completed and rolling the net to sack-up has not begun within one-half hour after sundown. Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity lighting system. In the event a sundown set occurs where the seine skiff was let go 90 or more minutes before sundown, and an earnest effort to
rescue dolphins is made, the International Review Panel of the IDCP may recommend to the United States that in the view of the International Review Panel, prosecution by the United States is not recommended. Any such recommendation will be considered by the United States in evaluating the appropriateness of prosecution in a particular circumstance.

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

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

(i) A vessel permit holder may apply for an experimental fishing operation waiver by submitting the following information to the Administrator, Southwest Region, no less than 90 days before the date the proposed operation is intended to begin:

(A) The name(s) of the vessel(s) and the vessel permit holder(s) to participate;

(B) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;

(C) A description of how the proposed modification to the gear and equipment or procedures is expected to reduce incidental mortality or serious injury of marine mammals;

(D) A description of the applicability of this modification to other purse seine vessels;

(E) The planned design, time, duration, and general area of the experimental operation;

(F) The name(s) of the permitted operator(s) of the vessel(s) during the experiment;

(G) A statement of the qualifications of the individual or company doing the analysis of the research; and

(H) Signature of the permitted operator or of the operator’s representative.

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

(iii) The Administrator, Southwest Region, after considering the information submitted in the application identified in paragraph (c)(7)(i) of this section and the comments received, will either issue a waiver to conduct the experiment that includes restrictions or conditions deemed appropriate, or deny the application, giving the reasons for denial.

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

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

(8) Operator permit holder performance requirements. [Reserved]

(9) Vessel permit holder dolphin mortality limits. For purposes of this paragraph, the term “vessel permit holder” includes both the holder of a current vessel permit and also the holder of a vessel permit for the following year.

(i) By September 1 each year, a vessel permit holder desiring a DML for the following year must provide to the Administrator, Southwest Region, the
name of the U.S. purse seine fishing vessel(s) of carrying capacity greater than 400 st (362.8 mt) that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the following year. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required by the IDCP, for assignment of a DML for the following year under the provisions of Annex IV of the Agreement on the IDCP.

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

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

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

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

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

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

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

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

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

(2) NMFS will make all reasonable efforts to determine the intentions of the vessel owner. The owner of any vessel that has been preliminarily determined to have left the fishery will be provided notice of such preliminary determination and given the opportunity to provide information on whether the vessel has left the fishery prior to NMFS
making a final determination under 15 CFR part 904 and notifying the IATTC.

(v) Any vessel that exceeds its assigned DML after any applicable adjustment under paragraph (c)(9)(iii) of this section will have its DML for the subsequent year reduced by 150 percent of the overage, unless another adjustment is determined by the International Review Panel, as mandated by the Agreement on the IDCP.

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

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

(viii) Vessel and operator permit holders must not deploy a purse seine net on or encircle any school of dolphins containing individuals of a particular stock of dolphins for the remainder of the calendar year:

(A) after the applicable per-stock per-year dolphin mortality limit for that stock of dolphins (or for that vessel, if so assigned) has been reached or exceeded; or

(B) after the time and date provided in actual notification or notification in the Federal Register by the Administrator, Southwest Region, based upon the best available evidence, stating when any applicable per-stock per-year dolphin mortality limit has been reached or exceeded, or is expected to be reached in the near future.

(ix) If individual dolphins belonging to a stock that is prohibited from being taken are not reasonably observable at the time the net skiff attached to the net is released from the vessel at the start of a set, the fact that individuals of that stock are subsequently taken will not be cause for enforcement action provided that all procedures required by the applicable regulations have been followed.

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

(A) after a set in which the vessel’s DML, as adjusted, has been reached or exceeded; or

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

(d) Purse seining by vessels without assigned DMLs. In addition to the requirements of paragraph (b) of this section, a vessel permit used for a trip not involving an assigned DML and the operator’s permit when used on such a vessel are subject to the following terms and conditions: a permit holder may take marine mammals provided that such taking is an accidental occurrence in the course of normal commercial fishing operations and the vessel does not intentionally deploy its net on, or to encircle, dolphins; marine mammals taken incidental to such commercial fishing operations must be immediately returned to the environment where captured without further injury, using release procedures such as hand rescue, or aborting the set at the earliest effective opportunity; and the use of one or more rafts and facemasks or viewboxes to aid in the rescue of dolphins is recommended.
(e) Observers—(1) The holder of a vessel permit must allow an observer duly authorized by the Administrator, Southwest Region, to accompany the vessel on all fishing trips in the ETP for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit sanctions. A vessel that fails to carry an observer in accordance with these requirements may not engage in fishing operations.

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

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

(4) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, or to influence or attempt to influence an observer, or to harass (including sexual harassment) an observer by conduct that has the purpose or effect of unreasonably interfering with the observer’s work performance, or that creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

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

(ii) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established before the placement meeting and approved by NMFS or other approved observer program and must be followed during the entire trip.

(iii) In the event there are one or more female crew members, the female observer must be provided a bunk in a cabin shared solely with female crew members, and provided toilet and shower facilities shared solely with these female crew members.

(f) Importation, purchase, shipment, sale and transport. (1)(i) It is illegal to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if the fish have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of that allowed under
this part for U.S. fishermen, or as specified at paragraph (f)(6) of this section.

(ii) For purposes of this paragraph (f), and in applying the definition of an “intermediary nation,” an import occurs when the fish or fish product is released from a nation’s Customs’ custody and enters into the commerce of the nation. For other purposes, “import” is defined in §216.3.

(2) Imports requiring a Fisheries Certificate of Origin. Shipments of tuna, tuna products, and certain other fish products identified in paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this section may not be imported into the United States unless a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, is filed with U.S. Customs and Border Protection (CBP) at the time of importation.

(i) Imports requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo. All shipments containing yellowfin tuna or yellowfin tuna products (other than fresh tuna) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following Harmonized Tariff Schedule of the United States (HTS) numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at www.usitc.gov. The scope of yellowfin tuna embargoes and procedures for attaining an affirmative finding are described under paragraphs (f)(6) and (f)(8) of this section, respectively.

<table>
<thead>
<tr>
<th>HTS Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0303.43.00</td>
<td>Albacore or longfinned tunas, frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0303.43.00</td>
<td>Skipjack tunas or stripe-bellied bonito, frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0303.44.00</td>
<td>Bigeye tunas, frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0303.45.00</td>
<td>Bluefin tunas, frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0303.46.00</td>
<td>Southern bluefin tunas, frozen, except fillets, livers and roes</td>
</tr>
<tr>
<td>0304.39.00</td>
<td>Tuna, frozen, except fillets, livers and roes, NESOI</td>
</tr>
<tr>
<td>0303.42.00</td>
<td>Yellowfin tunas, whole, frozen</td>
</tr>
<tr>
<td>0303.42.00</td>
<td>Yellowfin tunas, head-on, frozen, except whole</td>
</tr>
<tr>
<td>0304.29.00</td>
<td>Tuna fish fillets, frozen, Not elsewhere specified or indicated (NESOI)</td>
</tr>
<tr>
<td>0304.99.10</td>
<td>Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg, NESOI</td>
</tr>
<tr>
<td>0304.41.00</td>
<td>Tuna fish fillets, frozen, NESOI</td>
</tr>
<tr>
<td>1604.14.00</td>
<td>Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each, NESOI</td>
</tr>
<tr>
<td>1604.14.00</td>
<td>Other tunas and skipjack, no oil, in foilflexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year</td>
</tr>
</tbody>
</table>

(ii) Imports requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo. All shipments containing tuna or tuna products (other than fresh tuna or yellowfin tuna identified in paragraph (f)(2)(i) of this section) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following HTS numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at www.usitc.gov.

<table>
<thead>
<tr>
<th>HTS Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0304.10.00</td>
<td>Tuna, head-on, frozen, in airtight containers</td>
</tr>
<tr>
<td>0304.11.00</td>
<td>Tuna and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each, NESOI</td>
</tr>
<tr>
<td>1604.14.00</td>
<td>Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each, NESOI</td>
</tr>
<tr>
<td>1604.14.00</td>
<td>Tunas, albacore, in oil, in airtight containers, NESOI</td>
</tr>
</tbody>
</table>
and official certification.

requiring a Fisheries Certificate of Origin
accompanied by an FCO and the offi-
States. Shipments exported from a
large-scale driftnet nation, as identi-
ified under paragraph (f)(2)(ii) of this sec-
tion, must be

listed in
hundreds of categories of
fish and shellfish, in addition to those
identified in paragraphs (f)(2)(i) and
(f)(2)(ii) of this section, known to have
been harvested using a large-scale
driftnet and imported into the United
States. Shipments exported from a
large-scale driftnet nation, as identi-
fied under paragraph (f)(7) of this sec-
tion, and imported into the United
States, including but not limited to
those imported into the United States
under any of the HTS numbers listed in
paragraph (f)(2) of this section, must be
accompanied by an FCO and the offi-
cial statement described in paragraph
(f)(4)(xiii) of this section.

(A) Frozen.

0303.19.0012 .......... Chinook (King) salmon
(Oncorhynchus tshawytscha), frozen,
except fillets, livers and roes

0303.19.0022 .......... Chum (dog) salmon (Oncorhynchus
keta), frozen, except fillets, livers and
roes

0303.19.0032 .......... Pink (humpie) salmon
(Oncorhynchus gorbuscha), frozen,
except fillets, livers and roes

0303.19.0052 .......... Coho (silver) salmon (Oncorhynchus
kisutch), frozen, except fillets, liv-
ers and roes

0303.19.0062 .......... Pacific salmon (Oncorhynchus
masou, Oncorhynchus rhodurus), frozen,
except fillets, livers and roes, NESOI

0303.21.0000 .......... Trout (Salmo trutta; Oncorhynchus
mykiss, clarki, aquabonita, gilae,
apache, and chrysogaster), frozen,
except fillets, livers and roes

0303.22.0000 .......... Atlantic salmon (Salmo salar) and
Danube salmon (Hucho hucho), frozen,
except fillets, livers and roes

0303.29.0000 .......... Salmonidae, frozen, except fillets,
livers and roes, NESOI

0303.61.0010 .......... Swordfish steaks, frozen, except fil-
lets

0303.61.0090 .......... Swordfish, frozen, except steaks, fil-
lets, livers and roes

0303.75.0010 .......... Dogfish (Squalus spp.), frozen, ex-
cept fillets, livers and roes

0303.75.0090 .......... Sharks, frozen, except dogfish, fil-
lets, livers and roes

0303.79.0079 .......... Fish, frozen, except fillets, livers and
roes, NESOI

0304.21.0000 .......... Salmonidae fillets, frozen, except At-
lantic salmon, NESOI

0304.29.6006 .......... Fish fillets, frozen, NESOI

0304.29.6099 .......... Fish fillets, frozen, NESOI

0307.49.0010 .......... Squid fillets, frozen

(B) Canned:

1604.11.2020 .......... Pink (humpie) salmon, whole or in
pieces, but not minced, in oil, in
airtight containers

1604.11.2030 .......... Sockeye (red) salmon, whole or in
pieces, but not minced, in oil, in
airtight containers

1604.11.2090 .......... Salmon NESOI, whole or in pieces,
but not minced, in oil, in airtight
containers

1604.11.4010 .......... Chum (dog) salmon, not in oil, can-
ed

1604.11.4020 .......... Pink (humpie) salmon, not in oil, can-
ed

1604.11.4030 .......... Sockeye (red) salmon, not in oil, can-
ed

1604.11.4040 .......... Salmon, NESOI, not in oil, canned

1604.11.4050 .......... Salmon, whole or in pieces, but not
minced, NESOI

1604.19.2000 .......... Fish, NESOI, not in oil, in airtight
containers

1604.19.3000 .......... Fish, NESOI, in oil, in airtight con-
tainers

1605.90.6050 .......... Loligo squid, prepared or preserved

1604.14.2251 .......... Albacore tuna, not in oil, in foil/flexi-
ble airtight containers, weighing not
over 6.8 kg, 4.8% of U.S. consump-
tion of canned tuna during preceding
year

1604.14.2259 .......... Albacore tuna, not in oil, in airtight
containers weighing not over 7 kg,
NESOI, 4.8% of U.S. consumption of
canned tuna during preceding
year

1604.14.2299 .......... Other tunas and skipjack, no oil, in
foil/flexible airtight containers, not
over 6.8 kg, 4.8% of U.S. consump-
tion of canned tuna during preceding
year

1604.14.3051 .......... Tuna, albacore not in oil, in foil or
other flexible airtight containers,
weighing with contents not more than
6.8 kg each, NESOI

1604.14.3059 .......... Tuna, albacore not in oil, in airtight
containers, NESOI

1604.14.3091 .......... Tunas and skipjack, NESOI, not in
oil, in foil or other flexible airtight
containers, weighing with their
contents not more than 6.8 kg each

1604.14.3099 .......... Other tunas and skipjack, not in oil,
in airtight containers, NESOI

(C) Loins: (other than Yellowfin).

1604.14.4000 .......... Tunas and skipjacks, prepared or
preserved, not in airtight con-
tainers, NESOI

1604.14.5000 .......... Tunas and skipjacks, prepared or pre-
served, not in airtight containers, NESOI

(D) Other: (only if the product contains tuna).

1604.20.1000 .......... Fish pastes

1604.20.2500 .......... Fish balls, cakes and puddings, not
in oil, in airtight containers, in
immediate containers weighing with
their contents not over 6.8 kg each

1604.20.3000 .......... Fish balls, cakes and puddings, NESOI

(iii) Exports from driftnet nations only,
requiring a Fisheries Certificate of Origin
and official certification. The following
HTS numbers identify categories of
fish and shellfish, in addition to those
identified in paragraphs (f)(2)(i) and
(f)(2)(ii) of this section, known to have
been harvested using a large-scale
driftnet and imported into the United
States. Shipments exported from a
large-scale driftnet nation, as identi-
fied under paragraph (f)(7) of this sec-
tion, and imported into the United
States, including but not limited to
those imported into the United States
under any of the HTS numbers listed in
paragraph (f)(2) of this section, must be
accompanied by an FCO and the offi-


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(3) Disposition of Fisheries Certificates of Origin. The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at http://swr.nmfs.noaa.gov/noaa370.htm.

(i) A properly completed FCO and its attached certificates as described in §216.91(a), if applicable, must accompany the required CBP entry documents that are filed at the time of import.

(ii) FCOs and associated certifications as described in §216.91(a), if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 10 calendar days of the shipment’s entry into the commerce of the United States. FCOs submitted via mail should be sent to the Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832–2469. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following email address: SWRTuna.Track@noaa.gov. The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned. Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in Portable Document Format (PDF).

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed.

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years, and such records must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region.

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

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

(vii) Ocean area where the fish were harvested (ETP, western Pacific Ocean, south Pacific Ocean, north Pacific Ocean, eastern Atlantic Ocean, western Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);
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(viii) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, pole and line/hook and line, or other);  

(ix) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel’s fishing operations;  

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

(xi) The name of the harvesting vessel;  

(xii) Dolphin-safe condition of the shipment, described by checking the appropriate statement on the form and attaching additional certifications as described in §216.91(a) if required;  

(xiii) For shipments containing fish or fish products exported from, or harvested on the high seas by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(7) of this section, the High Seas Driftnet Certification contained on the FCO must be dated and signed by a responsible government official of the large-scale driftnet nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and  

(xiv) Each importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.  

(5) Dolphin-safe label. Tuna or tuna products sold in or exported from the United States that include on the label the term “dolphin-safe” or any other term or symbol that claims or suggests that the tuna were harvested in a manner not injurious to dolphins are subject to the requirements of subpart H of this part (§216.90 et seq.).  

(6) Scope of embargoes—(1) ETP yellowfin tuna embargo. Yellowfin tuna or products of yellowfin tuna harvested using a purse seine in the ETP identified by an HTS number listed in paragraph (f)(2)(i) of this section may not be imported into the United States if such tuna or tuna products were:  

(A) Harvested on or after March 3, 1999, the effective date of section 4 of the IDCPA, and harvested by, or exported from, a nation that the Assistant Administrator has determined has jurisdiction over purse seine vessels of greater than 400 st (362.8 mt) carrying capacity harvesting tuna in the ETP, unless the Assistant Administrator has made an affirmative finding required for importation for that nation under paragraph (f)(8) of this section;  

(B) Exported from an intermediary nation, as defined in Section 3 of the MMPA, and a ban is currently in force prohibiting the importation under Section 101(a)(2) of the MMPA at the time of harvest.  

(ii) Driftnet embargo. A shipment containing fish or fish products identified by an HTS number listed in paragraph (f)(2) of this section may not be imported into the United States if it is harvested by a large-scale driftnet, or if it is exported from or harvested on the high seas by any nation determined by the Assistant Administrator to be engaged in large-scale driftnet fishing, unless a government official of the large-scale driftnet nation completes, signs and dates the High Seas Driftnet section of the FCO certifying that the fish or fish products were harvested by a method other than large-scale driftnet.  

(iii) Pelly certification. After 6 months of an embargo being in place against a nation under this section, the Secretary will certify that nation under Section 8(a) of the Fishermen’s Protective Act (22 U.S.C. 1978(a)). When such an embargo is lifted, the Secretary will terminate the certification under Section 8(d) of that Act (22 U.S.C. 1978(d)).  

(iv) Coordination. The Assistant Administrator will promptly advise the Department of State and the Department of Homeland Security of embargo decisions, actions, and finding determinations.  

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

(b) Affirmative finding procedure for nations harvesting yellowfin tuna using a purse seine in the ETP. (i) The Assistant Administrator will determine, on an annual basis, whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation or by the IDCP and the IATTC, and will publish the finding in the Federal Register. A finding will remain valid for 1 year or for such other period as the Assistant Administrator may determine. An affirmative finding will be terminated if the Assistant Administrator determines that the requirements of this paragraph are no longer being met. Every 5 years, the government of the harvesting nation must submit such documentary evidence directly to the Assistant Administrator and request an affirmative finding. Documentary evidence must be submitted by the harvesting nation for the first affirmative finding application. The Assistant Administrator may require the submission of supporting documentation or other verification of statements made in connection with requests to allow importations. An affirmative finding applies to yellowfin tuna and yellowfin tuna products that were harvested by vessels of the nation after March 3, 1999. To make an affirmative finding, the Assistant Administrator must find that:

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

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

(C)(i) The annual total dolphin mortality of the nation’s purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the mortality limits assigned by the IDCP for that nation’s purse seine vessels for the year preceding the year in which the finding would start; or

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

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

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

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

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

(ii) Documentary Evidence and Compliance with the IDCP—(A) Documentary Evidence. The Assistant Administrator will make an affirmative finding under paragraph (f)(8)(i) of this section only if the government of the harvesting nation provides directly to the Assistant Administrator, or authorizes the IATTC to release to the Assistant Administrator, complete, accurate, and timely information that enables the Assistant Administrator to determine whether the harvesting nation is meeting the obligations of the IDCP, and whether ETP-harvested tuna imported from such nation complies with the tracking and verification regulations of subpart H of this part.

(B) Revocation. After considering the information provided under paragraph (f)(8)(i)(A) of this section, each party’s financial obligations to the IATTC, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations that diminish the effectiveness of the IDCP, the Assistant Administrator, in consultation with the Secretary of State, will revoke an affirmative finding issued to a nation that is not meeting the obligations of the IDCP.

(iii) A harvesting nation may apply for an affirmative finding at any time by providing to the Assistant Administrator the information and authorizations required by paragraphs (f)(8)(i) and (f)(8)(ii) of this section, allowing at least 60 days from the submission of complete information to NMFS for processing.

(iv) The Assistant Administrator will make or renew an affirmative finding for the period from April 1 through March 31 of the following year, or portion thereof, if the harvesting nation has provided all the information and authorizations required by paragraphs (f)(8)(i) and (f)(8)(ii) of this section, and has met the requirements of paragraphs (f)(8)(i) and (f)(8)(ii) of this section.

(v) Reconsideration of finding. The Assistant Administrator may reconsider a finding upon a request from, and the submission of additional information by, the harvesting nation, if the information indicates that the nation has met the requirements under paragraphs (f)(8)(i) and (f)(8)(ii) of this section.

(9) Intermediary nation. Except as authorized under this paragraph, no yellowfin tuna or yellowfin tuna products harvested by purse seine in the ETP classified under one of the HTS numbers listed in paragraph (f)(2)(i) of this section may be imported into the United States from any intermediary nation.

(i) An “intermediary nation” is a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to Section 101(a)(2)(B) of the MMPA.

(ii) Shipments of yellowfin tuna that pass through any nation (e.g. on a “through Bill of Lading”) and are not entered for consumption in that nation are not considered to be imports to that nation and thus, would not cause that nation to be considered an intermediary nation under the MMPA.

(iii) The Assistant Administrator will publish in the FEDERAL REGISTER a notice announcing when NMFS has determined, based on the best information available, that a nation is an “intermediary nation.” After the effective date of that notice, the import restrictions of this paragraph shall apply.

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

(v) The Assistant Administrator will review decisions under this paragraph upon the request of an intermediary nation. Such requests must be accompanied by specific and detailed supporting information or documentation indicating that a review or reconsideration is warranted. For purposes of this paragraph, the term “certification and reasonable proof” means the submission to the Assistant Administrator by a responsible government official from the nation of a document reflecting the nation’s customs records for the preceding 6 months, together with a certification attesting that the document is accurate.

(10) Fish refused entry. If fish is denied entry under paragraph (f)(2) of this section, the Port Director of CBP shall refuse to release the fish for entry into the United States.

(11) Disposition of fish refused entry into the United States. Fish that is denied entry under paragraph (f)(2) of this section and that is not exported under CBP supervision within 90 days shall be disposed of under CBP laws and regulations at the importer’s expense. Provided, however, that any disposition shall not result in an introduction into the United States of fish caught in violation of the MMPA.

(12) Market Prohibitions. (i) It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals unless the label or mark complies with the requirements of 16 U.S.C. 1385(d).

(g) Penalties. Any person or vessel subject to the jurisdiction of the United States will be subject to the penalties provided for under the MMPA for the conduct of fishing operations in violation of these regulations. Penalties for violating these regulations may include, but are not limited to, civil monetary fines, permit suspension or revocation, and reductions in current and future DMLs. Recommended sanctions are identified in the IDCPA/DPCIA Tuna/Dolphin Civil Administrative Penalty Schedule. Procedures for the imposition of penalties under the MMPA are found at 15 CFR part 904.

§ 216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the MMPA and these regulations shall not apply:

(1) To any marine mammal taken before December 21, 1972, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

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

(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals exempted under this section as those that were actually captured or otherwise in captivity before December 21, 1972.

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1In the context of captive maintenance of marine mammals, the only marine mammals exempted under this section are those that were actually captured or otherwise in captivity before December 21, 1972.
§ 216.26 Collection of certain marine mammal parts without prior authorization.

Notwithstanding any other provision of this subpart:
(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within \(\frac{1}{4}\) of a mile of the ocean. The term ocean includes bays and estuaries.
(b) Notwithstanding the provisions of subpart D, soft parts that are sloughed, excreted, or discharged naturally by a living marine mammal in the wild may be collected or imported for bona fide scientific research and enhancement, provided that collection does not involve the taking of a living marine mammal in the wild.
(c) Any marine mammal part collected under paragraph (a) of this section or any marine mammal part collected and imported under paragraph (b) of this section must be registered and identified, and may be transferred or otherwise possessed, in accordance with §216.22(c). In registering a marine mammal part collected or imported under paragraph (b) of this section, the person who collected or imported the part must also state the scientific research or enhancement purpose for which the part was collected or imported.
(d) No person may purchase, sell or trade for commercial purposes any marine mammal part collected or imported under this section.
(e) The export of parts collected without prior authorization under paragraph (b) of this section may occur if consistent with the provisions at §216.37(d) under subpart D.

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

(a) Release requirements. (1) Any marine mammal held for rehabilitation must be released within six months of capture or import unless the attending veterinarian determines that:
   (i) The marine mammal might adversely affect marine mammals in the wild;
   (ii) Release of the marine mammal to the wild will not likely be successful given the physical condition and behavior of the marine mammal; or
   (iii) More time is needed to determine whether the release of the marine mammal to the wild will likely be successful. Releasability must be reevaluated at intervals of no less than six months until 24 months from capture or import, at which time there will be a rebuttable presumption that release into the wild is not feasible.
(2) The custodian of the rehabilitated marine mammal shall provide written notification prior to any release into the wild.
   (i) Notification shall be provided to:
      (A) The NMFS Regional Director at least 15 days in advance of releasing any beached or stranded marine mammal, unless advance notice is waived in writing by the Regional Director; or
      (B) The Office Director at least 30 days in advance of releasing any imported marine mammal.
   (ii) Notification shall include the following:
      (A) A description of the marine mammal, including its physical condition and estimated age;
      (B) The date and location of release; and
      (C) The method and duration of transport prior to release.
(3) The Regional Director, or the Office Director as appropriate, may:
   (i) Require additional information prior to any release;
   (ii) Change the date or location of release, or the method or duration of transport prior to release;
   (iii) Impose additional conditions to improve the likelihood of success or to monitor the success of the release; or
   (iv) Require other disposition of the marine mammal.
(4) All marine mammals must be released near wild populations of the same species, and stock if known, unless a waiver is granted by the Regional Director or the Office Director.
(5) All marine mammals released must be tagged or marked in a manner acceptable to the Regional Director or the Office Director. The tag number or description of the marking must be reported to the Regional Director or Office Director following release.

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

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

(i) Order the release of the marine mammal;

(ii) Order continued rehabilitation for an additional 6 months; or

(iii) Order other disposition as authorized.

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

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

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

(4) Notwithstanding any of the provisions of this section, the Office Director may require use of a rehabilitated marine mammal in accordance with paragraph (c)(1)(i) of this section and pending disposition under paragraph (c) of this section, or any marine mammal imported for medical treatment otherwise unavailable and placed on public display following a non-releasability determination under paragraph (a)(1) of this section and pending disposition under paragraph (c) of this section, for purposes of scientific research, enhancement, or public display purposes.

(c) Disposition for a special exception purpose. (1) Upon receipt of an authorization request made under paragraph (b)(3)(i) of this section, or release notification under (a)(2), the Office Director may authorize the retention or transfer of custody of the marine mammal for a special exception purpose authorized under subpart D.

(2) The Office Director will first consider requests from a person authorized to hold the marine mammal for rehabilitation. The Office Director may authorize such person to retain or transfer custody of the marine mammal for scientific research, enhancement, or public display purposes.

(3) The Office Director may authorize retention or transfer of custody of the marine mammal only if:

(i) Documentation has been submitted to the Office Director that the person retaining the subject animal or the person receiving custody of the subject animal by transfer, hereinafter referred to as the recipient, complies with public display requirements of 16 U.S.C. 1374(c)(2)(A) or, for purposes of scientific research and enhancement, holds an applicable permit, or an application for such a special exception permit under §216.33 or a request for a major amendment under §216.39 has been submitted to the Office Director and has been found complete;

(ii) The recipient agrees to hold the marine mammal in conformance with all applicable requirements and standards; and

(iii) The recipient acknowledges that the marine mammal is subject to seizure by the Office Director:

(A) If, at any time pending issuance of the major amendment or permit, the Office Director determines that seizure is necessary in the interest of the health or welfare of the marine mammal;

(B) If the major amendment or permit is denied; or

(C) If the recipient is issued a notice of violation and assessment, or is subject to permit sanctions, in accordance with 15 CFR part 904.

(4) There shall be no remuneration associated with any transfer, provided the transferee may reimburse the
transferor for any and all costs associated with the rehabilitation and transport of the marine mammal.

(5) Marine mammals undergoing rehabilitation or pending disposition under this section shall not be subject to public display, unless such activities are specifically authorized by the Regional Director or the Office Director, and conducted consistent with the requirements applicable to public display. Such marine mammals shall not be trained for performance or be included in any aspect of a program involving interaction with the public; and

(6) Marine mammals undergoing rehabilitation shall not be subject to intrusive research, unless such activities are specifically authorized by the Office Director in consultation with the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals, and are conducted pursuant to a scientific research permit.

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

[61 FR 21933, May 10, 1996]

Subpart D—Special Exceptions

§ 216.30 [Reserved]

§ 216.31 Definitions.

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

[61 FR 21935, May 10, 1996]

§ 216.32 Scope.

The regulations of this subpart apply to:

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

[61 FR 21935, May 10, 1996]

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

(a) Application submission. Persons seeking a special exemption permit under this subpart must submit an application to the Office Director. The application must be signed by the applicant, and provide in a properly formatted manner all information necessary to process the application. Written instructions addressing information requirements and formatting may be obtained from the Office Director upon request.

(b) Applications to export living marine mammals. For applicants seeking a special exception permit to export living marine mammals, the application must:

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

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

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

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

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

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

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

(i) Whether the application is complete.

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

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

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

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

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

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

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

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

(i) Summarize the application, including:

(A) The purpose of the request;

(B) The species and number of marine mammals;

(C) The type and manner of special exception activity proposed;

(D) The location(s) in which the marine mammals will be taken, from which they will be imported, or to which they will be exported; and

(E) The requested period of the permit.

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

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

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

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

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

(4) Within 30 days of publication of the notice of receipt in the Federal Register, any interested party may submit written comments or may request a public hearing on the application.

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

(6) The Office Director may extend the period during which any interested party may submit written comments.
§ 216.34 Issuance criteria.

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

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

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

(3) If the permit is issued, upon receipt, the holder must date and sign the permit, and return a copy of the original to the Office Director. The permit shall be effective upon the permit holder’s signing of the permit. In signing the permit, the holder:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations under this subpart; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization by the Office Director.

(4) Notice of the decision of the Office Director shall be published in the Federal Register within 10 days after the date of permit issuance or denial. If the permit issued involves marine mammals listed as endangered or threatened under the ESA, the notice shall include a finding by the Office Director that the permit:

(i) Was applied for in good faith;

(ii) If exercised, will not operate to the disadvantage of such endangered or threatened species; and

(iii) Is consistent with the purposes and policy set forth in section 2 of the ESA.

(5) If the permit is denied, the Office Director shall provide the applicant with an explanation for the denial.

(6) Under the MMPA, the Office Director may issue a permit for scientific research before the end of the public comment period if delaying issuance could result in injury to a species, stock, or individual, or in loss of unique research opportunities. The Office Director also may waive the 30-day comment period required under the ESA in an emergency situation where the health or life of an endangered or threatened marine mammal is threatened and no reasonable alternative is available. If a permit is issued under these circumstances, notice of such issuance before the end of the comment period shall be published in the Federal Register within 10 days of issuance.

(7) The applicant or any party opposed to a permit may seek judicial review of the terms and conditions of such permit or of a decision to deny such permit. Review may be obtained by filing a petition for review with the appropriate U.S. District Court as provided for by law.

[61 FR 21935, May 10, 1996]
(3) The proposed activity, if it involves endangered or threatened marine mammals, will be conducted consistent with the purposes and policies set forth in section 2 of the ESA;

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

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

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

(7) Any requested import or export will not likely result in the taking of marine mammals or marine mammal parts beyond those authorized by the permit.

(b) The opinions or views of scientists or other persons or organizations knowledgeable of the marine mammals that are the subject of the application or of other matters germane to the application will be considered.

[61 FR 21936, May 10, 1996]

§ 216.35 Permit restrictions.

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

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

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

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

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

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

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

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

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

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

(j) The permit holder or designated agent shall possess a copy of the permit when engaged in a permitted activity, when the marine mammal is in transit incidental to such activity, and whenever marine mammals or marine mammal parts are in the possession of the permit holder or agent. A copy of the permit shall be affixed to any container, package, enclosure, or other means of containment, in which the marine mammals or marine mammal parts are.
§ 216.36 Permit conditions.

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

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

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

(iii) The location(s) in which the marine mammals may be taken, from which they may be imported, or to which they may be exported, as applicable, and, for endangered or threatened marine mammal species to be imported or exported, the port of entry or export;

(iv) The period during which the permit is valid.

(2) [Reserved]

(b) Other conditions. In addition to the specific conditions imposed pursuant to paragraph (a) of this section, the Office Director shall specify any other permit conditions deemed appropriate.

§ 216.37 Marine mammal parts.

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

(a) Marine mammal parts are transferrable if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Marine mammal parts may be exported and subsequently reimported by a permit holder or subsequent authorized recipient, for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that:

(1) The permit holder or other person receives no remuneration for the marine mammal part;

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

(3) The marine mammal part is exported or reimported in compliance with all applicable domestic and foreign laws;

(4) If exported or reimported for educational purposes, the recipient is a museum, educational institution, or equivalent that will ensure that the part is available to the public as part of an educational program; and

(5) Special reports are submitted within 30 days after both export and reimport as required by the Office Director under §216.38.

§216.38 Reporting.

All permit holders must submit annual, final, and special reports in accordance with the requirements established in the permit, and any reporting format established by the Office Director.

§216.39 Permit amendments.

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

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

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

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

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

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

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

(b) Amendment requests and proposals.

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

(i) The purpose and nature of the amendment;

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

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

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

(c) Review of proposed amendments—(1) Major amendments. The provisions of
§ 216.40 Penalties and permit sanctions.

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

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

§ 216.41 Permits for scientific research and enhancement.

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The proposed research will either:

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

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

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

(6) For proposed enhancement activities:

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

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

(iii) The activity is consistent with:

(A) An approved conservation plan developed under section 115(b) of the MMPA or recovery plan developed under section 4(f) of the ESA for the species or stock; or

(B) If there is no conservation or recovery plan, with the Office Director's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation or recovery plan.

(iv) An enhancement permit may authorize the captive maintenance of a marine mammal from a threatened, endangered, or depleted species or stock only if the Office Director determines that:

(A) The proposed captive maintenance will likely contribute directly to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing necessary biological information, or establishing animal reserves required to support directly these objectives; and

(B) The expected benefit to the species or stock outweighs the expected benefits of alternatives that do not require removal of marine mammals from the wild.

(v) The Office Director may authorize the public display of marine mammals held under the authority of an enhancement permit only if:

(A) The public display is incidental to the authorized captive maintenance;

(B) The public display will not interfere with the attainment of the survival or recovery objectives;

(C) The marine mammals will be held consistent with all requirements and standards that are applicable to marine mammals held under the authority of the Acts and the Animal Welfare Act, unless the Office Director determines that an exception is necessary to implement an essential enhancement activity; and

(D) The marine mammals will be excluded from any interactive program and will not be trained for performance.

(vi) The Office Director may authorize non-intrusive scientific research to be conducted while a marine mammal is held under the authority of an enhancement permit, only if such scientific research:

(A) Is incidental to the permitted enhancement activities; and

(B) Will not interfere with the attainment of the survival or recovery objectives.

(c) Restrictions. (1) The following restrictions apply to all scientific research permits issued under this subpart:

(i) Research activities must be conducted in the manner authorized in the permit.

(ii) Research results shall be published or otherwise made available to the scientific community in a reasonable period of time.

(iii) Research activities must be conducted under the direct supervision of the principal investigator or a co-investigator identified in the permit.

(iv) Personnel involved in research activities shall be reasonable in number and limited to:

(A) Individuals who perform a function directly supportive of and necessary to the permitted research activity; and

(B) Support personnel included for the purpose of training or as backup.
§ 216.42  Photography. [Reserved]

§ 216.43  Public display. [Reserved]

§ 216.44  Applicability/transition.

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

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

[61 FR 21938, May 10, 1996]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild...
§ 216.45

involving other than Level B harassment and, as a result, cannot be conducted under the General Authorization, and that a scientific research permit is required to conduct all or part of the subject research; or

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

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

(3) Periodically, NMFS will publish a summary document in the Federal Register notifying the public of letters of confirmation issued.

(d) Terms and conditions. Persons issued letters of confirmation in accordance with paragraph (c) of this section are responsible for complying with the following terms and conditions:

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

(2) Annual reports of activities conducted under the General Authorization must be submitted to the Chief, Permits Division (address listed in paragraph (b) of this section) within 90 days of completion of the last field season(s) during the calendar year or, if the research is not conducted during a defined field season, no later than 90 days after the anniversary date of the letter of confirmation issued under paragraph (c) of this section. Annual reports must include:

(i) A summary of research activities conducted;

(ii) Identification of the species and number of each species taken by Level B harassment;

(iii) An evaluation of the progress made in meeting the objectives of the research as described in the letter of intent; and

(iv) Any incidental scientific, educational, or commercial uses of photographs, videotape, and film obtained as a result of or incidental to the research and if so, names of all photographers.

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

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

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

(6) If research activities result in a taking which exceeds Level B harassment, the applicant shall:

(i) Report the taking within 12 hours to the Director, Office of Protected Resources, or his designee as set forth in the letter authorizing research; and

(ii) Temporarily discontinue for 72 hours all field research activities that resulted in the taking. During this time period, the applicant shall consult with NMFS as to the circumstances surrounding the taking and any precautions necessary to prevent future taking, and may agree to amend the research protocol, as deemed necessary by NMFS.
(7) NMFS may review scientific research conducted pursuant to the General Authorization. If requested by NMFS, the applicant must cooperate with any such review and shall:
   (i) Allow any employee of NOAA or any other person designated by the Director, Office of Protected Resources to observe research activities; and
   (ii) Provide any documents or other information relating to the scientific research;
(8) Any photographs, videotape, or film obtained during the conduct of research under the General Authorization must be identified by a statement that refers to the General Authorization or ESA permit number, and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images, and if there are any such uses, the names of all photographers; and
(9) Persons conducting scientific research under authority of the General Authorization may not transfer or assign any authority granted thereunder to any other person.

§ 216.46 U.S. citizens on foreign flag vessels operating under the International Dolphin Conservation Program.

The MMPA’s provisions do not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations in the ETP which are outside the U.S. exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)), while employed on a fishing vessel of a harvesting nation that is participating in, and in compliance with, the IDCP.

§ 216.47 Access to marine mammal tissue, analyses, and data.

(a) Applications for the National Marine Mammal Tissue Bank samples (NMMTB). (1) A principal investigator, contributor or holder of a scientific research permit issued in accordance with the provisions of this subpart may apply for access to a tissue specimen sample in the NMMTB. Applicants for tissue specimen samples from the NMMTB must submit a signed written request with attached study plan to the Marine Mammal Health and Stranding Response Program (MMHSRP) Program Manager, Office of Protected Resources, NMFS. The written request must include:
   (i) A clear and concise statement of the proposed use of the banked tissue specimen. The applicant must demonstrate that the proposed use of the banked tissue is consistent with the goals of the NMMTB and the MMHSRP.
   (A) The goals of the MMHSRP are to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.
   (B) The goal of the NMMTB is to maintain quality controlled marine mammal tissues that will permit retrospective analyses to determine environmental trends of contaminants and
other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques.

(ii) A copy of the applicant’s scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit;

(iii) Name of principal investigator, official title, and affiliated research or academic organization;

(iv) Specific tissue sample and quantity desired;

(v) Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance (AQA) program, which was designed to ensure the accuracy, precision, level of detection, and intercompatibility of data resulting from chemical analyses of marine mammal tissues. The AQA consists of annual interlaboratory comparisons and the development of control materials and standard reference materials for marine mammal tissues;

(vi) Verification that funding is available to conduct the research;

(vii) Estimated date for completion of research, and schedule/date of subsequent reports;

(viii) Agreement that all research findings based on use of the banked tissue will be reported to the NM&M, MMHSRP Program Manager and the contributor, and the sequences of tissue specimen samples that are used/released for genetic analyses (DNA sequencing) will be archived in the National Center for biotechnology Information’s GenBank. Sequence accessions in GenBank should document the source, citing a NIST field number that identifies the animal; and

(ix) Agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service (USFWS), US Geologic Service (USGS), National Institute of Standards and Technology (NIST), the Minerals Management Service (MMS), NMFS, the NM&M, and the collector for use of banked tissues.

(2) The applicant shall insert the following acknowledgment in all publications, abstracts, or presentations based on research using the banked tissue:

The specimens used in this study were collected by [the contributor] and provided by the National Marine Mammal Tissue Bank, which is maintained in the National Monitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of MMS, USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program (and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska).

(3) Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

(i) Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species; and

(ii) Representatives of the NM&M Collaborating Agencies (NMFS, USFWS, USGS Biological Resources Division, and NIST) If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which may be outside of NMFS or USFWS but within the Federal Government.

(4) The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date that the request was sent to the contributor(s).

(5) The USFWS Representative of the NM&M Collaborating Agencies will be chair of review committees for requests involving species managed by the DOI. The MMHSRP Program Manager will be chair of all other review committees.

(6) Each committee chair will provide recommendations on the request and an evaluation of the study plan to the Director, Office of Protected Resources, NMFS.

(7) The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee, comments received from any contributors(s) of the samples within the time provided in paragraph

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(a)(4) of this section, and determination that the proposed use of the banked tissue specimen is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

(8) The applicant will bear all shipping and homogenization costs related to use of any specimens from the NMMTB.

(9) The applicant will dispose of the tissue specimen sample consistent with the provisions of the applicant’s scientific research permit after the research is completed, unless the requester submits another request and receives approval pursuant to this section. The request must be submitted within three months after the original project has been completed.

(b) [Reserved]

[69 FR 41979, July 13, 2004]

§§ 216.48–216.49 [Reserved]

Subpart E—Designated Ports

§ 216.50 Importation at designated ports.

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

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

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

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

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

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


Subpart F—Pribilof Islands, Taking for Subsistence Purposes

§ 216.71 Allowable take of fur seals.

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

(a) For subsistence uses, and
(b) Not accomplished in a wasteful manner.


§ 216.72 Restrictions on taking.

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

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

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

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

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

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

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

(f) The Assistant Administrator shall terminate the take provided for in § 215.31 on August 8 of each year or when it is determined under paragraph (e)(1)(i) of this section that the subsistence needs of the Pribilovians on the island have been satisfied, whichever occurs first.

§ 216.74 Cooperation with Federal officials.

Pribilovians who engage in the harvest of seals are required to cooperate with scientists engaged in fur seal research on the Pribilof Islands who may need assistance in recording tag or other data and collecting tissue or other fur seal samples for research purposes. In addition, Pribilovians who take fur seals for subsistence uses must, consistent with 5 CFR 1320.7(k)(3), cooperate with the NMFS representatives on the Pribilof Islands who are responsible for compiling the following information on a daily basis:

(a) The number of seals taken each day in the subsistence harvest,

(b) The extent of the utilization of fur seals taken, and

(c) Other information determined by the Assistant Administrator to be necessary for determining the subsistence needs of the Pribilovians or for making determinations under §215.32(e).


Subpart G—Pribilof Islands Administration

§ 216.81 Visits to fur seal rookeries.

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

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

§ 216.82 Dogs prohibited.

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

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

§ 216.83 Importation of birds or mammals.

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

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

§ 216.84 [Reserved]

§ 216.85 Walrus and Otter Islands.

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

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

§ 216.86 Local regulations.

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

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

§ 216.87 Wildlife research.

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

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

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

(i) Copies of the required Federal and State of Alaska permits; and
§ 216.90

(ii) A resume of the intended research program.

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

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

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


Subpart H—Dolphin Safe Tuna Labeling


§ 216.90 Purposes.

This subpart governs the requirements for using the official mark described in § 216.95 or an alternative mark that refers to dolphins, porpoises, or marine mammals, to label tuna or tuna products offered for sale in or exported from the United States using the term dolphin-safe or suggesting the tuna were harvested in a manner not injurious to dolphins.

[69 FR 55307, Sept. 13, 2004]

§ 216.91 Dolphin-safe labeling standards.

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

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

(i) the documentation requirements for dolphin-safe tuna under § 216.92 and 216.93 are met;

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

(iii) None of the tuna were caught on a trip using a purse seine net intentionally deployed on or to encircle dolphins, provided that this paragraph (a)(1)(iii) will not apply if the Assistant Administrator publishes a notification in the Federal Register announcing a finding under 16 U.S.C. 1385(g)(2) that the intentional deployment of purse seine nets on or encirclement of dolphins is not having a significant adverse impact on any depleted stock.

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

(i) In a fishery in which the Assistant Administrator has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are accompanied as described in § 216.24(f)(3) by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied as described in § 216.24(f)(3) by a written statement executed by the Captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna was harvested;

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

(4) Other fisheries. By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator as having a regular
§ 216.93 Tracking and verification program.

The Administrator, Southwest Region, has established a national tracking and verification program to accurately document the dolphin-safe condition of tuna, under the standards set forth in §§ 216.91 and 216.92. The tracking program includes procedures and reports for use when importing tuna into the United States and during U.S. vessel fishing in the ETP.

§ 216.92 Dolphin-safe requirements for tuna harvested in the ETP by large purse seine vessels.

(a) U.S. vessels. Tuna products that contain tuna harvested by U.S. flag purse seine vessels of greater than 400 st (362.8 mt) carrying capacity may be labeled dolphin-safe only if the following requirements are met:

1. Tuna Tracking Forms containing a complete record of all the fishing activities on the trip, certified by the vessel Captain and the observer, are submitted to the Administrator, Southwest Region, at the end of the fishing trip during which the tuna was harvested;

2. The tuna is delivered for processing to a U.S. tuna processor in a plant located in one of the 50 states, Puerto Rico, or American Samoa that is in compliance with the tuna tracking and verification requirements of § 216.93; and

3. The tuna or tuna products meet the dolphin-safe labeling standards under § 216.91.

(b) Imported tuna. (1) Yellowfin tuna or tuna products harvested in the ETP by vessels of greater than 400 st (362.8 mt) carrying capacity and presented for import into the United States may be labeled dolphin-safe only if the yellowfin tuna was harvested by a U.S. vessel fishing in compliance with the requirements of the IDCP and applicable U.S. law, or by a vessel belonging to a nation that has obtained an affirmative finding under § 216.24(f)(8).

(ii) The tuna or tuna products are accompanied as described in § 216.24(f)(3) by a properly completed FCO; and

(iii) The tuna or tuna products are accompanied as described in § 216.24(f)(3) by valid documentation signed by a representative of the appropriate IDCP member nation, containing the harvesting vessel names and tuna tracking form numbers represented in the shipment, and certifying that:

(A) There was an IDCP approved observer on board the vessel(s) during the entire trip(s); and

(B) The tuna contained in the shipment were caught according to the dolphin-safe labeling standards of § 216.91.

The Administrator, Southwest Region, has established a national tracking and verification program to accurately document the dolphin-safe condition of tuna, under the standards set forth in §§ 216.91 and 216.92. The tracking program includes procedures and reports for use when importing tuna into the United States and during U.S. vessel fishing in the ETP.
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purse seine fishing, processing, and marketing in the United States and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements. The tracking program is consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.  

(a) Tuna tracking forms. Whenever a U.S. flag tuna purse seine vessel of greater than 400 st (362.8 mt) carrying capacity fishes in the ETP, IDC approved Tuna Tracking Forms (TTFs), bearing a unique number assigned to that trip, are used by the observer to record every set made during that trip. One TTF is used to record dolphin-safe sets and a second TTF is used to record non-dolphin-safe sets. The information entered on the TTFs following each set includes the date, well number, weights by species composition, estimated tons loaded, and additional notes, if any. The observer and the vessel engineer initial the entry as soon as possible following each set, and the vessel captain and observer review and sign both TTFs at the end of the fishing trip certifying that the information on the forms is accurate. TTFs are confidential official documents of the IDCP, consistent with Article XVIII of the Agreement on the IDCP, and the Agreement on the IDCP Rules of Confidentiality.  

(b) Dolphin-Safe Certification. Upon request, the Office of the Administrator, Southwest Region, will provide written certification that tuna harvested by U.S. purse seine vessels greater than 400 st (362.8 mt) carrying capacity is dolphin-safe, but only if NMFS’ review of TTFs for the subject trip shows that the tuna for which the certification is requested is dolphin-safe under the requirements of the Agreement on the IDCP and U.S. law.  

(c) Tracking fishing operations. (1) During ETP fishing trips by purse seine vessels greater than 400 st (362.8 mt) carrying capacity, tuna caught in sets designated as dolphin-safe by the vessel observer must be stored separately from tuna caught in non-dolphin-safe sets from the time of capture through unloading. Vessel personnel will decide into which wells tuna will be loaded. The observer will initially designate whether each set is dolphin-safe or not, based on his/her observation of the set. The observer will initially identify a vessel fish well as dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which no dolphin died or was seriously injured. The observer will initially identify a vessel fish well as non-dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which a dolphin died or was seriously injured. Any tuna loaded into a well previously designated non-dolphin-safe is considered non-dolphin-safe tuna. The observer will change the designation of a dolphin-safe well to non-dolphin-safe if any tuna are loaded into the well that were captured in a set in which a dolphin died or was seriously injured.  

(2) The captain, managing owner, or vessel agent of a U.S. purse seine vessel greater than 400 st (362.8 mt) returning to port from a trip, any part of which included fishing in the ETP, must provide at least 48 hours notice of the vessel’s intended place of landing, arrival time, and schedule of unloading to the Administrator, Southwest Region.  

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

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

(5) The handling of TTFs and the tracking and verification of tuna caught in the Convention Area by a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity shall be
conducted consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

(d) Tracking cannery operations. (1) Whenever a U.S. tuna canning company in the 50 states, Puerto Rico, or American Samoa receives a domestic or imported shipment of ETP caught tuna for processing, a NMFS representative may be present to monitor delivery and verify that dolphin-safe and non-dolphin-safe tuna are clearly identified and remain segregated. Such inspections may be scheduled or unscheduled, and canners must allow the NMFS representative access to all areas and records.

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

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

(ii) Import receipts: In addition to the information required in paragraph (d)(2)(i) of this section, a copy of the FCO for each imported receipt must be provided.

(3) Tuna processors must report on a monthly basis the amounts of ETP-caught tuna that were immediately utilized upon receipt or removed from cold storage. This report may be submitted in conjunction with the monthly report required in paragraph (d)(2) of this section. This report must contain:

(i) The date of removal from cold storage or disposition;

(ii) Storage container or lot identifier number(s) and dolphin-safe or non-dolphin-safe designation of each container or lot; and

(iii) Details of the disposition of fish (for example, canning, sale, rejection, etc.).

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

(e) Tracking imports. All tuna products, except fresh tuna, that are imported into the United States must be accompanied as described in §216.24(f)(3) by a properly certified FCO as required by §216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 10 calendar days of the shipment’s entry into the commerce of the United States as required by §216.24(f)(3)(i).

(f) Verification requirements—(1) Record maintenance. Any exporter, transshipper, importer, processor, or wholesaler/distributor of any tuna or tuna products must maintain records related to that tuna for at least 2 years. These records include, but are not limited to: FCOs and required certifications, any reports required in paragraphs (a), (b) and (d) of this section, invoices, other import documents, and trip reports.

(2) Record submission. Within 10 calendar days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

(3) Audits and spot checks. Upon request of the Administrator, Southwest Region, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, stored, and processed tuna.

(g) Confidentiality of proprietary information. Information submitted to the National Marine Fisheries Service/NOAA, Commerce

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§ 216.94 False statements or endorsements.

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


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

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

(b) Location and size of the official mark. The official mark on labels must allow the consumer to identify the official mark and be similar in design and scale to figure 1. A full color version of

![Figure 1](image-url)
Subpart I—General Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities

 SOURCE: 61 FR 15887, Apr. 10, 1996, unless otherwise noted.

§ 216.101 Purpose.

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

§ 216.102 Scope.

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

(a) Finds, based on the best scientific evidence available, that the total taking by the specified activity during the specified time period will have a negligible impact on species or stock of marine mammal(s) and will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses;

(b) Prescribes either regulations under §216.106, or requirements and conditions contained within an incidental harassment authorization issued under §216.107, setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species or stock of marine mammal and its habitat and on the availability of the species or stock of marine mammal for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(c) Prescribes either regulations or requirements and conditions contained within an incidental harassment authorization, as appropriate, pertaining to the monitoring and reporting of such taking. The specific regulations governing certain specified activities are contained in subsequent subparts of this part.

§ 216.103 Definitions.

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

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

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

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

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

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

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

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

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

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

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

(3) The species and numbers of marine mammals likely to be found within the activity area;

(4) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks of marine mammals likely to be affected by such activities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A proposed incidental harassment authorization; or

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

(2) Through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media in the coastal areas that may be affected by such activity, NMFS will invite information, suggestions, and comments for a period not to exceed 30 days from the date of publication in the Federal Register. All information and suggestions will be considered by the National Marine Fisheries Service in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization or conditions governing the issuance of an incidental harassment authorization.

(3) Applications that are determined to be incomplete or inappropriate for the type of taking requested, will be returned to the applicant with an explanation of why the application is being returned.

(c) The Assistant Administrator shall evaluate each request to determine, based upon the best available scientific evidence, whether the taking by the specified activity within the specified geographic region will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Assistant Administrator finds that the mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Assistant Administrator may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary findings of "negligible impact" and "no unmitigable adverse impact" shall be proposed for public comment along with either the proposed incidental harassment authorization or the proposed regulations for the specific activity.

(d) If, subsequent to the public review period, the Assistant Administrator finds that the taking by the specified activity would have more than a negligible impact on the species or stock of marine mammal or would have an unmitigable adverse impact on the availability of such species or stock for subsistence uses, the Assistant Administrator shall publish in the Federal Register the negative finding along with the basis for denying the request.

§ 216.105 Specific regulations.

(a) For all petitions for regulations under this paragraph, applicants must provide the information requested in §216.104(a) on their activity as a whole, which includes, but is not necessarily limited to, an assessment of total impacts by all persons conducting the activity.

(b) For allowed activities that may result in incidental takings of small
numbers of marine mammals by harassment, serious injury, death or a combination thereof, specific regulations shall be established for each allowed activity that set forth:

(1) Permissible methods of taking;
(2) Means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses; and
(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(c) Regulations will be established based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review.


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

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

(c) Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request.

(d) Notice of issuance of all Letters of Authorization will be published in the Federal Register within 30 days of issuance.

(e) Letters of Authorization shall be withdrawn or suspended, either on an individual or class basis, as appropriate, if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The regulations prescribed are not being substantially complied with; or
(2) The taking allowed is having, or may have, more than a negligible impact on the species or stock or, where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(f) The requirement for notice and opportunity for public review in §216.106(e) shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the wellbeing of the species or stocks of marine mammals concerned.

(g) A violation of any of the terms and conditions of a Letter of Authorization or of the specific regulations shall subject the Holder and/or any individual who is operating under the authority of the Holder’s Letter of Authorization to penalties provided in the MMPA.

§ 216.107 Incidental harassment authorization for Arctic waters.

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

(1) Permissible methods of taking by harassment:

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

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

(b) Issuance of an incidental harassment authorization will be based on a determination that the number of marine mammals taken by harassment will be small, will have a negligible impact on the species or stock of marine mammal(s), and will not have an unmitigable adverse impact on the
§ 216.108 Requirements for monitoring and reporting under incidental harassment authorizations for Arctic waters.

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

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

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

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

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

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

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

(2) Monitoring reports will be reviewed by the Assistant Administrator and, if determined to be incomplete or inaccurate, will be returned to the holder of the authorization with an explanation of why the report is being returned. If the authorization holder disagrees with the findings of the Assistant Administrator, the holder may request an independent peer review of the report. Failure to submit a complete and accurate report may result in a delay in processing future authorization requests.

(g) Results of any behavioral, feeding, or population studies, that are conducted supplemental to the monitoring program, should be made available to the National Marine Fisheries Service before applying for an incidental harassment authorization for the following year.

Subpart J—Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

SOURCE: 71 FR 40932, July 19, 2006, unless otherwise noted.

EFFECTIVE DATE: At 71 FR 40932, July 19, 2006, Subpart J consisting of §§216.110 through 216.119 were added, effective July 4, 2006 through July 3, 2011.

§216.110 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the MBNMS.

(b) The incidental take, by Level B harassment only, of marine mammals under the activity identified in this section is limited to the following species: California sea lions (Zalophus californianus) and Pacific harbor seals (Phoca vitulina).

§216.111 Effective dates.

Regulations in this subpart are effective from July 4, 2006, through July 3, 2011.

§216.112 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.117, the Holder of the Letter of Authorization (i.e. the Superintendent of MBNMS) may incidentally, but not intentionally, take marine mammals by Level B harassment only, within the area described in §216.110(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.110(a) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The taking of marine mammals is authorized for the species listed in §216.110(b) and is limited to the Level B...
Harassment of no more than 6,170 California sea lions and 1,065 harbor seals annually.

§ 216.113 Prohibitions.
Notwithstanding takings contemplated in § 216.110 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.117, no person in connection with the activities described in § 216.110 may:
(a) Take any marine mammal not specified in § 216.110(b);
(b) Take any marine mammal specified in § 216.110(b) other than by incidental, unintentional Level B harassment;
(c) Take a marine mammal specified in § 216.110(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 216.117.

§ 216.114 Mitigation.
(a) The activity identified in § 216.110(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.110(a), all the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.117 must be implemented, including but not limited to:
(1) Limiting the location of the authorized fireworks displays to the four specifically prescribed areas at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek);
(2) Limiting the total frequency of authorized fireworks displays to no more than 20 total displays per year and the average frequency to no more than one fireworks display every two months in each of the four conditional display areas;
(3) Limiting the duration of authorized individual fireworks displays to no longer than 30 minutes each, with the exception of two longer shows not to exceed 1 hour;
(b) The Holder of the Letter of Authorization must conduct all monitoring and/or research required under the Letter of Authorization including, but not limited to:
(1) A one-time comprehensive pinniped census at the City of Monterey Fourth of July Celebration in 2007;
(2) A one-time acoustic measurement of the Monterey Fourth of July Celebration in 2007;

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103) conducting the activity identified in §216.110(a) must apply for and obtain either an initial Letter of Authorization in accordance with §§216.117 or a renewal under §216.118.

§ 216.117 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, subject to annual renewal pursuant to the conditions in §216.118.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

(d) The U.S. Citizen, i.e., the MBNMS, operating under an LOA must clearly describe in any Sanctuary Authorizations issued to the individuals conducting fireworks displays, any requirements of the LOA for which the individuals conducting fireworks are responsible.

§ 216.118 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §216.106 and §216.117 for the activity identified in §216.110(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.115(b) will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §216.115(b), and the Letter of Authorization issued under §216.117, which has been reviewed and accepted by NMFS; and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under §216.114 and the Letter of Authorization issued under §§216.106 and 216.117,
were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 216.118 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

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

§ 216.119 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 216.117 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.118, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.110(b), a Letter of Authorization issued pursuant to §§216.106 and 216.117 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subpart K—Taking Of Marine Mammals Incidental To Space Vehicle And Test Flight Activities

SOURCE: 74 FR 6242, Feb. 6, 2009, unless otherwise noted.

Effective Date Note: 74 FR 6242, Feb. 6, 2009, subpart K, consisting of §§216.120 through 216.129 were added, effective Feb. 7, 2009 through Feb. 7, 2014.

§ 216.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by the 30th Space Wing, United States Air Force, and those persons it authorizes to engage in:

(1) Launching up to 30 space and missile vehicles each year from Vandenberg Air Force Base, for a total of up to 150 missiles and rockets over the 5-year period of the regulations in this subpart,

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

(3) Aircraft flight test operations, and

(4) Helicopter operations from Vandenberg Air Force Base.

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

§ 216.121 Effective dates.

Regulations in this subpart are effective from February 7, 2009, through February 6, 2014.

§ 216.122 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §216.106 and 216.127, the 30th Space Wing, U.S. Air Force,
§ 216.123 Prohibitions.

Notwithstanding takings specified in § 216.120 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.127, no person in connection with the activities described in § 216.120 may:

(a) Take any marine mammal not specified in § 216.120(b);
(b) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;
(c) Take a marine mammal specified in § 216.120(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 216.127.

§ 216.124 Mitigation.

(a) The activity identified in § 216.120(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.120(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.127 must be implemented. These mitigation measures include (but are not limited to):

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting), which may require approaching pinniped haul-outs and rookeries closer than 1,000 ft (305 m).
(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.
(3) Vandenberg Air Force Base must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, California sea lion, and northern fur seal pupping seasons of March through June.
(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch of the same vehicle under that Letter of Authorization.
(5) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 216.125 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.127 for activities described in § 216.120(a) are required to cooperate with NMFS, and any other Federal, state or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, NMFS, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 216.120(a) is
§ 216.126 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 216.120(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–713–2289), within 48 hours of the discovery of the injured or dead animal.

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

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haul-out, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time not less than 48 hours subsequent to launching.

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals.

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf could occur in those areas (this determination will be made in consultation with NMFS).

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction.

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

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that surveys are required that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell.

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

(d) Holders of Letters of Authorization must submit a report to the Southwest Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

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

(2) Design of the monitoring program, and

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

(i) Numbers of pinnipeds present on the haul-out prior to commencement of the launch,

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

(iii) The length of time pinnipeds remained off the haul-out or rookery,

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

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

(e) An annual report must be submitted at the time of renewal of the Letter of Authorization.

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

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

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

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

(4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations.
in this subpart, the U.S. citizen (as defined by §216.103) conducting the activity identified in §216.120(a) (30th Space Wing, U.S. Air Force) must apply for and obtain either an initial Letter of Authorization in accordance with §216.127 or a renewal under §216.128.

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

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

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

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

§ 216.127 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §216.128.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 216.128 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §216.106 and §216.127 for the activity identified in §216.120(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.126 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §216.125(d) and (e), and the Letter of Authorization issued under §216.127, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§216.124 and 216.125 and the Letter of Authorization issued under §§216.106 and 216.127, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 216.128 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

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

§ 216.129 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 216.127 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.128, without
modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.120(b), a Letter of Authorization issued pursuant to §§216.106 and 216.127 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subparts L–M [Reserved]

Subpart N—Taking Of Marine Mammals Incidental To Missile Launch Activities from San Nicolas Island, CA

SOURCE: 74 FR 26587, June 3, 2009, unless otherwise noted. EFFECTIVE DATE NOTE: At 74 FR 26587, June 3, 2009, subpart N, consisting of §§216.150 through 216.159 was added, effective June 2, 2009 through June 2, 2014.

§ 216.150 Specified activity and specified geographical region.

(a) This subpart applies only to the incidental taking of marine mammals specified in paragraph (b) of this section by the Naval Air Warfare Center Weapons Division, U.S. Navy, and those persons it authorizes to engage in missile launch activities and associated aircraft and helicopter operations at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (Mirounga angustirostris), harbor seals (Phoca vitulina), and California sea lions (Zalophus californianus).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Coyote (or similar sized and smaller) missiles per year from San Nicolas Island, California.

§ 216.151 Effective dates.

This subpart is effective June 2, 2009 through June 2, 2014.

§ 216.152 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.157, the U.S. Navy, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in §216.150, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The taking of marine mammals is authorized for the species listed in §216.150(b) and is limited to Level B Harassment.

§ 216.153 Prohibitions.

Notwithstanding takings contemplated in §216.150 and authorized by a Letter of Authorization issued under §§216.106 and 216.157, no person in connection with the activities described in §216.150 may:

(a) Take any marine mammal not specified in §216.150(b);

(b) Take any marine mammal specified in §216.150(b) other than by incidental, unintentional harassment, as discussed in §216.152;

(c) Take a marine mammal specified in §216.150(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§216.106 and 216.157.

§ 216.154 Mitigation.

(a) The activity identified in §216.150 must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.150(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.157 must be implemented. These mitigation measures include (but are not limited to):
§ 216.155 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.157 for activities described in § 216.150 are required to cooperate with NMFS, and any other Federal, state or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, NMFS, by letter, e-mail, or telephone, at least 1 week prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 216.150 is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 216.150(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–713–2289), and the Administrator, Southwest Region, NMFS, or designee, by telephone (562–980–3232), within 48 hours of the discovery of the injured or dead animal.

(b) The National Marine Fisheries Service must be informed immediately of any changes or deletions to any portions of the proposed monitoring plan submitted, in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site individual(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) Visual Land-Based Monitoring. (i) Prior to each missile launch, an observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site.
Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded on digital video for subsequent analysis for no less than 1 hour prior to the estimated launch time and for up to 1 hour immediately following each missile launch.

(iii) Documentation, both via autonomous video camera and human observer, will consist of:

(A) Numbers and sexes of each age class in focal subgroups;
(B) Description and timing of launch activities or other disruptive event(s);
(C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;
(D) Description of reactions;
(E) Minimum distances between interacting and reacting pinnipeds;
(F) Study location;
(G) Local time;
(H) Substratum type;
(I) Substratum slope;
(J) Weather condition;
(K) Horizontal visibility; and
(L) Tide state.

(2) Acoustic Monitoring. (i) During all missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the missile’s flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of missiles in three dimensions, whenever data coverage allows.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each missile.

(c) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report to the National Marine Fisheries Service, Southwest Regional Office, providing reporting items found under the Letter of Authorization, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations;
(ii) Summary of pinniped behavioral observations;
(iii) Estimate of the amount and nature of all takes by harassment or by other means; and
(iv) Evidence of compliance with mitigation measures.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of the regulations in this subpart, providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final comprehensive technical report, including all monitoring results during the entire period of the Letter of Authorization will be due 90 days after the end of the period of effectiveness of the regulations in this subpart.

(5) Both the 60-day and final reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under §§216.106 and 216.157, including the retention of
§216.156 marine mammals, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

§216.156 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations contained in this subpart, the U.S. citizen (as defined by §216.103) conducting the activity identified in §216.150 (Naval Air Warfare Center Weapons Division, U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §216.157 or a renewal under §216.158.

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

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

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

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

§216.157 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §216.158.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§216.158 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§216.106 and 216.157 for the activity identified in §216.150 will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §216.155(e), and the Letter of Authorization issued under §216.157, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§216.154 and 216.155 and the Letter of Authorization issued under §§216.106 and 216.157, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §216.106 and this section indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.
National Marine Fisheries Service/NOAA, Commerce

§ 216.163 Mitigation.

(a) Under a Letter of Authorization issued pursuant to §216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals in the course of the activity described in paragraph (b) of this section by persons engaged in the detonation of up to four 4,536 kg (10,000 lb) conventional explosive charges within the waters of the U.S. Atlantic Coast offshore Mayport, FL, for the purpose of conducting one full ship-shock trial (FSST) of the USS MESA VERDE (LPD 19) during the time period between July 23 and September 20, 2008, and May 1 and September 20, 2009 through 2013.

(b) The activity identified in paragraph (b) of this section is limited to the following species: Minke whale (Balaenoptera acutorostrata), dwarf sperm whale (Kogia simus); pygmy sperm whale (K. breviceps); pilot whale (Globicephala macrohyschus); Atlantic spotted dolphin (Stenella frontalis); spinner dolphin (S. longirostris); bottlenose dolphin (Tursiops truncatus); Risso’s dolphin (Grampus griseus); rough-toothed dolphin (Steno bredanensis); common dolphin (Delphinus delphis), false killer whale (Pseudorca crassidens); Cuvier’s beaked whale (Ziphius cavirostris), Blainville’s beaked whale (Mesoplodon densirostris); Gervais’ beaked whale (M. europaeus); and True’s beaked whale (M. mirus).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total, across all species, of no more than 1 mortality or serious injury, 2 takings by Level A harassment (injuries), and 282 takings by Level B behavioral harassment (through temporary threshold shift). The incidental taking of any species listed as threatened or endangered under the Endangered Species Act is prohibited.
mammals and their habitat. When detonating explosives, the following mitigation measures must be implemented:

(1) Except as provided under the following paragraph (2), if any marine mammals are visually detected within the designated 3.5 nm (6.5 km) Safety Range surrounding the USS MESA VERDE, detonation must be delayed until the marine mammals are positively resighted outside the Safety Range either due to the animal(s) swimming out of the Safety Range or due to the Safety Range moving beyond the mammal’s last verified location.

(2) If a North Atlantic right whale or other marine mammal listed under the Endangered Species Act (ESA) is seen within the Safety Range, detonation must not occur until the animal is positively resighted outside the Safety Range and at least one additional aerial monitoring of the Safety Range shows that no other right whales or other ESA-listed marine mammals are present:

(3) If the sea state exceeds 3 on the Beaufort scale (i.e., whitecaps on 33 to 50 percent of surface; 2 ft (0.6 m) to 3 ft (0.9 m) waves), the visibility is equal to or less than 3 nm (5.6 km), or the aircraft ceiling (i.e., vertical visibility) is equal to or less than 1,000 ft (305 m), detonation must not occur until conditions improve sufficiently for aerial surveillance to be undertaken.

(4) A detonation must not be conducted earlier than 3 hours after sunrise or later than 3 hours prior to sunset to ensure adequate daylight for conducting the pre-detonation and post-detonation monitoring requirements in §216.165.

(5) If post-detonation surveys determine that an injury or lethal take of a marine mammal has occurred,

(i) the Director, Office of Protected Resources, National Marine Fisheries Service must be notified within 24 hours of the taking determination,

(ii) the FSST procedures and monitoring methods must be reviewed in coordination with the National Marine Fisheries Service, and

(iii) appropriate changes to avoid future injury or mortality must be made prior to conducting the next detonation.

§216.164 Prohibitions.

No person in connection with the activities described in §216.161(a) shall:

(a) Take any marine mammal not specified in §216.161(b);

(b) Take any marine mammal specified in §216.161(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in §216.161(b) if such taking results in more than a negligible impact on the species or stocks or marine mammals;

(d) Violate, or failure to comply with, the requirements of a Letter of Authorization issued under §216.106.

§216.165 Requirements for monitoring and reporting.

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

(b) The holder of the Letter of Authorization must designate at least 6 experienced on-site marine mammal observers (MMOs) onboard the USS MESA VERDE, 2 experienced MMOs onboard the survey aircraft and 2 experienced MMOs onboard the Navy support vessel each of whom has been approved in advance by NMFS, to monitor the Safety Range for presence of marine mammals and to record the effects of explosives detonation on marine mammals that inhabit the Navy’s Jacksonville/Charleston Operating Area offshore of Mayport, Florida.

(c)(1) Prior to each detonation for the FSST, an area will be located which has been determined by an aerial survey to contain the lowest marine mammal abundance relative to other areas within the area off Mayport, FL.

(2) The test area must be monitored by aerial and shipboard monitoring for the following periods of time:

(i) 48–72 hours prior to a scheduled detonation (aircraft only),

(ii) on the day of detonation,
(iii) immediately after each detonation and continuing for at least 3 hours subsequent to each detonation (or until sighting conditions become unsuitable for visual observations),

(iv) for at least 2 days after each detonation, unless weather and/or sea conditions preclude surveillance, in which case post-test survey dates must be extended, and

(v) for a period of 7 days after the last detonation for a minimum of 3 hours per day at the detonation site and down-current from the site.

(3) Monitoring shall include, but is not limited to, aerial and vessel surveillance sufficient to ensure that no marine mammals are within the designated Safety Range prior to or at the time of detonation.

(d) Under the direction of an attending U.S.-licensed veterinarian (an attending U.S. licensed veterinarian is one who has graduated from a veterinary school accredited by the American Veterinary Medical Association Council on Education, has a certificate by the American Veterinary Graduates Association's Education Commission, or has received equivalent formal education, as determined by the NMFS Assistant Administrator), an examination and recovery of any dead or injured marine mammals will be conducted in accordance with protocols and best practices of the NOAA Health and Stranding Response Program. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea.

(e) Activities related to the monitoring described in paragraphs (c) and (d) of this section, including the retention of marine mammals, may be conducted without a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to Subpart D of this part.

(f) Subject to relevant Navy regulations, the National Marine Fisheries Service at its discretion may place an observer on any ship or aircraft involved in marine mammal monitoring either prior to, during, or after explosives detonation.

(g) A final report must be submitted to the Director, Office of Protected Resources, no later than 120 days after completion of the USS MESA VERDE (LPD 19) shock trial. This report must contain the following information:

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

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

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and an estimate of the number, by species, of marine mammals in the Safety Range at the time of detonation based on post-test aerial monitoring and current density estimates.

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

§ 216.166 Modifications to the Letter of Authorization.

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

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), the Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register subsequent to the action.
§ 216.170 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the Hawaii Operational Area, which extends from 16 to 43° N. lat. and from 150 to 179° degrees W. long.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources for U.S. Navy anti-submarine warfare (ASW) training in the amounts indicated below (±10 percent):

(i) AN/SQS–53 (hull-mounted sonar)—up to 6420 hours over the course of 5 years (an average of 1284 hours per year)

(ii) AN/SQS–56 (hull-mounted sonar)—up to 1915 hours over the course of 5 years (an average of 383 hours per year)

(iii) AN/AQS–22 (helicopter dipping sonar)—up to 5650 dips over the course of 5 years (an average of 1100 dips per year)

(iv) SSQ–62 (sonobuoys)—up to 12115 sonobuoys over the course of 5 years (an average of 2423 sonobuoys per year)

(v) MK–48 (torpedoes)—up to 1565 torpedoes over the course of 5 years (an average of 313 torpedoes per year)

(vi) AN/BQQ–10 (submarine mounted sonar)—up to 1000 hours over the course of 5 years (an average of 200 per year)

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

(i) Underwater Explosives:

(A) 5" Naval Gunfire (9.5 lbs).

(B) 76 mm rounds (1.6 lbs).

(C) Maverick (78.5 lbs).

(D) Harpoon (448 lbs).

(E) MK–82 (236 lbs).

(F) MK–83 (574 lbs).

(G) MK–84 (945 lbs).

(H) MK–48 (851 lbs).

(I) Demolition Charges (20 lbs).

(J) EER/IEER (5 lbs).

(ii) Training Events:

(A) Mine Neutralization—up to 340 exercises over the course of 5 years (an average of 68 per year).

(B) Air-to-Surface MISSILEX—up to 250 exercises over the course of 5 years (an average of 50 per year).

(C) Surface-to-Surface MISSILEX—up to 60 exercises over the course of 5 years (an average of 12 per year).

(D) BOMBEX—up to 195 exercises over the course of 5 years (an average of 38 per year).

(E) SINKEX—up to 30 exercises over the course of 5 years (an average of 6 per year).

(F) Surface-to-Surface GUNEX—up to 455 exercises over the course of 5 years (an average of 91 per year).

(G) Naval Surface Fire Support—up to 140 exercises over the course of 5 years (an average of 28 per year).

§ 216.171 Effective dates and definitions.

(a) Regulations are effective January 5, 2009 through January 5, 2014.

(b) The following definitions are utilized in these regulations:

(1) Uncommon Stranding Event (USE)—A stranding event that takes place during a major training exercise and involves any one of the following:

(i) Two or more individuals of any cetacean species (not including mother/calf pairs, unless of species of concern listed in next bullet) found dead or live on shore within a two day period and occurring on same shore lines or facing shorelines of different islands.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: Beaked whale of any species, *Kogia* sp., Risso’s dolphin, melon-headed whale, pilot whales, humpback whales, sperm whales, blue whales, fin whales, sei whales, or monk seal.

(iii) A group of 2 or more cetaceans of any species exhibiting indicators of distress.
§ 216.172 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.177, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 216.170(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

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

(c) The incidental take of marine mammals under the activities identified in § 216.170(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment (±10 percent of the number of takes indicated below):

   (i) Mysticetes:

   (A) Humpback whale (Megaptera novaeangliae)—49470 (an average of 9894 annually).

   (B) Minke whale (Balaenoptera acutorostrata)—320 (an average of 64 annually).

   (C) Sei whale (Balaenoptera borealis)—230 (an average of 46 annually).

   (D) Fin whale (Balaenoptera physalus)—230 (an average of 46 annually).

   (E) Bryde’s whale (Balaenoptera edeni)—320 (an average of 64 annually).

   (ii) Odontocetes:

   (A) Sperm whales ( Physeter macrocephalus)—3905 (an average of 781 annually).

   (B) Pygmy sperm whales (Kogia breviceps)—4325 (an average of 865 annually).

   (C) Dwarf sperm whale (Kogia sima)—10610 (an average of 2122 annually).

   (D) Cuvier’s beaked whale (Ziphius cavirostris)—5750 (an average of 1150 annually).

   (E) Blainville’s beaked whale (Mesoplodon densirostris)—1785 (an average of 357 annually).

   (F) Longman’s beaked whale (Indopacetus pacificus)—525 (an average of 105 annually).

   (G) Rough-toothed dolphin (Steno bredanensis)—5385 (an average of 1077 annually).

   (H) Bottlenose dolphin (Tursiops truncatus)—3970 (an average of 794 annually).

   (I) Pan-tropical dolphins (Stenella attenuata)—10995 (an average of 2199 annually).

   (J) Spinner dolphins (Stenella longirostris)—2105 (an average of 421 annually).

   (K) Striped dolphins (Stenella coeruleoalba)—16045 (an average of 3209 annually).

   (L) Risso’s dolphin (Grampus griseus)—2485 (an average of 497 annually).

   (M) Melon-headed whale (Peponocephala electra)—2985 (an average of 597 annually).

   (N) Fraser’s dolphin (Lagenodelphis hosei)—6255 (an average of 1247 annually).

   (O) Pygmy killer whale (Feresa attenuata)—980 (an average of 196 annually).

   (P) False killer whale (Pseudorca crassidens)—230 (an average of 46 annually).

   (Q) Killer whale (Orcinus orca)—230 (an average of 46 annually).

   (R) Short-finned pilot whale (Globicephala macrorynchos)—8990 (an average of 1798 annually).

   (iii) Pinnipeds: Hawaiian monk seal (Monachus schauinslandi)—550 (an average of 110 annually).

(2) Level A Harassment and/or mortality of no more than 10 individuals total of each of the species listed below over the course of the 5-year regulations:

   (A) Bottlenose dolphin (Tursiops truncatus), Pygmy and Dwarf sperm whales (Kogia breviceps and sima), Melon-headed whale (Peponocephala electra), Pantropical spotted dolphin (Stenella attenuata), Pygmy killer whale (Feresa attenuata), Short-finned pilot whale (Globicephala
§216.173 Prohibitions.

Notwithstanding takings contemplated in §216.172 and authorized by a Letter of Authorization issued under §§216.106 and 216.177, no person in connection with the activities described in §216.170 may:

(a) Take any marine mammal not specified in §216.172(c);

(b) Take any marine mammal specified in §216.172(c) other than by incidental take as specified in §216.172(c)(1) and (2);

(c) Take a marine mammal specified in §216.172(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§216.106 and 216.177.

§216.174 Mitigation.

(a) When conducting training activities identified in §216.170(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 of this chapter and 216.177 must be implemented. These mitigation measures include, but are not limited to:

(1) Mitigation Measures for ASW training:

(i) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training (MSAT) material prior to use of mid-frequency active sonar.

(ii) All Commanding Officers, Executive Officers, and officers standing watch on the Bridge shall have reviewed the MSAT material prior to a training event employing the use of mid-frequency active sonar.

(iii) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968-D).

(iv) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(v) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

(vi) On the bridge of surface ships, there shall be at least three people on watch whose duties include observing the water surface around the vessel.

(vii) All surface ships participating in ASW exercises shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as lookouts.

(viii) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(ix) On surface vessels equipped with mid-frequency active sonar, pedestal mounted ‘Big Eye’ (20x110) binoculars shall be present and in good working order.

(x) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(xi) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(xii) Personnel on lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck.

(xiii) CPF shall distribute the final mitigation measures contained in the LOA and BO to the Fleet.

(xiv) Commanding Officers shall make use of marine species detection
cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(xv) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(xvi) During mid-frequency active sonar training activities, personnel shall utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(xvii) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(xviii) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yards (182 m) of the sonobuoy.

(xix) Marine mammal detections shall be reported immediately to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(xx) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that MFAS transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1000 yards (914 m) of the sonar dome (the bow).

(A) Ships and submarines shall continue to limit maximum MFAS transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(B) The Navy shall ensure that MFAS transmissions will be limited to at least 10 dB below the equipment’s normal operating level if any detected animals are within 500 yards (457 m) of the sonar dome. Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2000 yards (1828 m) beyond the location of the last detection.

(C) The Navy shall ensure that MFAS transmissions are ceased if any detected marine mammals are within 200 yards of the sonar dome. MFAS transmissions will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards beyond the location of the last detection.

(D) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the Officer of the Deck concludes that dolphins or porpoises are deliberately closing to ride the vessel’s bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(E) If the need for power-down should arise as detailed in “Safety Zones” in paragraph (a)(1)(xx) of this section, Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 dB sonar was being operated).

(xxii) Prior to start up or restart of active sonar, operators shall check that the Safety Zone radius around the sound source is clear of marine mammals.

(xxiii) Sonar levels (generally)—Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xxiv) Helicopters shall observe/survey the vicinity of an ASW Exercise for 10 minutes before the first deployment of active (dipping) sonar in the water.
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(xxiv) Helicopters shall not dip their sonar within 200 yards (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yards (183 m) after pinging has begun.

(xxv) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training activities involving active mid-frequency sonar.

(xxvi) Night vision goggles shall be available to all ships and air crews, for use as appropriate.

(xxvii) Humpback Whale Cautionary Area: An area extending 5 km (2.7 nm) from a line drawn from Kaunakakai on the island of Molokai to Kaena Point on the Island of Oahu; and an area extending 5 km (2.7 nm) from a line drawn from Kaunolu on the Island of Oahu to the most northeastern point on the Island of Kauai; and within a line drawn from Kanapou Bay on the Island of Oahu to Kanahena Point on the Island of Oahu, excluding the existing submarine operating area.

(A) Should national security needs require MFAS training and testing in the cautionary area between 15 December and 15 April, it must be personally authorized by the Commander, U.S. Pacific Fleet based on his determination that training and testing in that specific area is required for national security purposes. This authorization shall be documented by the CPF in advance of transiting and training in the cautionary area, and the determination shall be based on the unique characteristics of the area from a military readiness perspective, taking into account the importance of the area for humpback whales and the need to minimize adverse impacts on humpback whales from MFAS whenever practicable. Further, Commander, U.S. Pacific Fleet will provide specific direction on required mitigation measures prior to operational units transiting to and training in the cautionary area.

(B) The Navy shall provide advance notification to NMFS of any such activities listed in paragraph (a)(1)(xxvii)(A) of this section.

(C) The Navy shall include in its periodic reports for compliance with the MMPA whether or not activities occurred in the Humpback Whale Cautionary Area and any observed effects on humpback whales due to the conduct of these activities.

(xxviii) The Navy shall abide by the letter of the “Stranding Response Plan for Major Navy Training Exercises in the HRC” to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in §216.171(b)) occurs during a Major Training Exercise (MTE, including RIMPAC, USWEX, or Multi-Strike Group Exercise) in the HRC, the Navy shall implement the procedures described below.

(I) The Navy shall implement a Shutdown (as defined §216.171(b)) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the HRC Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy will maintain a dialogue, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(2) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(3) If the Navy finds an injured or dead animal floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal(s) is/are dead), location, time of first discovery, observed behavior (if alive), and photo or video (if available). Based on the information provided, NMFS will determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.
(d) In the event, following a USE, that qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS training activities or explosive detonations, though farther than 14 nm from the distressed animal(s), is likely contributing to the animals’ refusal to return to the open water. If so, NMFS and the Navy will further coordinate to determine what measures are necessary to improve the probability that the animals will return to open water and implement those measures as appropriate.

(B) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the HRC Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using MFAS, and marine mammal sightings information associated with training activities occurring within 80 nm (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80 nm (148 km), 72 hour period prior to the event will be provided as soon as it becomes available. The Navy will provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(C) Memorandum of Agreement (MOA)—The Navy and NMFS shall develop a MOA, or other mechanism consistent with federal fiscal law requirements (and all other applicable laws), that will establish a framework whereby the Navy can (and provide the Navy examples of how they can best) assist NMFS with stranding investigations in certain circumstances.

(xxx) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed” so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(xxx) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

(2) Mitigation for IEER—The following are protective measures for use with Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER) given an explosive source generates the acoustic wave used in this sonobuoy.

(i) Crews shall conduct aerial visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search should be conducted below 500 yards (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft training activities, crews are allowed to conduct coordinated area clearances.

(ii) Crews shall conduct a minimum of 30 minutes of visual and acoustic monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(iii) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 1,000 yards (914 m) of observed marine mammal activity, the Navy shall deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yards (914 m) of the intended post position, co-locate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.

(iv) When able, crews will conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of communication range of these sensors.

(v) Aural Detection: If the presence of marine mammals is detected aurally, then that shall cue the aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then
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the crew may continue multi-static active search.

(vi) Visual Detection:

(A) If marine mammals are visually detected within 1,000 yards (914 m) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 1,000 yards (914 m) safety buffer.

(B) Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000 yards (914 m) safety buffer.

(vii) Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the “Payload 1 Release” command followed by the “Payload 2 Release” command. Aircrews will refrain from using the “Scuttle” command when two payloads remain at a given post. Aircrews will ensure that a 1,000 yard (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(viii) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(ix) The navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(x) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(3) Mitigation for Demolitions (DEMOs) and Mine Countermeasure (MCM) Training (Up to 20 lb).

(i) Exclusion Zones—Explosive charges shall not be detonated if a marine mammal is detected within 700 yards (640 m) of the detonation site.

(ii) Pre-Exercise Surveys—For MCM training activities, the Navy shall conduct a pre-exercise survey within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air. If a marine mammal is detected within the survey area, the exercise shall be suspended until the animal voluntarily leaves the area.

(iii) Post-Exercise Surveys—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

(iv) Reporting—Any evidence of a marine mammal that may have been injured or killed by the action shall be reported immediately to NMFS.

(v) Mine Laying Training—Though mine laying training operations involve aerial drops of inert training shapes on floating targets, measures 1, 2, and 3 for Demolitions and Mine countermeasures will apply to mine laying training. To the maximum extent feasible, the Navy shall retrieve inert mine shapes dropped during Mine Laying Training.

(4) Mitigation for SINKEX, GUNEX, MISSILEX, and BOMBEX. (i) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(ii) Extensive range clearance operations shall be conducted in the hours prior to commencement of the exercise.

(iii) An exclusion zone with a radius of 1.0 nm (1.85 km) shall be established around each target. An additional buffer of 0.5 nm (0.93 km) shall be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which extends out an additional 0.5 nm (0.93 km), shall be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

(iv) A series of surveillance overflights shall be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol would be as follows:

(A) Overflights within the exclusion zone shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy’s
Search and Rescue (SAR) Tactical Aid (TACAID).

(B) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team shall have completed the Navy’s marine mammal training program for lookouts.

(C) In addition to the overflights, the exclusion zone shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring shall be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals in the vicinity of the exercise. The sonobuoys shall be re-seeded as necessary throughout the exercise. Additionally, passive sonar on-board submarines may be utilized to detect any vocalizing marine mammals in the area. The Officer Conducting the Exercise (OCE) shall be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

(D) On each day of the exercise, aerial surveillance of the exclusion and safety zones shall commence two hours prior to the first firing.

(E) The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing would commence until the OCE declares the safety and exclusion zones free of marine mammals.

(F) If a marine mammal observed within the exclusion zone is diving, firing shall be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes has elapsed.

(G) During breaks in the exercise of 30 minutes or more, the exclusion zone shall again be surveyed for any marine mammals. If marine mammals are sighted within the exclusion zone, the OCE would be notified, and the procedure described in paragraph (a)(4)(iv)(F) of this section would be followed.

(H) Upon sinking of the vessel, a final surveillance of the exclusion zone shall be monitored for two hours, or until sunset, to verify that no marine mammals were harmed.

(v) Aerial surveillance would be conducted using helicopters or other aircraft based on necessity and availability. These aircraft shall be capable of (and shall, to the extent practicable) flying at the slow safe speeds necessary to enable viewing of marine mammals with unobstructed, or minimally obstructed, downward and outward visibility. The Navy may cancel the exclusion and safety zone surveys in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

(vi) Where practicable, the Navy shall conduct the exercise in sea states that are ideal for marine mammal sighting, i.e., Beaufort Sea State 3 or less. In the event of a Beaufort Sea State of 4 or above, the Navy shall utilize additional aircraft (conducting tight search patterns), if available, to increase survey efforts within the zones.

(vii) The exercise shall not be conducted unless the exclusion zone can be adequately monitored visually.

(viii) In the unlikely event that any marine mammals are observed to be harmed in the area, a detailed description of the animal shall be documented, the location noted, and if possible, photos taken. This information would be provided to NMFS.

(b) [Reserved]

§216.175 Requirements for monitoring and reporting.

(a) As outlined in the HRC Stranding Communication Plan, the Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §216.170(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in §216.172(c).

(b) The Holder of the Letter of Authorization must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the HRC Monitoring Plan.

(c) The Navy shall complete an Integrated Comprehensive Monitoring Plan (ICMP) in 2009. This planning and
adaptive management tool shall include:

1. A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

2. A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

3. A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.


(d) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Navy shall consult the Stranding Response Plan to obtain more specific reporting requirements for specific circumstances.

(e) Annual HRC Monitoring Plan Report—The Navy shall submit a report annual on October 1 describing the implementation and results (through August 1 of the same year) of the HRC Monitoring Plan, described in §216.175(b). Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the HRC Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in §216.175(f)(1).

(f) Annual HRC Exercise Report—The Navy shall submit an Annual HRC Exercise Report on October 1 of every year (covering data gathered through August 1 or completion of RIMPAC if later than Aug 1 of the same year). This report shall contain information identified in subsections 216.175(f)(1)–(f)(5).

1. MFAS/HFAS Major Training Exercises—This section shall contain the following information for Major Training Exercises (MTEs, which include RIMPAC, USWEX, and Multi Strike Group) conducted in the HRC:

   (i) Exercise Information (for each MTE):
      (A) Exercise designator.
      (B) Date that exercise began and ended.
      (C) Location.
      (D) Number and types of active sources used in the exercise.
      (E) Number and types of passive acoustic sources used in exercise.
      (F) Number and types of vessels, aircraft, etc., participating in exercise.
      (G) Total hours of observation by watchstanders.
      (H) Total hours of all active sonar source operation.
      (I) Total hours of each active sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).
      (J) Wave height (high, low, and average during exercise).

   (ii) Individual marine mammal sighting info (for each sighting in each MTE):
      (A) Location of sighting.
      (B) Species (if not possible—indication of whale/dolphin/pinniped).
      (C) Number of individuals.
      (D) Calves observed (y/n).
      (E) Initial Detection Sensor.
      (F) Indication of specific type of platform observation made from (including, for example, what type of surface vessel, i.e., FFG, DDG, or CG).
      (G) Length of time observers maintained visual contact with marine mammal.
(H) Wave height (in feet).
(I) Visibility.
(J) Sonar source in use (y/n).
(K) Indication of whether animal is <200yd, 200–500yd, 500–1000yd, 1000–2000yd, or >2000yd from sonar source in paragraph (f)(1)(i)(J) of this section.
(L) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was.
(M) If source in use (see paragraph (f)(1)(i)(J) of this section) is hullmounted, true bearing of animal from ship, true direction of ship’s travel, and estimation of animal’s motion relative to ship (opening, closing, parallel).
(N) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.).

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to avoid exposing to mid-frequency sonar. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) ASW Summary—This section shall include the following information as summarized from both MTEs and non-major training exercises (i.e., unit-level exercises, such as TRACKEXs):

(i) Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).

(ii) Total hours (from December 15 through April 15) of hullmounted active sonar operation occurring in the dense humpback areas plus a 5-km buffer, but not including the Pacific Missile Range Facility. The Navy shall work with NMFS to develop the exact boundaries of this area.

(iii) Total estimated annual hours of hull-mounted active sonar operation conducted in Humpback Whale Cautionary area between December 15 and April 15.

(iv) Cumulative Impact Report—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major (i.e., other than RIMPAC, USWEX, or Multi-Strike Group Exercises) training exercises utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across the HRC. The Navy shall include (in the HRC annual report) a brief annual progress update on the status of development until an agreed-upon (with NMFS) method has been developed and implemented.

(3) SINKEXs—This section shall include the following information for each SINKEX completed that year:

(i) Exercise information (gathered for each SINKEX):

(A) Location.

(B) Date and time exercise began and ended.

(C) Total hours of observation by watchstanders before, during, and after exercise.

(D) Total number and types of rounds expended/explosives detonated.

(E) Number and types of passive acoustic sources used in exercise.

(F) Total hours of passive acoustic search time.

(G) Number and types of vessels, aircraft, etc., participating in exercise.

(H) Wave height in feet (high, low and average during exercise).

(i) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) Individual marine mammal observation (by Navy lookouts) information (gathered for each marine mammal sighting):

(A) Location of sighting.

(B) Species (if not possible, indicate whale, dolphin or pinniped).

(C) Number of individuals.

(D) Whether calves were observed.

(E) Initial detection sensor.

(F) Length of time observers maintained visual contact with marine mammal.

(G) Wave height.

(H) Visibility.
(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.
(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance:
(1) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (91 m for SINKEX in HRC);
(2) The required exclusion zone (1 nm for SINKEX in HRC);
(3) The required observation distance (if different than the exclusion zone (2 nm for SINKEX in HRC); and
(4) Greater than the required observed distance. For example, in this case, the observer would indicate if < 91 m, from 91 m—1 nm, from 1 nm—2 nm, and > 2 nm.
(K) Observed behavior—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction.
(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.
(M) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.
(4) IEER Summary—This section shall include an annual summary of the following IEER information:
(i) Total number of IEER events conducted in the HRC.
(ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.
(g) Sonar Exercise Notification—The Navy shall submit to the NMFS Office of Protected Resources (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any major exercise. (RIMPAC, USWEX, or Multi Strike Group) indicating:
(1) Location of the exercise.
(2) Beginning and end dates of the exercise.
(3) Type of exercise (e.g., RIMPAC, USWEX, or Multi Strike Group).
(h) HRC 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual HRC Exercise Reports and HRC Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012.
(i) Comprehensive National ASW Report—By June 2014, the Navy shall submit a draft Comprehensive National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders in accordance with the Monitoring Plans for the HRC, the Atlantic Fleet Active Sonar Training, the Southern California (SOCAL) Range Complex, the Marianas Range Complex, the Northwest Training Range, the Gulf of Alaska, and the East Coast Undersea Warfare Training Range.
(j) The Navy shall respond to NMFS comments and requests for additional information or clarification on the HRC Comprehensive Report, the draft National ASW report, the Annual HRC Exercise Report, or the Annual HRC Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS’
§ 216.176 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by §216.103 of this chapter) conducting the activity identified in §216.170(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §216.177 or a renewal under §216.178.

§ 216.177 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §216.178.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;
(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and
(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 216.178 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§216.106 and 216.177 for the activity identified in §216.170(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.176 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;
(2) Timely receipt (by the dates indicated in these regulations) of the monitoring reports required under §216.175(c) through (j); and
(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under §216.174 and the Letter of Authorization issued under §§216.106 and 216.177, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under this §216.106 and §216.178 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and
(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

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

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:
§216.179 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 216.177 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.178, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.172(c), a Letter of Authorization issued pursuant to §§216.106 and 216.177 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

§216.180 Specified activity.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the U.S. Navy, Department of Defense, while engaged in the operation of no more than four SURTASS LFA sonar systems conducting active sonar operations, in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§216.106 and 216.180, include the transmission of low frequency sounds from the SURTASS LFA sonar and the transmission of high frequency sounds from the mitigation sonar described in §216.185 during training, testing, and routine military operations of SURTASS LFA sonar.

(a) With the exception of those areas specified in §216.183(d), the incidental taking by harassment may be authorized in the areas (biomes, provinces, and subprovinces) described in Longhurst (1998), as specified in a Letter of Authorization.

(b) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section is limited to the following species and species groups:

1. Mysticete whales—blue (Balaenoptera musculus), fin (Balaenoptera physalus), minke (Balaenoptera acutorostrata), Bryde’s (Balaenoptera edeni), sei (Balaenoptera borealis), humpback (Megaptera novaeangliae), North Atlantic right (Eubalaena glacialis), North Pacific right (Eubalena japonica) southern right (Eubalaena australis), pygmy right (Capera marginata), bowhead (Balaena
mysticetus), and gray (Eschrichtius robustus) whales.

(2) Odontocete whales—harbor porpoise (Phocoena phocoena), spectacled porpoise (Phocoena dioptrica), beluga (Delphinapterus leucas), Stenella spp., Risso’s dolphin (Grampus griseus), rough-toothed dolphin (Steno bredanensis), Fraser’s dolphin (Lagenodelphis hosei), northern right-whale dolphin (Lissodelphis borealis), southern right whale dolphin (Lissodelphis peronii), short-beaked common dolphin (Delphinus delphis), long-beaked common dolphin (Delphinus capensis), very long-beaked common dolphin (Delphinus tropicalis), Lagenorhynchus spp., Cephalorhynchus spp., bottlenose dolphin (Tursiops truncatus), Dall’s porpoise (Phocoenoides dalli), melon-headed whale (Peponocephala spp.), beaked whales (Berardius spp., Hyperoodon spp., Mesoplodon spp., Cuvier’s beaked whale (Ziphius cavirostris), Shepard’s beaked whale (Tasmacetus shepherdi), Longman’s beaked whale (Indopacetus pacificus), killer whale (Orcinus orca), false killer whale (Pseudorca crassidens), pygmy killer whale (Feresa attenuata), sperm whale (Physeter macrocephalus), dwarf and pygmy sperm whales (Kogia simus and K. breviceps), and short-finned and long-finned pilot whales (Globicephala macrocephalus and G. melas).

(3) Pinnipeds—hooded seal (Cystophora cristata), harbor seal (Phoca vitulina), spotted seal (P. largha), ribbon seal (P. fasciata), gray seal (Halichoerus grypus), elephant seal (Mirounga angustirostris and M. leonina), Hawaiian monk seal (Monachus schauinslandi), Mediterranean monk seal (Monachus monachus), northern fur seal (Callorhinus ursinus), southern fur seal (Arctocephalus spp.), harp seal (Phoca groenlandica), Galapagos sea lion (Zalophus californianus wollebaeki), Japanese sea lion (Zalophus japonicus), Steller sea lion (Eumetopias jubatus), California sea lion (Zalophus californianus), Australian sea lion (Neophoca cinerea), New Zealand sea lion (Phocarctos hookeri), and South American sea lion (Otaria flavescens).

§ 216.181 Effective dates.

Regulations in this subpart are effective from August 16, 2007 through August 15, 2012.

§ 216.182 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.188, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment within the areas described in § 216.180(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.180 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

§ 216.183 Prohibitions.

No person in connection with the activities described in § 216.180 shall:

(a) Take any marine mammal not specified in § 216.180(b);

(b) Take any marine mammal specified in § 216.180(b) other than by incidental, unintentional Level A and Level B harassment;

(c) Take a marine mammal specified in § 216.180(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of the regulations in this subpart or any Letter of Authorization issued under §§ 216.106 and 216.188.

§ 216.184 Mitigation.

The activity identified in § 216.180(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.180, the mitigation measures described in this section and in any Letter of Authorization issued under §§ 216.106 and 216.188 must be implemented.

(a) Through monitoring described under § 216.185, the Holder of a Letter of Authorization must act to ensure, to
the greatest extent practicable, that no marine mammal is subjected to a sound pressure level of 180 dB or greater.

(b) If a marine mammal is detected within or about to enter the mitigation zone (the area subjected to sound pressure levels of 180 dB or greater plus the 1 km (0.54 nm) buffer zone extending beyond the 180-dB zone), SURTASS LFA sonar transmissions will be immediately delayed or suspended. Transmissions will not resume earlier than 15 minutes after:

(1) All marine mammals have left the area of the mitigation and buffer zones; and

(2) There is no further detection of any marine mammal within the mitigation and buffer zones as determined by the visual and/or passive or active acoustic monitoring described in §216.185.

(c) The high-frequency marine mammal monitoring sonar (HF/M3) described in §216.185 will be ramped-up slowly to operating levels over a period of no less than 5 minutes:

(1) At least 30 minutes prior to any SURTASS LFA sonar transmissions;

(2) Prior to any SURTASS LFA sonar calibrations or testings that are not part of regular SURTASS LFA sonar transmissions described in paragraph (c)(1) of this section; and

(3) Anytime after the HF/M3 source has been powered down for more than 2 minutes.

(d) The HF/M3 sound pressure level will not be increased once a marine mammal is detected; ramp-up may resume once marine mammals are no longer detected.

(e) The Holder of a Letter of Authorization will not operate the SURTASS LFA sonar, such that:

(1) the SURTASS LFA sonar sound field exceeds 180 dB (re 1 microPa(rms)) at a distance less than 12 nautical miles (nm) (22 kilometers (km)) from any coastline, including offshore islands;

(2) the SURTASS LFA sonar sound field exceeds 180 db (re 1 microPa(rms)) at a distance of 1 km (0.5 nm) seaward of the outer perimeter of any offshore biologically important area designated in 216.184(f) during the biologically important period specified.

(f) The following areas have been designated by NMFS as Offshore Biologically Important Areas (OBIAs) for marine mammals (by season if appropriate):

<table>
<thead>
<tr>
<th>Name of area</th>
<th>Location of area</th>
<th>Months of importance</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) 200-m isobath North American East Coast</td>
<td>From 28° N. to 50° N., west of 40° W .......... 30° E. to 80° E. to 45°; 80° E. to 150° E. to 55°; S. 150° E. to 50° W. to 60° S.; 50° W. to 30° E. to 50° S.</td>
<td>Year-round.</td>
</tr>
<tr>
<td>(2) Antarctic Convergence Zone</td>
<td>Centered at 9° N. and 88° W ..........</td>
<td>October 1–March 31.</td>
</tr>
<tr>
<td>(5) Cordell Bank National Marine Sanctuary</td>
<td></td>
<td>November 1 through May 1.</td>
</tr>
<tr>
<td>(6) Gulf of the Farallones National Marine Sanctuary</td>
<td>Boundaries in accordance with 15 CFR 922.80</td>
<td>Year-round.</td>
</tr>
<tr>
<td>(7) Monterey Bay National Marine Sanctuary</td>
<td>Boundaries in accordance with 15 CFR 922.30</td>
<td>Year-round.</td>
</tr>
<tr>
<td>(8) Olympic Coast National Marine Sanctuary</td>
<td>Boundaries within 23 nm of the coast from</td>
<td>Year-round.</td>
</tr>
<tr>
<td>(10) The Gully</td>
<td>Boundaries in accordance with 15 CFR 922.120.</td>
<td>Year-round.</td>
</tr>
</tbody>
</table>

§216.185 Requirements for monitoring.

(a) In order to mitigate the taking of marine mammals by SURTASS LFA sonar to the greatest extent practicable, the Holder of a Letter of Authorization issued pursuant to §§216.106 and 216.188 must:

(1) Conduct visual monitoring from the ship’s bridge during all daylight hours (30 minutes before sunrise until 30 minutes after sunset);

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. Navy authority conducting the activity identified in §216.180 must apply for and obtain a Letter of Authorization in accordance with §216.106.

(b) The application for a Letter of Authorization must be submitted to the Director, Office of Protected Resources, NMFS, at least 60 days before the date that either the vessel is scheduled to begin conducting SURTASS LFA sonar operations or the previous Letter of Authorization is scheduled to expire.

(c) All applications for a Letter of Authorization must include the following information:

(1) The date(s), duration, and the area(s) where the vessel’s activity will occur;

(2) Use low frequency passive SURTASS sonar to listen for vocalizing marine mammals; and

(3) Use the HF/M3 (high frequency) sonar developed to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

(b) Monitoring under paragraph (a) of this section must:

(1) Commence at least 30 minutes before the first SURTASS LFA sonar transmission;

(2) Continue between transmission pings; and

(3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise, or, if marine mammals are exhibiting unusual changes in behavioral patterns, for a period of time until behavioral patterns return to normal or conditions prevent continued observations;

(c) Holders of Letters of Authorization for activities described in §216.180 are required to cooperate with the National Marine Fisheries Service and any other federal agency for monitoring the impacts of the activity on marine mammals.

(d) Holders of Letters of Authorization must designate qualified on-site individuals to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization.

(e) Holders of Letters of Authorization must conduct all monitoring required under the Letter of Authorization.

§ 216.186 Requirements for reporting.

(a) The Holder of the Letter of Authorization must submit quarterly mission reports to the Director, Office of Protected Resources, NMFS, no later than 30 days after the end of each quarter beginning on the date of effectiveness of a Letter of Authorization or as specified in the appropriate Letter of Authorization. Each quarterly mission report will include all active-mode missions completed during that quarter. At a minimum, each classified mission report must contain the following information:

(1) Dates, times, and location of each vessel during each mission;

(2) Information on sonar transmissions during each mission;

(3) Results of the marine mammal monitoring program specified in the Letter of Authorization; and

(4) Estimates of the percentages of marine mammal species and stocks affected (both for the quarter and cumulatively for the year) covered by the Letter of Authorization.

(b) The Holder of a Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, NMFS, no later than 45 days after the expiration of a Letter of Authorization. This report must contain all the information required by the Letter of Authorization.

(c) A final comprehensive report must be submitted to the Director, Office of Protected Resources, NMFS at least 240 days prior to expiration of these regulations. In addition to containing all the information required by any final year Letter of Authorization, this report must contain an unclassified analysis of new passive sonar technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar.
(2) The species and/or stock(s) of marine mammals likely to be found within each area;  
(3) The type of incidental taking authorization requested (i.e., take by Level A and/or Level B harassment);  
(4) The estimated percentage of marine mammal species/stocks potentially affected in each area for the 12-month period of effectiveness of the Letter of Authorization; and  
(5) The means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on marine mammal populations.  
(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with §216.104(b) and, if adequate and complete, issue a Letter of Authorization.

§ 216.188 Letters of Authorization.  
(a) A Letter of Authorization, unless suspended or revoked will be valid for a period of time not to exceed one year, but may be renewed annually subject to annual renewal conditions in §216.189.  
(b) Each Letter of Authorization will set forth:  
(1) Permissible methods of incidental taking;  
(2) Authorized geographic areas for incidental takings;  
(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking, their habitat, and the availability of the species for subsistence uses; and  
(4) Requirements for monitoring and reporting incidental takes.  
(c) Issuance of each Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity specified in §216.180 as a whole will have no more than a negligible impact on the species or stocks of affected marine mammals, and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.  
(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the Federal Register within 30 days of a determination.

§ 216.189 Renewal of Letters of Authorization.  
(a) A Letter of Authorization issued for the activity identified in §216.180 may be renewed annually upon:  
(1) Notification to NMFS that the activity described in the application submitted under §216.187 will be undertaken and that there will not be a substantial modification to the described activity, mitigation or monitoring undertaken during the upcoming season;  
(2) Notification to NMFS of the information identified in §216.187(c), including the planned geographic area(s), and anticipated duration of each SURTASS LFA sonar operation;  
(3) Timely receipt of the monitoring reports required under §216.185, which have been reviewed by NMFS and determined to be acceptable;  
(4) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§216.184 and 216.185 and the previous Letter of Authorization were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and  
(5) A determination by NMFS that the number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammals, and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.  
(b) If a request for a renewal of a Letter of Authorization indicates that a substantial modification to the described work, mitigation or monitoring will occur, or if NMFS proposes a substantial modification to the Letter of Authorization, NMFS will provide a period of 30 days for public review and comment on the proposed modification. Amending the areas for upcoming SURTASS LFA sonar operations is not considered a substantial modification to the Letter of Authorization.  
(c) A notice of issuance or denial of a renewal of a Letter of Authorization...
§ 216.190 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantial modification (including withdrawal or suspension) to a Letter of Authorization subject to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization, without modification, except for the period of validity and a listing of planned operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, is not considered a substantial modification.

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.180(b), a Letter of Authorization may be substantially modified without prior notice and opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days of the action.

§ 216.191 Designation of Offshore Biologically Important Marine Mammal Areas.

(a) Offshore biologically important areas for marine mammals may be nominated under this paragraph by the National Marine Fisheries Service or by members of the public.

(b) Proponents must petition NMFS by requesting an area be added to the list of offshore biologically important areas in § 216.184(f) and submitting the following information:

(1) Geographic region proposed for consideration (including geographic boundaries);

(2) A list of marine mammal species or stocks within the proposed geographic region;

(3) Whether the proposal is for year-round designation or seasonal, and if seasonal, months of years for proposed designation;

(4) Detailed information on the biology of marine mammals within the area, including estimated population size, distribution, density, status, and the principal biological activity during the proposed period of designation sufficient for NMFS to make a preliminary determination that the area is biologically important for marine mammals; and

(5) Detailed information on the area with regard to its importance for feeding, breeding, or migration for those species of marine mammals that have the potential to be affected by low frequency sounds;

(c) Areas within 12 nm (22 km) of any coastline, including offshore islands, or within non-operating areas for SURTASS LFA sonar are not eligible for consideration.

(d) If a petition does not contain sufficient information for the National Marine Fisheries Service to proceed, NMFS will determine whether the nominated area warrants further study. If so, NMFS will begin a scientific review of the area.

(e)(1) If through a petition or independently, NMFS makes a preliminary determination that an offshore area is biologically important for marine mammals and is not located within a previously designated area, NMFS will publish a FEDERAL REGISTER notice proposing to add the area to § 216.184(f) and solicit public comment.

(2) The National Marine Fisheries Service will publish its final determination in the FEDERAL REGISTER.

Subpart R—Taking of Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the U.S. Beaufort Sea

SOURCE: 71 FR 11322, Mar. 7, 2006, unless otherwise noted.

EFFECTIVE DATE NOTE: At 71 FR 11322, Mar. 7, 2006, subpart R, consisting of §§216.200 through 216.210 were added, effective Apr. 6, 2006 through Apr. 6, 2011.

§ 216.200 Specified activity and specified geographical region.

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

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

(2) [Reserved]

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

§ 216.201 Effective dates.

Regulations in this subpart are effective from April 6, 2006 through April 6, 2011.

§ 216.202 Permissible methods of taking.

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

(b) The activities identified in §216.200 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and on the availability of marine mammals for subsistence uses.

§ 216.203 Prohibitions.

Notwithstanding takings contemplated in §216.200 and authorized by a Letter of Authorization issued under §§216.106 and 216.208, no person in connection with the activities described in §216.200 shall:

(a) Take any marine mammal not specified in §216.200(b);

(b) Take any marine mammal specified in §216.200(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in §216.200(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

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

§ 216.204 Mitigation.

The activity identified in §216.200(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.200, the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.208 must be utilized.

§ 216.205 Measures to ensure availability of species for subsistence uses.

When applying for a Letter of Authorization pursuant to §216.207, or a renewal of a Letter of Authorization pursuant to §216.209, the applicant must submit a Plan of Cooperation that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(a) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding timing and methods of operation;

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

(c) What plans the applicant has to continue to meet with the affected
§ 216.206 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§216.106 and 216.208 for activities described in §216.200 are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, National Marine Fisheries Service, or his/her designee, by letter or telephone, at least 2 weeks prior to initiating new activities potentially involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization issued pursuant to §§216.106 and 216.208.

(c) Holders of Letters of Authorization must conduct all monitoring and/or research required under the Letter of Authorization.

(d) Unless specified otherwise in the Letter of Authorization, the Holder of that Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than March 31 of the year following the conclusion of the previous open water monitoring season. This report must contain all information required by the Letter of Authorization.

(e) A final annual comprehensive report must be submitted within the time period specified in the governing Letter of Authorization.

(f) A final comprehensive report on all marine mammal monitoring and research conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of these regulations or 240 days after the expiration of these regulations if renewal of the regulations will not be requested.

§ 216.207 Applications for Letters of Authorization.

(a) To incidentally take bowhead whales and other marine mammals pursuant to these regulations, the U.S. citizen (see definition at §216.103) conducting the activity identified in §216.200 must apply for and obtain either an initial Letter of Authorization in accordance with §§216.106 and 216.208, or a renewal under §216.209.

(b) The application for an initial Letter of Authorization must be submitted to the National Marine Fisheries Service at least 180 days before the activity is scheduled to begin.

(c) Applications for initial Letters of Authorization must include all information items identified in §216.104(a).

(d) NMFS will review an application for an initial Letter of Authorization in accordance with §216.104(b) and, if adequate and complete, will publish a notice of receipt of a request for incidental taking and a proposed amendment to §216.200(a). In conjunction with amending §216.200(a), the National Marine Fisheries Service will provide for public comment on the application for an initial Letter of Authorization.

(e) Upon receipt of a complete application for an initial Letter of Authorization, and at its discretion, the National Marine Fisheries Service may submit the monitoring plan to members of a peer review panel for review and/or schedule a workshop to review the plan. Unless specified in the Letter of Authorization, the applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of an initial Letter of Authorization.

§ 216.208 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §216.209.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;
§ 216.209

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

(3) Requirements for monitoring and reporting, including any requirements for the independent peer-review of proposed monitoring plans.

(c) Issuance and renewal of each Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of a Letter of Authorization will be published in the Federal Register within 30 days of a determination.


(a) A Letter of Authorization issued under § 216.106 and § 216.208 for the activity identified in § 216.200 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application submitted under § 216.207 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.205, and the Letter of Authorization issued under § 216.208, which have been reviewed and accepted by the National Marine Fisheries Service, and of the Plan of Cooperation required under § 216.205; and

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under § 216.204 and the Letter of Authorization issued under §§ 216.106 and 216.208, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.208 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the National Marine Fisheries Service will provide the public a minimum of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data that indicates that the determinations made in this document are in need of reconsideration,

(2) The Plan of Cooperation, and

(3) The proposed monitoring plan.

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


(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by the National Marine Fisheries Service, issued pursuant to §§ 216.106 and 216.208 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.209, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.200(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.208 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.
Subpart S—Taking of Marine Mammals Incidental to Explosive Severance Activities Conducted During Offshore Structure Removal Operations on the Outer Continental Shelf in the U.S. Gulf of Mexico

§ 216.211 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in explosive severance activities conducted during offshore oil and gas structure removal activities in areas within state and Federal waters in the U.S. Gulf of Mexico adjacent to the coasts of Texas, Mississippi, Louisiana, Alabama, and Florida. The incidental, but not intentional, taking of marine mammals by U.S. citizens holding a Letter of Authorization issued pursuant to §216.218 is permitted during the course of severing pilings, well conductors, and related supporting structures, and other activities related to the removal of the oil and gas structure.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to a total of 5 bottlenose dolphins, one Atlantic spotted dolphin, and one pantropical spotted dolphin by Level A harassment within the area described in §216.211(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

§ 216.212 Effective dates.

Regulations in this subpart are effective from July 21, 2008 until July 19, 2013.

§ 216.213 Permissible methods of taking.

The Holder of a Letter of Authorization issued pursuant to §216.218, may incidentally, but not intentionally, take marine mammals by harassment within the area described in §216.211(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

§ 216.214 Prohibitions.

No person in connection with the activities described in §216.211(a) shall:

(a) Take any marine mammal not specified in §216.211(b);

(b) Take any marine mammal specified in §216.211(b) in a manner or amount greater than described therein;

(c) Take any marine mammal specified in §216.211(b) if NMFS determines that the taking of marine mammals incidental to the activities described in §216.211(a) is having more than a negligible impact on the species or stocks of marine mammals;

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued pursuant to §§216.106 and 216.218;

(e) Take any marine mammal in violation of these regulations by using a charge with a weight greater than 500 lbs (227 kg);

(f) Take any marine mammal when conditions preclude conducting mitigation and monitoring requirements of these regulations or a Letter of Authorization.

§ 216.215 Definitions, terms, and criteria

(a) Definitions. (1) Below-mud-line or BML means that the explosives are detonated below the water-mud interface, either inside or outside a pipe, other structure or cable.

(2) Above-mud-line or AML means that the explosives are detonated in the water column above the water-mud interface, either inside or outside a pipe, other structure or cable.

(3) Multiple charge detonation means any explosive configuration where more than one charge is required in a single detonation event.
Scenario means an alpha-numeric designation provided to describe charge size, activity location, and target designation employed in order to determine the appropriate marine mammal mitigation/monitoring measures.

(4) Scenario means an alpha-numeric designation provided to describe charge size, activity location, and target designation employed in order to determine the appropriate marine mammal mitigation/monitoring measures.

(b) Terms (1) Impact zone (required for all scenarios) means any marine mammal monitoring survey (e.g., surface, aerial, or acoustic) conducted prior to the detonation of any explosive severance tool.

(2) Predetonation survey (required for all scenarios) means any marine mammal monitoring survey (e.g., surface, aerial, or acoustic) conducted prior to the detonation of any explosive severance tool.

(3) Postdetonation survey (required for all scenarios) means any marine mammal monitoring survey (e.g., surface, aerial, or post-post-detonation aerial) conducted after the detonation event occurs.

(4) Waiting period (required for all scenarios) means the amount of time detonation operations must hold before the requisite monitoring survey(s) can be repeated.

(5) Company observer (for scenarios A1–A4 only) means trained company observers authorized to perform marine mammal detection surveys only for “very-small” blasting scenarios A1–A4.

(6) NMFS observer (for scenarios B1–E4) means observers trained and approved by an instructor with experience as a NMFS Platform Removal Observer Program trainer. NMFS observers are required to perform marine mammal detection surveys for all detonation scenarios with the exception of scenarios B1–E4. Two NMFS observers will be assigned to each operation for detection survey duties, except mitigation-scenarios C2, C4, D2, D4, E2, and E4 require a minimum of three NMFS observers for the simultaneous surface, aerial, and acoustic surveys.

(c) Criteria—(1) Blasting category parameters and associated severance scenarios. To determine the appropriate marine mammal mitigation and monitoring requirements in §§216.218 and 216.219, holders of Letters of Authorization for activities described in §216.211(a) of this subpart must determine, from Table 1 in §216.217(b)(1), the appropriate explosive severance mitigation/monitoring scenario to follow for the blasting category, species-delineation zone, and charge configuration for their activity.

(2) [Reserved]

§216.216 Mitigation.

(a) The activity identified in §216.211(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.211(a), all mitigation measures contained in this subpart and in the Letter of Authorization issued pursuant to §§216.106 and 216.218 must be implemented. When using explosives, the following mitigation measures must be carried out:

(1)(i) If marine mammals are observed within (or about to enter) the marine mammal impact zone identified in Table 1 in §216.217(b)(1) column 5 for the relevant charge range and configuration (i.e., BML or AML) for the activity, detonation must be delayed until the marine mammal(s) are outside that zone;

(ii) Pre-detonation surveys shall not begin prior to sunrise and detonations shall not occur if the post-detonation survey cannot be concluded prior to sunset;

(iii) Whenever weather or sea conditions preclude adequate aerial, shipboard or subsurface marine mammal monitoring as determined by the trained observer, detonations must be delayed until conditions improve sufficiently for marine mammal monitoring to be undertaken or resumed;

(iv) Whenever the weather or sea conditions prevent implementation of the aerial survey monitoring required under §216.217(c)(2), the aerial survey must be repeated prior to detonation of charges; and

(v) Multiple charge detonations must be staggered at an interval of 0.9 sec (900 msec) between blasts.

(2) [Reserved]

(b) If a marine mammal is found seriously injured, or dead, the explosive severance activity will immediately cease and the holder of the Letter of
§ 216.217 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued for activities described in §216.211(a) are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency with regulatory authority over the offshore oil-and-gas activities for the purpose of monitoring the impacts of the activity on marine mammals.

(b)(1) Table 1 summarizes the required mitigation and monitoring survey modes, duration and zones for all blasting scenarios of marine mammal impact zones for implementation of surface and aerial monitoring requirements depending upon charge weight and severance scenario.

(2) Holders of Letters of Authorization must fully comply with the relevant mitigation and monitoring program for the explosive-severance activity described in subparagraph (c) of this paragraph that corresponds to the holder of the Letter of Authorization’s blast scenario shown in Table 1.
### Table 1. Blast Categories, Mitigation Scenarios, Survey and Time Requirements For All Explosive Severance Scenarios.1

<table>
<thead>
<tr>
<th>Blasting Category</th>
<th>Configuration (Charge wt/ placement)</th>
<th>Species Delination Zone</th>
<th>Mitigation Scenario</th>
<th>Impact Zone Radius</th>
<th>Pre Det Surface Survey (min)</th>
<th>Pre Det Aerial Survey (min)</th>
<th>Pre Det Acoustic Survey (min)</th>
<th>Post Det Surface Survey (min)</th>
<th>Post Det Aerial Survey (min)</th>
<th>Post Det Aerial Survey (Yes/No)</th>
<th>Waiting Period (min)</th>
</tr>
</thead>
<tbody>
<tr>
<td>BML</td>
<td>Shelf (&lt;200 m)</td>
<td>A1</td>
<td>261 m</td>
<td>60</td>
<td>N/A</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td>Very- Small</td>
<td>(0-10 lb) Shelf (&lt;200 m)</td>
<td>A2</td>
<td>(856 ft)</td>
<td>90</td>
<td>N/A</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td>Small</td>
<td>AML Shelf (&lt;200 m)</td>
<td>A3</td>
<td>293 m</td>
<td>60</td>
<td>N/A</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>Slope (&gt;200 m)</td>
<td>A4</td>
<td>(961 ft)</td>
<td>90</td>
<td>N/A</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td>BML</td>
<td>Shelf (&lt;200 m)</td>
<td>B1</td>
<td>373 m</td>
<td>90</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td>Small</td>
<td>(&gt;10-20 lb) Shelf (&gt;200 m)</td>
<td>B2</td>
<td>(1,224 ft)</td>
<td>90</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>AML Shelf (&gt;200 m)</td>
<td>B3</td>
<td>522 m</td>
<td>90</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>Slope (&gt;200 m)</td>
<td>B4</td>
<td>(1,714 ft)</td>
<td>90</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td>BML</td>
<td>Shelf (&lt;200 m)</td>
<td>C1</td>
<td>631 m</td>
<td>90</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td>Standard</td>
<td>(&gt;20-80 lb) Shelf (&gt;200 m)</td>
<td>C2</td>
<td>(2,069 ft)</td>
<td>90</td>
<td>30</td>
<td>120</td>
<td>N/A</td>
<td>30</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>AML Shelf (&gt;200 m)</td>
<td>C3</td>
<td>829 m</td>
<td>90</td>
<td>45</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>Slope (&gt;200 m)</td>
<td>C4</td>
<td>(2,721 ft)</td>
<td>90</td>
<td>60</td>
<td>150</td>
<td>N/A</td>
<td>30</td>
<td>30</td>
<td>Yes</td>
<td>45</td>
</tr>
<tr>
<td>BML</td>
<td>Shelf (&lt;200 m)</td>
<td>D1</td>
<td>941 m</td>
<td>120</td>
<td>45</td>
<td>N/A</td>
<td>30</td>
<td>N/A</td>
<td>30</td>
<td>No</td>
<td>30</td>
</tr>
<tr>
<td>Large</td>
<td>(&gt;80-200 lb) Slope (&gt;200 m)</td>
<td>D2</td>
<td>(3,086 ft)</td>
<td>120</td>
<td>60</td>
<td>180</td>
<td>N/A</td>
<td>30</td>
<td>Yes</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td></td>
<td>AML Shelf (&gt;200 m)</td>
<td>D3</td>
<td>1,126 m</td>
<td>120</td>
<td>60</td>
<td>N/A</td>
<td>30</td>
<td>30</td>
<td>No</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Slope (&gt;200 m)</td>
<td>D4</td>
<td>(3,693 ft)</td>
<td>150</td>
<td>60</td>
<td>210</td>
<td>N/A</td>
<td>30</td>
<td>Yes</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>BML</td>
<td>Shelf (&gt;200 m)</td>
<td>E1</td>
<td>1,500 m</td>
<td>150</td>
<td>90</td>
<td>N/A</td>
<td>45</td>
<td>No</td>
<td>45</td>
<td></td>
<td>45</td>
</tr>
<tr>
<td>Specialty</td>
<td>(&gt;200-500 lb) Slope (&gt;200 m)</td>
<td>E2</td>
<td>(4,916 ft)</td>
<td>180</td>
<td>90</td>
<td>270</td>
<td>N/A</td>
<td>45</td>
<td>Yes</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td></td>
<td>AML Shelf (&gt;200 m)</td>
<td>E3</td>
<td>1,528 m</td>
<td>150</td>
<td>90</td>
<td>N/A</td>
<td>45</td>
<td>No</td>
<td>45</td>
<td></td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Slope (&gt;200 m)</td>
<td>E4</td>
<td>(5,012 ft)</td>
<td>180</td>
<td>90</td>
<td>270</td>
<td>N/A</td>
<td>45</td>
<td>Yes</td>
<td>45</td>
<td></td>
</tr>
</tbody>
</table>

1 Severance of subsea structures that do not penetrate the sea surface will follow the mitigation scenario for above mudline (AML) detonations even if charges are placed below mudline.
(c) Holders of Letters of Authorization must ensure that the following monitoring programs are conducted as appropriate for the required monitoring scenario.

(1) Surface monitoring survey. A surface monitoring survey must be conducted for the length of time that corresponds to the relevant explosive severance scenario. Surface monitoring surveys are to be conducted from the highest vantage point and/or other location(s) that provide the best, clear view of the entire impact zone. These vantage points may be on the structure being removed or proximal surface vessels (i.e., crewboats, derrick barges, etc.). Surface surveys are restricted to daylight hours only, and the monitoring will cease if the designated lead observer determines that weather or marine conditions are not adequate for visual observations.

(2) Aerial monitoring survey. Aerial surveys are required for all explosive severance scenarios except monitoring scenarios A1–A4. Aerial monitoring surveys are to be conducted from helicopters running standard low-altitude search patterns over the extent of the impact zone that corresponds to the appropriate explosive severance scenario. Aerial surveys will be restricted to daylight hours only (defined as “legal sunrise” to “legal sunset”), and cannot begin until the requisite surface monitoring survey has been completed. Aerial surveys will cease if the designated lead observer determines that weather or marine conditions are not adequate for visual observations, or when the pilot/removal supervisor determines that helicopter operations must be suspended.

(3) Acoustic monitoring survey.

(i) Acoustic monitoring surveys are required to be conducted on all Standard, Large, and Specialty blasting scenarios conducted at slope (≤200 m (656 ft)) locations (i.e., scenarios C2, C4, D2, D4, E2, and E4).

(ii) Persons conducting acoustic surveys will be required to comply with NMFS-approved passive acoustic monitoring protocols and use approved devices and technicians.

(iii) Acoustic surveys will be run concurrent with the required pre-detonation surveys, beginning with the surface observations and concluding at the finish of the aerial surveys when the detonation(s) is allowed to proceed.

(4) Post-detonation surface monitoring survey. A 30-minute post-detonation surface survey must be conducted by the trained company observer for scenarios A1–A4 immediately upon conclusion of the detonation.

(5) Post-detonation aerial monitoring survey. For scenarios B1–D4, a 30-minute aerial survey must be conducted immediately upon conclusion of the detonation. For scenarios E1–E4, a 45-minute aerial survey must be conducted immediately upon conclusion of the detonation.

(6) Post-post-detonation aerial monitoring survey. For scenarios B1–D4, a 30-minute aerial survey must be conducted immediately upon conclusion of the detonation. For scenarios E1–E4, a 45-minute aerial survey must be conducted immediately upon conclusion of the detonation.

(7) If unforeseen conditions or events occur during an explosive severance operation that may necessitate additional monitoring not specified in this paragraph, the designated NMFS lead observer will contact the appropriate National Marine Fisheries Service and Minerals Management Service personnel as detailed in the Letter of Authorization for additional guidance.

(d) Holders of Letters of Authorization must conduct all monitoring and research required under the Letter of Authorization. Any monitoring or research measures proposed to be contained in a Letter of Authorization that are not specified in this subpart or not considered an emergency requirement under § 216.218(d), will first be subject to public notice and comment through publication in the Federal Register, as provided by § 216.219(c).

(e) Reporting (1) A report summarizing the results of structure removal...
activities, mitigation measures, monitoring efforts, and other information as required by a Letter of Authorization, must be submitted to the Director, Office of Protected Resources, within 30 days of completion of the removal activity.

(2) The National Marine Fisheries Service will accept the NMFS observer report as the activity report required by subparagraph (1) of this paragraph if all requirements for reporting contained in the Letter of Authorization are provided to the NMFS observer before the NMFS observer’s report is submitted to the PROP Manager.

(3) If a marine mammal is found shocked, injured, or dead, the Holder of the Letter of Authorization, or designee, must report the incident to the National Marine Fisheries Service Southeast Regional Office, at the earliest opportunity.

§ 216.218 Letters of Authorization.

(a) To incidentally take marine mammal species listed in § 216.211(b) pursuant to these regulations, each company or contractor responsible for the removal of the structure or an industry-related seafloor obstruction in the area specified in § 216.211(a) must apply for and obtain either a Letter of Authorization in accordance with § 216.106 or a renewal under § 216.219(a).

(b) An application for a Letter of Authorization must be submitted to the National Marine Fisheries Service at least 30 days before the explosive removal activity is scheduled to begin.

(c) Issuance of a Letter of Authorization and renewal of a Letter of Authorization under § 216.218(a) will be based on a determination by the National Marine Fisheries Service that the number of each species or stock of cetaceans taken annually by the activity will be small and that the total taking over the 5-year period will have a negligible impact on the species or stock of affected marine mammal(s).

(d) A Letter of Authorization may be renewed annually, subject to conditions in § 216.219(a).

(e) A Letter of Authorization for activities in this subpart will not be valid after the effective period of this subpart.

(f) A copy of the Letter of Authorization must be in the possession of the persons conducting the activity specified in § 216.211(a) that may involve incidental takings of marine mammals.

(g) Notice of issuance or denial of a Letter of Authorization will be published in the Federal Register within 30 days of a determination.

§ 216.219 Renewal and modifications of Letters of Authorization.

(a) A Letter of Authorization issued for the activity identified in § 216.211(a) will be renewed annually upon:

(1) Receipt of an application for renewal of a Letter of Authorization under § 216.218.

(2) Timely receipt of the report(s) required under § 216.217(f), which have been reviewed by the Assistant Administrator and determined to be acceptable; and

(3) A determination that the required mitigation, monitoring and reporting measures have been undertaken.

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

(c) In addition to complying with the provisions of § 216.106, except as provided in paragraph (d) of this section, no substantive modification, including a request for a variance in the mitigation or monitoring requirements in this subpart or a withdrawal or suspension of the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart, shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under § 216.219, without modification other than an effective date change, is not considered a substantive modification.

(d) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.211(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.118, or renewed pursuant to this paragraph may be modified without prior notice and opportunity for public comment. A notice will be published in the Federal Register subsequent to the action.
§ 216.230 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in rocket launch activities (up to nine launches per year) at the Kodiak Launch Complex on Kodiak Island, Alaska.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to Steller sea lions (Eumetopius jubatus) and Pacific harbor seals (Phoca vitulina richardsi).

§ 216.231 Effective dates.

Regulations in this subpart are effective from February 27, 2006 through February 28, 2011.

§ 216.232 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to §216.106, the Alaska Aerospace Development Corporation and its contractors, may incidentally, but not intentionally, take Steller sea lions by Level B harassment, take adult Pacific harbor seals by Level B harassment, and take harbor seal pups by Level B or Level A harassment or mortality, in the course of conducting missile launch activities within the area described in §216.230(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activities identified in §216.230(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitat.

§ 216.233 Prohibitions.

The following activities are prohibited:

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

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

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

§ 216.234 Mitigation, monitoring and reporting.

(a) No more than five launches may occur between May 15 and June 30 within the 5-year period, and no more than 15 launches may occur between June 15 and September 30 within the 5-year period.

(b) The holder of the Letter of Authorization must implement the following measures for all launches occurring from June through October:

1. Conduct five replicate fixed-wing aerial surveys of all hauled out Steller sea lions and harbor seals at Ugak Island, each flown at low tide (weather permitting), using a minimum flight altitude of 500 feet (152 meters) above sea level, with an approach no closer than 0.25 mi (0.40 km) to the haulout, and conducted a day prior to, directly following, and for three consecutive days after a launch.

2. At least one biologist observer will accompany the pilot during all aerial surveys.

3. Data gathered during aerial surveys will be gathered visually and through the use of a camera with a zoom lens.

4. A real-time video record of Steller sea lion reactions to launch noise will be made using a video camera system placed upon the Ugak Island haulout before a scheduled launch and then retrieved after the launch.

5. Sound intensities and frequencies of rocket motor noise will be recorded before, during, and after a launch by a sound level monitor mounted upon the...
§ 216.234

Ugak Island haulout and set to high-light sounds greater than 70 dBA. Monitors will be installed one day or more before a launch and retrieved within one day post-launch.

(c) A trial effort to obtain real-time video records of harbor seals hauled out at the eastern end of the northern side of the island and their reactions to launch noise will be made as soon as practicable. A brief report summarizing the efficacy of this monitoring effort should be included in the standard monitoring reports for that launch and year. If valuable data may be gathered using this method, real-time video records of harbor seals reactions to launch noise will be made before launches scheduled between May 15 and June 30, and between June 30 and September 30 if the equipment is not being used to record Steller sea lions, and then retrieved after the launches.

(d) Security flights immediately associated with rocket launches may not approach closer than 0.25 mile (0.4 km) to occupied pinniped haulout sites on Ugak Island or fly lower than 1000 ft (305 m) when the plane is closer than 0.5 miles (0.8 km) from occupied pinniped sites on Ugak Island unless indications of human presence or activity warrant closer inspection of the area to assure that national security interests are protected in accordance with the law.

(e) When pinnipeds are present at haulouts during security overflights associated with rocket launches, and when practicable, a member of the flight crew will note and record whether pinnipeds appeared to flush as a result of the overflight and estimate a number.

(f) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the NMFS Alaska Assistant Regional Administrator for Protected Resources and to the NMFS Division of Permits, Conservation, and Education, Office of Protected Resources, or their designees, within 48 hours. In consultation with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(g) Activities related to the monitoring described in paragraph (a) of this section or in the Letter of Authorization may be conducted without a separate scientific research permit.

(h) In coordination and compliance with the Alaska Aerospace Development Corporation, the National Marine Fisheries Service may place an observer on Kodiak or Ugak Islands for any marine mammal monitoring activity prior to, during, or after a missile launch to monitor impacts on marine mammals, provided observers are not within the calculated danger zone of the rocket’s flight path during a launch.

(i) The holder of the Letter of Authorization must comply with any other applicable state or federal permits, regulations, and environmental monitoring agreements set up with other agencies.

(j) The National Marine Fisheries Service must be informed immediately of any proposed changes or deletions to any portions of the monitoring requirements.

(k) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) If indications of injurious or lethal take are recorded, the NMFS Alaska Assistant Regional Administrator for Protected Resources and the NMFS Division of Permits, Conservation, and Education, Office of Protected Resources, or their designees, will be contacted within 48 hours. In consultation with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(2) Data from monitoring activities will be reported to the National Marine Fisheries Service within 90 days following cessation of field activities for each launch. After the trial effort to videotape harbor seals at the eastern end of the north side of Ugak island, a summary of the effectiveness of the videotaping will be included in the associated launch report.

(3) An interim technical report must be submitted to the NMFS Alaska Assistant Regional Administrator for Protected Resources and to the NMFS Division of Permits, Conservation, and

(a) A Letter of Authorization for the activity identified in §216.230(a) will be renewed upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under §216.235 will be undertaken and that there will not be a substantial modification to the described activity, mitigation or monitoring undertaken during the upcoming season;

(2) Timely receipt of and acceptance by the National Marine Fisheries Service of the monitoring reports required under §216.234;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under §§216.232 and 216.234 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity will be small and that the total taking by the activity will have no more than a negligible impact on the affected species or stocks of marine mammal(s), and that the level of taking will be consistent with the findings.


(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization, but a Letter of Authorization may not be valid beyond the effective period of the regulations.

(b) A Letter of Authorization will set forth:

(1) Species of marine mammals authorized to be taken;

(2) Permissible methods of incidental taking;

(3) Specified geographical region;

(4) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(5) Requirements for monitoring and reporting incidental takes.

(c) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the total taking by the activity as a whole will have no more than a negligible impact on the affected species or stocks of marine mammal(s).

(d) Notice of issuance or denial of a Letter of Authorization will be published in the Federal Register within 30 days of a determination.
§ 216.237 Modifications to a Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to the provisions of this subpart shall be made by the National Marine Fisheries Service until after notification and an opportunity for public comment has been provided. A renewal of a Letter of Authorization under §216.236 without modification is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.230(b), a Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days of the action.

Subpart V—Taking and Importing Marine Mammals; U.S. Navy’s Atlantic Fleet Active Sonar Training (AFAST)

SOURCE: 74 FR 4876, Jan. 27, 2009, unless otherwise noted.


§ 216.240 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the AFAST Study Area, which extends east from the Atlantic Coast of the U.S. to 45° W. long. and south from the Atlantic and Gulf of Mexico Coasts to approximately 23° N. lat., excluding the Bahamas (see Figure 1–1 in the Navy’s Application).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the use of the following mid-frequency active sonar (MFAS) sources, high frequency active sonar (HFAS) sources, or explosive sonobuoys for U.S. Navy anti-submarine warfare (ASW), mine warfare (MIW) training, maintenance, or research, development, testing, and evaluation (RDT&E) in the amounts indicated below (±10 percent):

1. AN/SQS–53 (hull-mounted sonar)—up to 16070 hours over the course of 5 years (an average of 3214 hours per year).

2. AN/SQS–56 (hull-mounted sonar)—up to 8420 hours over the course of 5 years (an average of 1684 hours per year).

3. AN/SQS–56 or 53 (hull mounted sonar in object detection mode)—up to 1080 hours over the course of 5 years (an average of 216 hours per year).

4. AN/BQQ–10 or 5 (submarine sonar)—up to 49880 pings over the course of 5 years (an average of 9976 pings per year) (an average of 1 ping per two hours during training events, 60 pings per hour for maintenance).

5. AN/AQS–22 or 13 (helicopter dipping sonar)—up to 14760 dips over the course of 5 years (an average of 2952 dips per year—10 pings per five-minute dip).

6. SSQ–62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 29255 sonobuoys over the course of 5 years (an average of 5853 sonobuoys per year).

7. MK–48 (heavyweight torpedoes)—up to 160 torpedoes over the course of 5 years (an average of 32 torpedoes per year).

8. MK–46 or 54 (lightweight torpedoes)—up to 120 torpedoes over the course of 5 years (an average of 24 torpedoes per year).

9. AN/SSQ–110A (IEER explosive sonobuoy) and AN/SSQ–125 (AEER sonar sonobuoy)—up to 4360 sonobuoys, between these 2 sources, over the course of 5 years.
of 5 years (an average of 872 buoys per year).

(10) AN/SQQ–32 (over the side mine-hunting sonar)—up to 22370 hours over the course of 5 years (an average of 4474 hours per year).

(11) AN/SLQ–25 (NIXIE—towed countermeasure)—up to 1660 hours over the course of 5 years (an average of 332 hours per year).

(12) AN/BQS–15 (submarine navigation)—up to 2250 hours over the course of 5 years (an average of 450 hours per year).

(13) MK–1 or 2 or 3 or 4 (Submarine-fired Acoustic Device Countermeasure (ADC))—up to 1125 ADCs over the course of 5 years (an average of 225 ADCs per year).

(14) Noise Acoustic Emitters (NAE—Sub-fired countermeasure)—up to 635 NAEs over the course of 5 years (an average of 127 NAEs per year).

§ 216.241 Effective dates and definitions.

(a) Regulations are effective January 22, 2009 through January 22, 2014.

(b) The following definitions are utilized in these regulations:

(1) Uncommon Stranding Event (USE)—A stranding event that takes place during a major training exercise (MTE) and involves any one of the following:

(i) Two or more individuals of any cetacean species (not including mother/calf pairs), unless of species of concern listed in §216.241(b)(1)(ii) found dead or live on shore within a 2-day period and occurring within 30 miles of one another.

(ii) A single individual or mother/calf pair of any of the following species, dwarf or pygmy sperm whales, melon-headed whales, pilot whales, right whales, humpback whales, sperm whales, blue whales, fin whales, or sei whales.

(iii) A group of 2 or more cetaceans of any species exhibiting indicators of distress as defined in §216.241(b)(3).

(2) Shutdown—The cessation of MFAS/HFAS operation or detonation of explosives within 14 nm (Atlantic Ocean) or 17 nm (Gulf of Mexico) of any live, in the water, animal involved in a USE.

§ 216.242 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.247, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §216.240(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.240(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §216.240(c) is limited to the following species, by the identified method of take and the indicated number of times:

(1) Level B Harassment (±10 percent of the number of takes indicated below):

(i) Mysticetes:

(A) North Atlantic right whale (Eubalaena glacialis)—3330 (an average of 666 annually).

(B) Humpback whale (Megaptera novaeangliae)—21010 (an average of 4202 annually).

(C) Minke whale (Balaenoptera acutorostrata)—2075 (an average of 415 annually).

(D) Sei whale (Balaenoptera borealis)—5285 (an average of 1057 annually).

(E) Fin whale (Balaenoptera physalus)—4410 (an average of 882 annually).

(F) Bryde’s whale (Balaenoptera edeni)—180 (an average of 36 annually).

(G) Blue whale (Balaenoptera musculus)—4005 (an average of 801 annually).

(ii) Odontocetes:

(A) Sperm whales (Physeter macrocephalus)—48790 (an average of 9758 annually).

(B) Pygmy or dwarf sperm whales (Kogia breviceps or Kogia sima)—21920 (an average of 4384 annually).

(C) Beaked Whales (Cuvier’s, True’s, Gervais’, Sowerby’s, Blainville’s, Northern bottlenose whale) (Ziphius cavirostris, Mesoplodon mirus, M. europaeus, M. bidens, M. densirostris,
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Hyperoodon ampullatus)—24535 (an average of 4907 annually).

(D) Rough-toothed dolphin (Steno bredanensis)—13540 (an average of 2708 annually).

(E) Bottlenose dolphin (Tursiops truncatus)—3034010 (an average of 606802 annually).

(F) Pan-tropical dolphin (Stenella attenuata)—696530 (an average of 139306 annually).

(G) Atlantic spotted dolphin (Stenella frontalis)—1881805 (an average of 376361 annually).

(H) Spinner dolphin (Stenella longirostris)—105775 (an average of 21155 annually).

(I) Clymene dolphin (Stenella clymene)—232190 (an average of 46438 annually).

(J) Striped dolphin (Stenella coeruleoalba)—873620 (an average of 174274 annually).

(K) Common dolphin (Delphinus spp.)—482300 (an average of 96460 annually).

(L) Fraser’s dolphin (Lagenodelphis hosei)—1730 (an average of 346 annually).

(M) Risso’s dolphin (Grampus griseus)—470375 (an average of 94075 annually).

(N) Atlantic white-sided dolphin (Lagenorhynchus acutus)—103255 (an average of 20651 annually).

(O) White-beaked dolphin (Lagenorhynchus albirostris)—17250 (an average of 3450 annually).

(P) Melon-headed whale (Peponocephala electra)—8270 (an average of 1654 annually).

(Q) Pygmy killer whale (Feresa attenuata)—1400 (an average of 280 annually).

(R) False killer whale (Pseudorca crassidens)—2690 (an average of 538 annually).

(S) Killer whale (Orcinus orca)—2515 (an average of 503 annually).

(T) Pilot whales (Short-finned pilot or long-finned) (Globicephala macrorhynchus or G. melas)—639965 (an average of 127393 annually).

(U) Harbor porpoise (Phocoena phocoena)—767405 (an average of 153481 annually).

(iii) Pinnipeds:

(A) Gray seal (Halichoerus grypus)—39295 (an average of 7859 annually).

(B) Harbor seal (Phoca vitulina)—63295 (an average of 12659 annually).

(C) Hooded seal (Cystophora cristata)—78590 (an average of 15718 annually).

(D) Harp seal (Pagophilus groenlandicus)—55010 (an average of 11002 annually).

(2) Level A Harassment and/or mortality of no more than 10 beaked whales (total), of any of the species listed in §216.242(c)(1)(ii)(C) over the course of the 5-year regulations.

§ 216.244 Mitigation.

(a) When conducting training activities identified in §216.240(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.247 must be implemented. These mitigation measures include, but are not limited to:

(1) Mitigation Measures for ASW and MIW training:

(i) All lookouts onboard platforms involved in ASW training shall review the NMFS-approved Marine Species Awareness Training (MSAT) material prior to use of mid-frequency active sonar.

(ii) All Commanding Officers, Executive Officers, and officers standing watch on the Bridge shall review the MSAT material prior to a training event employing the use of mid- or high-frequency active sonar.
(iii) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968–D).

(iv) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, Lookouts shall complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(v) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine mammals are spotted.

(vi) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(vii) All surface ships participating in ASW exercises shall, in addition to the three personnel on watch noted previously, have at least two additional personnel on watch as lookouts.

(viii) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(ix) On surface vessels equipped with MFAS, pedestal mounted “Big Eye” (20 x 110) binoculars shall be present and in good working order.

(x) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D). Surface lookouts should scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout should always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout should hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout should scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They should search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses should be lowered to allow the eyes to rest for a few seconds, and then the lookout should search back across the sector with the naked eye.

(xi) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook. At night, lookouts should not sweep the horizon with their eyes because this method is not effective when the vessel is moving. Lookouts should scan the horizon in a series of movements that should allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they should look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision.

(xii) Personnel on lookout shall be responsible for informing the Officer of the Deck all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted.

(xiii) Commanding Officers shall make use of marine mammal detection cues and information to limit interaction with marine mammals to the maximum extent possible consistent with safety of the ship.

(xiv) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(xv) Units shall use training lookouts to survey for marine mammals prior to commencement and during the use of active sonar.
(xvi) During operations involving sonar, personnel shall utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(xvii) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(xviii) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yards (182 m) of the sonobuoy.

(xix) Marine mammal detections shall be reported immediately to assigned Aircraft Control Unit (if participating) for further dissemination to ships in the vicinity of the marine mammals. This action shall occur when it is reasonable to conclude that the course of the ship will likely close the distance between the ship and the detected marine mammal.

(xx) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that sonar transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1000 yards (914 m) of the sonar dome (the bow).

(A) Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(B) Should a marine mammal be detected within or closing to inside 457 m (500 yd) of the sonar dome, active sonar transmissions shall be limited to at least 10 dB below the equipment’s normal operating level. Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2000 yards (1828 m) beyond the location of the last detection.

(C) Should the marine mammal be detected within or closing to inside 183 m (200 yd) of the sonar dome, active sonar transmissions shall cease. Sonar shall not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(D) If the need for power-down should arise as detailed in “Safety Zones” in paragraph (a)(1)(xx) of this section, Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down shall be to 229 dB, regardless of at what level above 235 sonar was being operated).

(xxii) Prior to startup or restart of active sonar, operators shall check that the Safety Zone radius around the sound source is clear of marine mammals.

(xxiii) Sonar levels (generally)—The Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xxiv) Helicopters shall not dip their sonar within 200 yards (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yards of the helicopter dipping sonar (183 m) after pinging has begun.

(xxv) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training activities involving active sonar.

(xxvi) Night vision devices shall be available to all ships and air crews, for use as appropriate.

(xxvii) Dolphin bowriding—If, after conducting an initial maneuver to avoid close quarters with dolphins, the ship concludes that dolphins are deliberately closing in on the ship to ride the vessel’s bow wave, no further mitigation actions would be necessary because dolphins are out of the main transmission axis of the active sonar while in the shallow-wave area of the vessel bow.
(xxviii) TORPEXs conducted in the northeast North Atlantic right whale critical habitat (as designated in 50 CFR Part 226) shall implement the following measures.

(A) All torpedo-firing operations shall take place during daylight hours.

(B) During the conduct of each test, visual surveys of the test area shall be conducted by all vessels and aircraft involved in the exercise to detect the presence of marine mammals. Additionally, trained observers shall be placed on the submarine, spotter aircraft, and the surface support vessel. All participants shall report sightings of any marine mammals, including negative reports, prior to torpedo firings. Reporting requirements shall be outlined in the test plans and procedures written for each individual exercise, and shall be emphasized as part of pre-exercise briefings conducted with all participants.

(C) Observers shall receive NMFS-approved training in field identification, distribution, and relevant behaviors of marine mammals of the western north Atlantic. Observers shall fill out Standard Sighting Forms and the data shall be housed at the Naval Undersea Warfare Center Division Newport (NUWCDIVNPT). Any sightings of North Atlantic right whales shall be immediately communicated to the Sighting Advisory System (SAS). All platforms shall have onboard a copy of:

1. The Guide to Marine Mammals and Turtles of the U.S. Atlantic and Gulf of Mexico (Wynne and Schwartz 1999);
2. The NMFS Critical Sightings Program placard;

(D) In addition to the visual surveillance discussed above, dedicated aerial surveys shall be conducted utilizing a fixed-wing aircraft. An aircraft with an overhead wing (i.e., Cessna Skymaster or similar) shall be used to facilitate a clear view of the test area. Two trained observers, in addition to the pilot, shall be embarked on the aircraft. Surveys shall be conducted at an approximate altitude of 1000 ft (305 m) flying parallel track lines at a separation of 1 nm (1.85 km), or as necessary to facilitate good visual coverage of the sea surface. While conducting surveillance, the aircraft shall maintain an approximate speed of 100 knots (185 km/hr). Since factors that affect visibility are highly dependent on the specific time of day of the survey, the flight operator will have the flexibility to adjust the flight pattern to reduce glare and improve visibility. The entire test site shall be surveyed initially, but once preparations are being made for an actual test launch, survey effort shall be concentrated over the vicinity of the individual test location. Further, for approximately ten minutes immediately prior to launch, the aircraft shall racetrack back and forth between the launch vessel and the target vessel.

(E) Commencement of an individual torpedo test scenario shall not occur until observers from all vessels and aircraft involved in the exercise have reported to the Officer in Tactical Command (OTC) and the OTC has declared that the range is clear of marine mammals. Should marine mammals be present within or seen moving toward the test area, the test shall be either delayed or moved as required to avoid interference with the animals.

(F) The TORPEX shall be suspended if the Beaufort Sea State exceeds 3 or if visibility precludes safe operations.

(G) Vessel speeds:

1. During transit through the northeastern North Atlantic right whale critical habitat, surface vessels and submarines shall maintain a speed of no more than 10 knots (19 km/hr) while not actively engaged in the exercise procedures.

2. During TORPEX operations, a firing vessel should, where feasible, not exceed 10 knots. When a submarine is used as a target, vessel speeds should, where feasible, not exceed 18 knots. However, on occasion, when surface vessels are used as targets, the vessel may exceed 18 kts in order to fully test the functionality of the torpedoes. This increased speed would occur for a short period of time (e.g., 10–15 minutes) to evade the torpedo when fired upon.

(H) In the event of an animal strike, or if an animal is discovered that appears to be in distress, the Navy shall immediately report the discovery through the appropriate Navy chain of Command.
(xxix) The Navy shall abide by the following additional measures:

(A) The Navy shall avoid planning major exercises in the specified planning awareness areas (PAAs—as depicted in NMFS’ “Environmental Assessment of Mitigation Alternatives for Issuance of Incidental Take Regulations to U.S. Navy for Atlantic Fleet Active Sonar Training (AFAST’’)” where feasible. Should national security require the conduct of more than four major exercises (C2X, JTFEX, SEASWITI, or similar scale event) in these areas (meaning all or a portion of the exercise) per year the Navy shall provide NMFS with prior notification and include the information in any associated after-action or monitoring reports.

(B) The Navy shall conduct no more than one of the four above-mentioned major exercises (COMPTUEX, JTFEX, SEASWITI or similar scale event) per year in the Gulf of Mexico to the extent operationally feasible. If national security needs require more than one major exercise to be conducted in the Gulf of Mexico PAAs, the Navy shall provide NMFS with prior notification and include the information in any associated after-action or monitoring reports.

(C) The Navy shall include the PAAs in the Navy’s Protective Measures Assessment Protocol (PMAP) (implemented by the Navy for use in the protection of the marine environment) for unit level situational awareness (i.e., exercises other than COMPTUEX, JTFEX, SEASWITI) and planning purposes.

(D) Helicopter Dipping Sonar—Unless otherwise dictated by national security needs, the Navy shall minimize helicopter dipping sonar activities within the southeastern areas of North Atlantic right whale critical habitat (as designated in 50 CFR part 226) from November 15–April 15.

(E) Object Detection Exercises—The Navy shall implement the following measures regarding object detection activities in the southeastern areas of the North Atlantic right whale critical habitat:

(1) The Navy shall reduce the time spent conducting object detection exercises in the NARW critical habitat;

(2) Prior to conducting surface ship object detection exercises in the southeastern areas of the North Atlantic right whale critical habitat during the time of November 15–April 15, ships shall contact FACSFAJAX to obtain the latest North Atlantic right whale sighting information. FACSFAJAX shall advise ships of all reported whale sightings in the vicinity of the critical habitat and associated areas of concern (which extend 9 km (5 NM) seaward of the designated critical habitat boundaries). To the extent operationally feasible, ships shall avoid conducting training in the vicinity of recently sighted North Atlantic right whales. Ships shall maneuver to maintain at least 500 yards separation from any observed whale, consistent with the safety of the ship.

(XXX) The Navy shall abide by the letter of the “Stranding Response Plan for Major Navy Training Exercises in the AFAST Study Area” (available at: http://www.nmfs.noaa.gov/pr/permits/incidental.htm), to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in §216.241) occurs during a Major Training Exercise (MTE, including SEASWITI, IAC, Group Sails, JTFEX, or COMPTUEX) in the AFAST Study Area, the Navy shall implement the procedures described below.

(1) The Navy shall implement a Shutdown (as defined §216.241) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the AFAST Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy shall communicate, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(2) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(3) If the Navy finds an injured or dead animal of any species other than...
North Atlantic right whale floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) including carcass condition (if the animal(s) is/are dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). Based on the information provided, NMFS shall determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(4) If the Navy finds an injured (or entangled) North Atlantic right whale floating at sea during an MTE, the Navy shall implement shutdown procedures (14 or 17 nm, as defined below) around the animal immediately (without waiting for notification from NMFS). The Navy shall then notify NMFS (pursuant to the AFAST Communication Protocol) immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) including carcass condition (if the animal(s) is/are dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). Subsequent to the discovery of the injured whale, any Navy platforms in the area shall report any North Atlantic right whale sightings to NMFS (or to a contact that can alert NMFS as soon as possible). Based on the information provided, NMFS may initiate/organize an aerial survey (by requesting the Navy’s assistance pursuant to the MOA (see (a)(1)(xxx)(C) of this section) or by other available means) to see if other North Atlantic right whales are in the vicinity. Based on the information provided by the Navy and, if necessary, the outcome of the aerial surveys, NMFS will determine whether any additional mitigation measures are necessary on a case-by-case basis.

(5) If the Navy finds a dead North Atlantic right whale floating at sea during an MTE, the Navy shall notify NMFS (pursuant to AFAST Stranding Communication Protocol) immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) including carcass condition (if the animal(s) is/are dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). Subsequent to the discovery of the dead whale, if the Navy is operating sonar in the area they shall use increased vigilance (in looking for North Atlantic right whales) and all platforms in the area shall report sightings of North Atlantic right whales to NMFS as soon as possible. Based on the information provided, NMFS may initiate/organize an aerial survey (by requesting the Navy’s assistance pursuant to the MOA (see (a)(1)(xxx)(C) of this section) or by other available means) to see if other North Atlantic right whales are in the vicinity. Based on the information provided by the Navy and, if necessary, the outcome of the aerial surveys, NMFS will determine whether any additional mitigation measures are necessary on a case-by-case basis.

(6) In the event, following a USE, that: (a) Qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or (b) animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy should coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS/HFAS training activities or explosive detonations, though farther than 14 or 17 nm from the distressed animal(s), is likely decreasing the likelihood that the animals return to the open water. If so, NMFS and the Navy shall further coordinate to determine what measures are necessary to further minimize that likelihood and implement those measures as appropriate.
(B) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the AFAST Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using MFAS/HFAS, and marine mammal sightings information associated with training activities occurring within 80 nm (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80 nm (148 km), 72 hours, period prior to the event shall be provided as soon as it becomes available. The Navy shall provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(C) Memorandum of Agreement (MOA)—The Navy and NMFS shall develop a MOA, or other mechanism consistent with Federal fiscal law requirements (and all other applicable laws), that will establish a framework whereby the Navy can (and provide the Navy examples of how they can best) assist NMFS with stranding investigations in certain circumstances. This document shall be finalized in 2009 (unless NMFS notifies the Navy that a delay is needed).

(2) Mitigation for IEER/AEER—The following are mitigation measures for use with Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER) and Advanced Extended Echo Ranging given an explosive source generates the acoustic wave used in this sonobuoy.

(i) Navy crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search using MFAS/HFAS shall be conducted below 500 yards (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft training activities, crews are allowed to conduct coordinated area clearances.

(ii) For IEER (AN/SSQ–110A), Navy crews shall conduct a minimum of 30 minutes of visual and acoustic monitoring of the search area prior to commanding the first post (source/receiver sonobuoy pair) detonation. This 30-minute observation period may include pattern deployment time.

(iii) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 1,000 yards (914 m) of observed marine mammal activity, deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yards (914 m) of the intended post position, co-locate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.

(iv) When operationally feasible, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of communication range of these sensors.

(v) Aural Detection: If the presence of marine mammals is detected aurally, then that should cue the aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the Navy crew may continue multi-static active search.

(vi) Visual Detection:

(A) If marine mammals are visually detected within 1,000 yards (914 m) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated.

(B) Navy Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 1,000 yards (914 m) safety buffer.

(C) Navy Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000 yards (914 m) safety buffer.

(vii) For IEER (AN/SSQ–110A), Navy Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the “Payload 1 Release” command followed by the “Payload 2 Release” command. Aircrews shall refrain from using the “Scuttle” command when two payloads remain at a given post. Aircrews shall ensure that a 1,000 yard (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.
(viii) Navy Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(ix) The Navy shall ensure all pay-loads are accounted for. Explosive source sonobuoys (AN/SSQ-110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(x) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(3) Mitigation Measures Related to Vessel Transit and North Atlantic Right Whales:

(i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:

(1) South and East of Block Island (37 km (20 NM) seaward of line between 41–4.9° N. lat. 071–51.15° W. long. and 41–18.58° N. lat. 070–60.23° W. long): Sept–Oct and Mar–Apr.

(2) New York/New Jersey (40–30.64° N. lat. 073–57.76° W. long.): Sep–Oct and Feb–Apr.


(4) Chesapeake Bay (Hampton Roads and Baltimore) (37–1.11° N. lat. 075–57.56° W. long.): Nov–Dec and Feb–Apr.

(5) North Carolina (34–41.54° N. lat. 076–40.20° W. long.): Dec–Apr.

(B) The following specific mitigation measures apply to activities occurring within the critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(A) Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(1) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest speed that is consistent with mission, training and operations.
§216.244  50 CFR Ch. II (10–1–10 Edition)

(2) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessel must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(3) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(4) Ships shall not transit through the critical habitat or associated area of concern in a North-South direction.

(5) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement, and number and description of whale (i.e., adult/calf).

(iii) Northeast Atlantic, Offshore of the Eastern United States:
(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed. The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat.; 69–05° W. long.; 41–45° N. lat.; 69–45° W. long.; 42–10° N. lat.; 68–31° W. long.; 41–38° N. lat.; 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat.; 70–10° W. long.; 42–12° N. lat.; 70–15° W. long.; 42–12° N. lat.; 70–30° W. long.; 41–46.8° N. lat.; 70–30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:
(1) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(2) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(3) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(4) Ships transiting the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions as per Rule 6 of International Navigational Rules.
§ 216.245 Requirements for monitoring and reporting.

(a) As outlined in the AFAST Strand- ing Communication Plan, the Navy must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 216.240(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 216.242(c).

(b) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the AFAST Monitoring Plan, which is incorporated herein by reference.

(c) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:

1. A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

2. A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

3. A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.


(d) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Navy shall consult the Stranding Response Plan to obtain more specific reporting requirements for specific circumstances.

(e) Annual AFAST Monitoring Plan Report—The Navy shall submit a report annually on October 1 describing the implementation and results (through August 1 of the same year) of the AFAST Monitoring Plan. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the AFAST Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in § 216.245(f)(1). The AFAST Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from AFAST and multiple Range Complexes.

(f) Annual AFAST Exercise Report—The Navy shall submit an Annual AFAST Exercise Report on October 1 of every year (covering data gathered through August 1 of the same year). This report shall contain information identified in subsections § 216.245(f)(1) through (f)(5).

(i) MFAS/HFAS Major Training Exercises—This section shall contain the following information for the major training exercises for reporting (MTERs), which include the Southeastern ASW Integrated Training Initiative (SEASWITI), Integrated ASW Course (IAC), Composite Training Unit Exercises (COMPTUEX), and Joint Task Force Exercises (JTFEX) conducted in the AFAST Study Area:

(A) Exercise Information (for each MTER):

1. Exercise designator;

2. Date that exercise began and ended;

3. Location;

4. Number and types of active acoustic sources used in the exercise;

5. Number and types of passive acoustic sources used in the exercise;

6. Number and types of vessels, aircraft, etc., participating in exercise;
(G) Total hours of observation by watchstanders;
(H) Total hours of all active sonar source operation;
(I) Total hours of each active sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.));
(J) Wave height (high, low, and average during exercise).

(ii) Individual marine mammal sighting info (for each sighting in each MTER):
(A) Location of sighting;
(B) Species (if not possible—indication of whale/dolphin/pinniped);
(C) Number of individuals;
(D) Calves observed (y/n);
(E) Initial Detection Sensor;
(F) Indication of specific type of platform observation made from (including, for example, what type of surface vessel, i.e., FFG, DDG, or CG);
(G) Length of time observers maintained visual contact with marine mammal;
(H) Wave height (in feet);
(I) Visibility;
(J) Sonar source in use (y/n);
(K) Indication of whether animal is < 200 yd, 200–500 yd, 500–1000 yd, 1000–2000 yd, or > 2000 yd from sonar source in paragraph (f)(1)(ii)(J) of this section;
(L) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was;
(M) If source in use (i.e., in paragraph (f)(1)(ii)(J) of this section) is hull-mounted, true bearing of animal from ship, true direction of ship’s travel, and estimation of animal’s motion relative to ship (opening, closing, parallel);
(N) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.).

(iii) An evaluation (based on data gathered during all of the MTERs) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to MPAS. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) ASW Summary—This section shall include the following information as summarized from both MTERs and non-major training exercises:

(i) Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).

(ii) Cumulative Impact Report—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major (i.e., other than MTERs) training exercises utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across the AFAST Study Area. To the extent practicable, this report will also include the total number of sonar hours (from helicopter dipping sonar and object detection exercises) conducted within the southern NARW critical habitat plus 5 nm buffer area. The Navy shall include (in the AFAST annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with NMFS) method has been developed and implemented.

(3) IEER/AEER Summary—This section shall include an annual summary of the following IEER and AEER information:

(i) Total number of IEER and AEER events conducted in the AFAST Study Area;
(ii) Total expended/detonated rounds (buoys);
(iii) Total number of self-scuttled IEER rounds.

(g) Sonar Exercise Notification—The Navy shall submit to the NMFS Office of Protected Resources (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any MTER indicating:

(1) Location of the exercise;
(2) Beginning and end dates of the exercise;
(3) Type of exercise (e.g., COMPTUEX or SEASWITI).
(h) AFAST 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW, MIW and IEER/AEER exercises for which annual reports are required (Annual AFAST Exercise Reports and AFAST Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012.

(i) Comprehensive National ASW Report—By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for AFAST, SOCAL, the HRC, the Marianas Range Complex, the Northwest Training Range, the Gulf of Alaska, and the East Coast Undersea Warfare Training Range.

(j) The Navy shall respond to NMFS comments and requests for additional information or clarification on the AFAST Comprehensive Report, the Comprehensive National ASW report, the Annual AFAST Exercise Report, or the Annual AFAST Monitoring Plan Report if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS’ comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(k) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy’s Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§216.246 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by §216.103) conducting the activity identified in §216.240(c) (the U.S. Navy) must apply for and obtain either an Initial Letter of Authorization in accordance with §216.247 or a renewal under §216.248.


(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §216.248.

(b) Each Letter of Authorization will set forth:

1. Permissible methods of incidental taking;
2. Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and
3. Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).


(a) A Letter of Authorization issued under §§216.106 and 216.247 for the activity identified in §216.240(c) will be renewed annually upon:

1. Notification to NMFS that the activity described in the application submitted under §216.246 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;
2. Timely receipt (by the dates indicated in these regulations) of the monitoring reports required under §216.245(c) through (j); and
3. A determination by the NMFS that the mitigation, monitoring and reporting measures required under
§ 216.244 and the Letter of Authorization issued under §§ 216.106 and 216.247, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.247 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

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

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy’s monitoring from the previous year (either from AFAST or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (section 216.245(i)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§216.245(d))).

(4) Results from specific stranding investigations (either from the AFAST Study Area or other locations, and involving coincident MPAS/HFAS or explosive training or not involving coincident use).

(5) Results from the Long Term Prospective Study described in the preamble to these regulations.

(6) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

§ 216.249 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.247 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.248, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.242(c), a Letter of Authorization issued pursuant to §§ 216.106 and 216.247 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subpart W—Taking Marine Mammals Incidental to Conducting Precision Strike Weapon Missions in the Gulf of Mexico

SOURCE: 71 FR 67822, Nov. 24, 2006, unless otherwise noted.


§ 216.250 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in U.S. Air Force Precision Strike Weapon missions within the Eglin Air Force Base Gulf Test and
§ 216.254 Mitigation.

The activity identified in §216.250(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammal species and stocks and their habitats. When conducting operations identified in §216.250(a) under a Letter of Authorization, the following mitigation measures must be implemented:

(a) Take any marine mammal not specified in §216.250(b);
(b) Take any marine mammal specified in §216.250(b) other than by incidental, unintentional Level A or Level B harassment or mortality;
(c) Take a marine mammal specified in §216.250(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal;
(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§216.106 and 216.257.

§ 216.251 Effective dates.

Regulations in this subpart are effective from December 26, 2006 until December 27, 2011.

§ 216.252 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.257, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment, including lethal take within the area described in §216.250(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The taking of marine mammals under a Letter of Authorization is limited to the species listed in §216.250(b) and is limited to a total of 1 mortality, 2 takes by Level A harassment, and 53 takes by Level B harassment annually.

§ 216.253 Prohibitions.

Notwithstanding takings contemplated in §216.250 and authorized by a Letter of Authorization issued under §§216.106 and 216.257, no person in connection with the activities described in §216.250 shall:

(a) Take any marine mammal not specified in §216.250(b);
(b) Take any marine mammal specified in §216.250(b) other than by incidental, unintentional Level A or Level B harassment or mortality;
(c) Take a marine mammal specified in §216.250(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal;
(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§216.106 and 216.257.

§ 216.254 Mitigation.

The activity identified in §216.250(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammal species and stocks and their habitats. When conducting operations identified in §216.250(a) under a Letter of Authorization, the following mitigation measures must be implemented:

(a)(1) For the JASSM, the holder of the Letter of Authorization must establish and monitor a safety zone for marine mammals with a radius of 2.0 nm (3.7 km) from the center of the detonation and a buffer zone with a radius of 1.0 nm (1.85 km) radius from the outer edge of the safety zone.

(2) For the SDB, the holder of the Letter of Authorization must establish and monitor a safety zone for marine mammals with a radius of no less than 5 nm (9.3 km) for single bombs and 10 nm (18.5 km) for double bombs and a buffer zone from the outer edge of the safety zone with a radius of at least 2.5 nm (4.6 km) for single bombs and 5 nm (18.5 km) for double bombs.

(b) Prior to a JASSM or SDB launch:
(1) If any marine mammals are observed within the designated safety zone prescribed in condition (a)(2) above, or within the buffer zone prescribed in condition (a)(2) above and if they are on a course that will put them within the safety zone prior to an JASSM or SDB launch, the launch must be delayed until all marine mammals are no longer within the designated safety zone.
(2) If any marine mammals are detected in the buffer zone and subsequently cannot be reacquired, the mission launch will not continue until the next verified location is outside of the safety zone and the animal is moving away from the mission area.

(3) If weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals, detonation must be delayed until adequate sea conditions exist for aerial surveillance to be undertaken. Adequate sea conditions means the sea state does not exceed Beaufort sea state 3.5 (i.e., whitecaps on 33 to 50 percent of surface; 0.6 m (2 ft) to 0.9 m (3 ft) waves), the visibility is 5.6 km (3 nm) or greater, and the ceiling is 305 m (1,000 ft) or greater.

(4) To ensure adequate daylight for pre- and post-detonation monitoring, mission launches may not take place earlier than 2 hours after sunrise, and detonations may not take place later than 2 hours prior to sunset, or whenever darkness or weather conditions will preclude completion of the post-test survey effort described in §216.255.

(5) If post-detonation surveys determine that a serious injury or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed with the National Marine Fisheries Service and appropriate changes must be made prior to conducting the next mission detonation.

(6) Mission launches must be delayed if aerial or vessel monitoring programs described under §216.255 cannot be carried out fully.

§ 216.255 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§216.106 and 216.257 for activities described in §216.250(a) is required to conduct the monitoring and reporting measures described in this section and any additional monitoring measures contained in the Letter of Authorization.

(b) The Holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency authorized to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, National Marine Fisheries Service, or designee, by letter or telephone (301–713–2289), at least 2 weeks prior to any modification to the activity identified in §216.250(a) that has the potential to result in the mortality or Level A or Level B harassment of marine mammals that was not identified and addressed previously.

(c) The Holder of this Authorization must:

(1) Designate qualified on-site marine mammal observers to record the effects of mission launches on marine mammals that inhabit the northern Gulf of Mexico;

(2) Have on-site marine mammal observers approved in advance by the National Marine Fisheries Service to conduct the mitigation, monitoring and reporting activities specified in these regulations and in the Letter of Authorization issued pursuant to §216.106 and §216.257.

(3) Conduct aerial surveys to reduce impacts on protected species. The aerial survey/monitoring team will consist of two experienced marine mammal observers, approved in advance by the Southeast Region, National Marine Fisheries Service. The aircraft will also have a data recorder who would be responsible for relaying the location, the species if possible, the direction of movement, and the number of animals sighted.

(4) Conduct shipboard monitoring to reduce impacts to protected species. Trained marine mammal observers will conduct monitoring from the highest point possible on each mission or support vessel(s). The observer on the vessel must be equipped with optical equipment with sufficient magnification (e.g., 25X power “Big-Eye” binoculars. The marine mammal observation platform must be of sufficient height to provide observers a platform to see a major portion of the safety zone.

(5) Conduct shipboard monitoring to reduce impacts to protected species. Trained marine mammal observers will conduct monitoring from the highest point possible on each mission or support vessel(s). The observer on the vessel must be equipped with optical equipment with sufficient magnification (e.g., 25X power “Big-Eye” binoculars. The marine mammal observation platform must be of sufficient height to provide observers a platform to see a major portion of the safety zone.

(d) The Holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency authorized to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, National Marine Fisheries Service, or designee, by letter or telephone (301–713–2289), at least 2 weeks prior to any modification to the activity identified in §216.250(a) that has the potential to result in the mortality or Level A or Level B harassment of marine mammals that was not identified and addressed previously.

(c) The Holder of this Authorization must:

(1) Designate qualified on-site marine mammal observers to record the effects of mission launches on marine mammals that inhabit the northern Gulf of Mexico;

(2) Have on-site marine mammal observers approved in advance by the National Marine Fisheries Service to conduct the mitigation, monitoring and reporting activities specified in these regulations and in the Letter of Authorization issued pursuant to §216.106 and §216.257.

(3) Conduct aerial surveys to reduce impacts on protected species. The aerial survey/monitoring team will consist of two experienced marine mammal observers, approved in advance by the Southeast Region, National Marine Fisheries Service. The aircraft will also have a data recorder who would be responsible for relaying the location, the species if possible, the direction of movement, and the number of animals sighted.

(4) Conduct shipboard monitoring to reduce impacts to protected species. Trained marine mammal observers will conduct monitoring from the highest point possible on each mission or support vessel(s). The observer on the vessel must be equipped with optical equipment with sufficient magnification (e.g., 25X power “Big-Eye” binoculars. The marine mammal observation platform must be of sufficient height to provide observers a platform to see a major portion of the safety zone.

(d) The Holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency authorized to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, National Marine Fisheries Service, or designee, by letter or telephone (301–713–2289), at least 2 weeks prior to any modification to the activity identified in §216.250(a) that has the potential to result in the mortality or Level A or Level B harassment of marine mammals that was not identified and addressed previously.
vessel will have direct communication with the lead scientist aboard the operations vessel.

(e) Pre-mission Monitoring: Approximately 5 hours prior to the mission, or at daybreak, the appropriate vessel(s) would be on-site in the primary test site near the location of the earliest planned mission point. Observers on-board the vessel will assess the suitability of the test site, based on visual observation of marine mammals and overall environmental conditions (visibility, sea state, etc.). This information will be relayed to the lead scientist.

(f) Three Hours Prior to Mission:
(1) Approximately three hours prior to the mission launch, aerial monitoring will commence within the test site to evaluate the test site for environmental suitability. Evaluation of the entire test site would take approximately 1 to 1.5 hours. The aerial monitoring team will begin monitoring the safety zone and buffer zone around the target area.

(2) Shipboard observers will monitor the safety and buffer zone, and the lead scientist will enter all marine mammal sightings, including the time of sighting and the direction of travel, into a marine animal tracking and sighting database.

(g) One to 1.5 Hours Prior to Mission Launch:
(1) Depending upon the mission, aerial and shipboard viewers will be instructed to leave the area and remain outside the safety area. The aerial team will report all marine animals spotted and their directions of travel to the lead scientist onboard the vessel.

(2) The shipboard monitoring team will continue searching the buffer zone for protected species as it leaves the safety zone. The surface vessels will continue to monitor from outside of the safety area until after impact.

Post-mission monitoring:
(1) The vessels will move into the safety zone from outside the safety zone and continue monitoring for at least two hours, concentrating on the area down current of the test site.

(2) The Holder of the Letter of Authorization will closely coordinate mission launches with marine animal stranding networks. Coordination shall include:
   (i) Pre-activity notification of a PSW exercise; and
   (ii) Post-event surveying of the Eglin AFB shore-line in the vicinity of the PSW exercise.

(3) The monitoring team will document any dead or injured marine mammals and, if practicable, recover and examine any dead animals.

(1) Activities related to the monitoring described in this section may include retention of marine mammals without the need for a separate scientific research permit.


(k) Reporting. (1) Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than 30 days prior to the date of expiration of the Letter of Authorization. This report must contain all information required by these regulations and the Letter of Authorization.

(2) The final comprehensive report on all marine mammal monitoring and research conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of these regulations or 240 days after the expiration of these regulations if new regulations will not be requested.

§216.256 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined at §216.103) conducting the activity identified in §216.250(a) must apply for and obtain either an initial Letter of Authorization in accordance with §§216.106 and 216.257 or a renewal under §216.258.

§216.257 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter
of Authorization, but may not to exceed the period of validity of this subpart, and must be renewed annually subject to annual renewal conditions in § 216.258.

(b) A Letter of Authorization with a period of validity less than the period of this subpart may be renewed subject to renewal conditions in § 216.258.

(c) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for monitoring and reporting incidental takes.

(d) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammals.

(e) Except for the initial Letter of Authorization, notice of issuance or denial of subsequent Letters of Authorization will be published in the Federal Register within 30 days of a determination.

§ 216.258 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.257 for the activity identified in § 216.250(a) will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application submitted under § 216.256 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring report required under § 216.255(k), and the Letter of Authorization, which has been reviewed and accepted by the National Marine Fisheries Service; and

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under § 216.254, § 216.255, and the Letter of Authorization issued under §§ 216.106 and 216.257, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.258 indicates that a substantial modification to the described work, mitigation, monitoring or research undertaken during the upcoming season will occur, the National Marine Fisheries Service will provide the public a period of 30 days for review and seek comment on:

(1) New cited information and data that indicates that the determinations made for promulgating these regulations are in need of reconsideration, and

(2) Proposed changes to the mitigation, monitoring and research requirements contained in these regulations or in the current Letter of Authorization.

§ 216.259 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to §§ 216.106 shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.258, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.250(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.257 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.
Subpart X—Taking Marine Mammals Incidental to U.S. Navy Training in the Southern California Range Complex (SOCAL Range Complex)

SOURCE: 74 FR 3909, Jan. 21, 2009, unless otherwise noted.


§ 216.270 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the SOCAL Range Complex (as depicted in Figure ES–1 in the Navy’s Final Environmental Impact Statement for the SOCAL Range Complex), which extends southwest from southern California in an approximately 700 by 200 nm rectangle with the seaward corners at 27°30′00″ N. lat.; 127°10′04″ W. long. and 24°00′01″ N. lat.; 125°00′03″ W. long.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The use of the following mid-frequency active sonar (MFAS) sources, high frequency active sonar (HFAS) sources for U.S. Navy anti-submarine warfare (ASW), mine warfare (MIW) training, maintenance, or research, development, testing, and evaluation (RDT&E) in the amounts indicated below (±10 percent):

(i) AN/SQS–53 (hull-mounted active sonar)—up to 9885 hours over the course of 5 years (an average of 1977 hours per year)

(ii) AN/SQS–56 (hull-mounted active sonar)—up to 2470 hours over the course of 5 years (an average of 494 hours per year)

(iii) AN/BQQ–10 (submarine active sonar)—up to 4075 hours over the course of 5 years (an average of 815 hours per year)

(iv) AN/AQS–22 or 13 (active helicopter dipping sonar)—up to 13955 dips over the course of 5 years (an average of 2719 dips per year—10 pings per dip)

(v) SSQ–62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 21275 sonobuoys over the course of 5 years (an average of 4255 sonobuoys per year)

(vi) MK–48 (heavyweight torpedoes)—up to 435 torpedoes over the course of 5 years (an average of 87 torpedoes per year)

(vii) AN/BQQ–15 (submarine navigational sonar)—up to 610 hours over the course of 5 years (an average of 122 hours per year)

(viii) MK–46 (lightweight torpedoes)—up to 420 torpedoes over the course of 5 years (an average of 84 torpedoes per year)

(ix) AN/SLQ–25A NIXIE—up to 1135 hours over the course of 5 years (an average of 227 hours per year)

(x) AN/SSQ–125 (AEER sonar sonobuoy)—up to 540 sonobuoys (total, of EER/IEER and AEER) over the course of 5 years (an average of 108 per year)

(2) The detonation of the underwater explosives identified in paragraph (c)(2)(i) conducted as part of the training exercises identified in paragraph (c)(2)(ii):

(i) Underwater Explosives:

(A) 5’’ Naval Gunfire (9.5 lbs)

(B) 76 mm rounds (1.6 lbs)

(C) Maverick (78.5 lbs)

(D) Harpoon (448 lbs)

(E) MK–82 (238 lbs)

(F) MK–83 (574 lbs)

(G) MK–84 (945 lbs)

(H) MK–48 (851 lbs)

(I) Demolition Charges (20 lbs)

(J) AN/SSQ–110A (IEER explosive sonobuoy—5 lbs)

(ii) Training Events:

(A) Surface-to-surface Gunnery Exercises (S–S GUNEX)—up to 2010 exercises over the course of 5 years (an average of 402 per year)
§ 216.271 Effective dates and definitions.

(a) Regulations are effective January 14, 2009 through January 14, 2014.

(b) The following definitions are utilized in these regulations:

(1) Uncommon Stranding Event (USE)—A stranding event that takes place during an integrated, coordinated, or major training exercise (MTE) and involves any one of the following:

(i) Two or more individuals of any cetacean species (not including mother/calf pairs, unless of species of concern listed in §216.271(b)(1)(ii)) found dead or live on shore within a two day period and occurring within 30 miles of one another.

(ii) A group of 2 or more cetaceans of any species exhibiting indicators of distress as defined in the SOCAL Range Complex Stranding Response Plan.

(2) Shutdown—The cessation of MFAS/HFAS operation or detonation of explosives within 14 nm of any live, in the water, animal involved in a USE.

§ 216.272 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.277, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §216.270(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.270(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §216.270(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment (±10 percent of the number of takes indicated below):

(i) Mysticetes:

(A) Humpback whale (Megaptera novaeangliae)—110 (an average of 22 annually)

(B) Fin whale (Balaenoptera physalus)—870 (an average of 174 annually)

(C) Blue whale (Balaenoptera musculus)—3085 (an average of 617 annually)

(D) Minke whale (Balaenoptera acutorostrata)—665 (an average of 133 annually)

(E) Gray whale (Eschrichtius robustus)—27340 (an average of 5468 annually)

(ii) Odontocetes:

(A) Sperm whales (Physeter macrocephalus)—775 (an average of 155 annually)

(B) Pygmy sperm whales (Kogia breviceps)—830 (an average of 166 annually)

(C) Dwarf sperm whale (Kogia sima)—100 (an average of 20 annually)

(D) Mesoplodont beaked whales (Blainville’s, Hubbard’s, Perrin’s, pygmy, and ginkgo-toothed) (Mesoplodon densirostris, M. carlhubbsi, M. perrini, M. peruvianus, M. ginkgodens)—690 (an average of 138 annually)

(E) Cuvier’s beaked whales (Ziphius cavirostris)—2175 (an average of 435 annually)
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(F) Baird’s beaked whales (*Berardius bairdii*)—100 (an average of 20 annually)

(G) Unidentified beaked whales—555 (an average of 104 annually)

(H) Rough-toothed dolphin (*Steno bredanensis*)—100 (an average of 20 annually)

(I) Bottlenose dolphin (*Tursiops truncatus*)—7480 (an average of 1516 annually)

(J) Pan-tropical spotted dolphin (*Stenella attenuata*)—100 (an average of 20 annually)

(K) Spinner dolphin (*Stenella longirostris*)—100 (an average of 20 annually)

(L) Striped dolphin (*Stenella coeruleoalba*)—9190 (an average of 1838 annually)

(M) Long-beaked common dolphin (*Delphinus capensis*)—23145 (an average of 4629 annually)

(N) Risso’s dolphin (*Grampus griseus*)—17995 (an average of 3599 annually)

(O) Northern right whale dolphin (*Lissodelphis borealis*)—7935 (an average of 1547 annually)

(P) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)—7020 (an average of 1404 annually)

(Q) Short-beaked common dolphin (*Delphinus delphis*)—197350 (an average of 39470 annually)

(R) Melon-headed whale (*Peponocephala electra*)—100 (an average of 20 annually)

(S) Pygmy killer whale (*Feresa attenuata*)—100 (an average of 20 annually)

(T) False killer whale (*Pseudorca crassidens*)—100 (an average of 20 annually)

(U) Killer whale (*Orcinus orca*)—70 (an average of 14 annually)

(V) Short-finned pilot whale (*Globicephala macrorhynchus*)—260 (an average of 52 annually)

(W) Dall’s porpoise (*Phocoenoides dalli*)—3145 (an average of 629 annually)

(iii) Pinnipeds:

(A) Northern elephant seal (*Mirounga angustirostris*)—4795 (an average of 959 annually)

(B) Pacific harbor seal (*Phoca vitulina*)—26380 (an average of 5076 annually)

(C) California sea lion (*Zalophus californianus*)—277530 (an average of 55506 annually)

(D) Northern fur seal (*Callorhinus ursinus*)—6185 (an average of 1237 annually)

(E) Guadalupe fur seal (*Arctocephalus townsendi*)—5940 (an average of 1086 annually)

(2) Level A Harassment and/or mortality of no more than 10 beaked whales (total), of any of the species listed in §216.272(c)(1)(ii)(D) through (G) over the course of the 5-year regulations.

§ 216.273 Prohibitions.

Notwithstanding takings contemplated in §216.272 and authorized by a Letter of Authorization issued under §§216.106 and 216.277, no person in connection with the activities described in §216.270 may:

(a) Take any marine mammal not specified in §216.272(c);

(b) Take any marine mammal specified in §216.272(c) other than by incidental take as specified in §216.272(c)(1) and (2);

(c) Take a marine mammal specified in §216.272(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§216.106 and 216.277.

§ 216.274 Mitigation.

(a) When conducting activities identified in §216.270(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.277 must be implemented. These mitigation measures include, but are not limited to:

(i) Navy's General SOCAL Maritime Measures for All Training at Sea:

(ii) Personnel Training (for all Training Types):

(A) All commanding officers (COs), executive officers (XOs), lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-submarine Warfare (ASW)/Mine Warfare (MIW) helicopter
crews shall complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.

(B) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968–D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced lookout. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). Personnel being trained as lookouts can be counted among required lookout personnel as long as supervisors monitor their progress and performance.

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

(ii) Operating Procedures and Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) COs shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts will watch for and report to the OOD the presence of marine mammals.

(D) On surface vessels equipped with a mid-frequency active sensor, pedestal mounted “Big Eye’ (20x110) binoculars shall be properly installed and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

(E) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) After sunset and prior to sunrise, lookouts shall employ Night Lookout Techniques in accordance with the Lookout Training Handbook. (NAVEDTRA 12968–D).

(G) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed” so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(H) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

(I) Floating weeds and kelp, algal mats, clusters of seabirds, and jellyfish are good indicators of marine mammals. Therefore, where these circumstances are present, the Navy shall exercise increased vigilance in watching for marine mammals.

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate when it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.
(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records will be kept for a period of 30 days following completion of a major training exercise.

(2) Navy’s Measures for MFAS Operations:

(i) Personnel Training (for MFAS Operations):

(A) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training material prior to use of mid-frequency active sonar.

(B) All COs, XO’s, and officers standing watch on the bridge shall have reviewed the Marine Species Awareness Training material prior to a training event employing the use of mid-frequency active sonar.

(C) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968-D).

(D) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). This does not forbid personnel being trained as lookouts from being counted as those listed in previous measures so long as supervisors monitor their progress and performance.

(ii) Lookout and Watchstander Responsibilities:

(A) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(B) All surface ships participating in ASW training events shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as marine mammal lookouts.

(C) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(D) On surface vessels equipped with mid-frequency active sonar, pedestal mounted “Big Eye” (20x110) binoculars shall be present and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

(E) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(F) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(G) Personnel on lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted.

(iii) Operating Procedures:

(A) Navy will distribute final mitigation measures contained in the LOA and the Incidental take statement of NMFS’ biological opinion to the Fleet.

(B) COs shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.
(D) During mid-frequency active sonar operations, personnel shall utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.

(E) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(F) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yds (183 m) of the sonobuoy.

(G) Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(H) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) within or closing to inside 1,000 yds (914 m) of the sonar dome (the bow), the ship or submarine shall limit active transmission levels to at least 6 decibels (dB) below normal operating levels.

(i) Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(ii) Should a marine mammal be detected within or closing to inside 500 yds (457 m) of the sonar dome, active sonar transmissions shall cease. Sonar shall not resume until the animal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(j) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the OOD concludes that dolphins or porpoises are deliberately closing to ride the vessel’s bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(k) If the need for power-down should arise as detailed in paragraph (a)(2)(iii)(H) of this section, the Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 dB active sonar was being operated).

(1) Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.

(J) Active sonar levels (generally)—Navy shall operate active sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(K) Helicopters shall observe/survey the vicinity of an ASW training event for 10 minutes before the first deployment of active (dipping) sonar in the water.

(L) Helicopters shall not dip their active sonar within 200 yds (183 m) of a marine mammal and shall cease ping if a marine mammal closes within 200 yds (183 m) after pinging has begun.

(M) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training events involving active mid-frequency sonar.

(N) Night vision goggles shall be available to all ships and air crews, for use as appropriate.
(3) Navy’s Measures for Underwater Detonations:

(i) Surface-to-Surface Gunnery (explosive rounds):

(A) Lookouts shall visually survey for floating weeds and kelp. Intended impact (i.e., where the Navy is aiming) shall not be within 600 yds (585 m) of known or observed floating weeds and kelp, and algal mats.

(B) For exercises using targets towed by a vessel or aircraft, target-towing vessels/aircraft shall maintain a trained lookout for marine mammals, if applicable. If a marine mammal is sighted in the vicinity, the tow aircraft/vessel shall immediately notify the firing vessel, which shall suspend the exercise until the area is clear.

(C) A 600-yard radius buffer zone shall be established around the intended target.

(D) From the intended firing position, trained lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable.

(E) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected within it.

(ii) Surface-to-Surface Gunnery (non-explosive rounds):

(A) Lookouts shall visually survey for floating weeds and kelp, and algal mats. Intended impact will not be within 200 yds (183 m) of known or observed floating weeds and kelp, and algal mats.

(B) A 200-yd (183 m) radius buffer zone shall be established around the intended target.

(C) From the intended firing position, trained lookouts shall survey the buffer zone for marine mammals prior to commencement and during the exercise as long as practicable.

(D) If applicable, target towing vessels shall maintain a lookout. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(E) The exercise shall be conducted only when the buffer zone is visible and marine mammals are not detected within the buffer zone.

(iii) Surface-to-Air Gunnery (explosive and non-explosive rounds):

(A) Vessels shall orient the geometry of gunnery exercises in order to prevent debris from falling in the area of sighted marine mammals.

(B) Vessels will expedite the recovery of any parachute deploying aerial targets to reduce the potential for entanglement of marine mammals.

(C) Target towing aircraft shall maintain a lookout, if applicable. If a marine mammal is sighted in the vicinity of the exercise, the tow aircraft shall immediately notify the firing vessel in order to secure gunnery firing until the area is clear.

(iv) Air-to-Surface Gunnery (explosive and non-explosive rounds)

(A) If surface vessels are involved, lookouts will visually survey for floating kelp in the target area. Impact shall not occur within 200 yds (183 m) of known or observed floating weeds and kelp or algal mats.

(B) A 200 yd (183 m) radius buffer zone shall be established around the intended target.

(C) If surface vessels are involved, lookouts shall visually survey the buffer zone for marine mammals prior to and during the exercise.

(D) Aerial surveillance of the buffer zone for marine mammals shall be conducted prior to commencement of the exercise. Aircraft crew/pilot shall maintain visual watch during exercises. Release of ordnance through cloud cover is prohibited: aircraft must be able to actually see ordnance impact areas.

(E) The exercise shall be conducted only if marine mammals are not visible within the buffer zone.

(v) Small Arms Training—(grenades, explosive and non-explosive rounds)—Lookouts will visually survey for floating weeds or kelp, algal mats, and marine mammals. Weapons shall not be fired in the direction of known or observed floating weeds or kelp, algal mats, or marine mammals.

(vi) Air-to-Surface At-sea Bombing Exercises (explosive and non-explosive):

(A) If surface vessels are involved, trained lookouts shall survey for floating kelp and marine mammals. Ordinance shall not be targeted to impact
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within 1,000 yds (914 m) of known or observed floating kelp or marine mammals.

(B) A 1,000 yd (914 m) radius buffer zone shall be established around the intended target.

(C) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area shall be made by flying at 1,500 ft (152 m) or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited; aircraft must be able to actually see ordnance impact areas. Survey aircraft should employ most effective search tactics and capabilities.

(D) The exercise will be conducted only if marine mammals are not visible within the buffer zone.

(vii) Air-to-Surface Missile Exercises (explosive and non-explosive):

(A) Ordnance shall not be targeted to impact within 1,800 yds (1646 m) of known or observed floating kelp.

(B) Aircraft shall visually survey the target area for marine mammals. Visual inspection of the target area shall be made by flying at 1,500 (457 m) feet or lower, if safe to do so, and at slowest safe speed. Firing or range clearance aircraft must be able to actually see ordnance impact areas. Explosive ordnance shall not be targeted to impact within 1,800 yds (1646 m) of sighted marine mammals.

(C) Post-Exercise Surveys—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

(D) Reporting—If there is evidence that a marine mammal may have been stranded, injured or killed by the action, Navy activities shall be immediately suspended and the situation immediately reported by the participating unit to the Officer in Charge of the Exercise (OCE), who will follow Navy procedures for reporting the incident to Commander, Pacific Fleet, Commander, Third Fleet, Commander, Navy Region Southwest, Environmental Director, and the chain-of-command. The situation shall also be reported to NMFS (see Stranding Plan for details).

(ix) Mining Operations—Initial target points shall be briefly surveyed prior to inert ordnance (no live ordnance used) release from an aircraft to ensure the intended drop area is clear of marine mammals. To the extent feasible, the Navy shall retrieve inert mine shapes dropped during Mining Operations.

(x) Sink Exercise:

(A) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(B) An exclusion zone with a radius of 1.5 nm shall be established around each target. This 1.5 nm zone includes a buffer of 0.5 nm to account for errors, target drift, and animal movement. In addition to the 1.5 nm exclusion zone, a further safety zone, which extends from the exclusion zone at 1.5 nm out an additional 0.5 nm, shall be surveyed. Together, the zones (exclusion and safety) extend out 2 nm from the target.

(C) A series of surveillance overflights shall be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol shall be as follows:
(1) Overflights within the exclusion zone shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy’s Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

(2) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team shall have completed the Navy’s marine mammal training program for lookouts.

(3) In addition to the overflights, the exclusion zone shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals (particularly sperm whales) in the vicinity of the exercise. The sonobuoys shall be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE would be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

(4) On each day of the exercise, aerial surveillance of the exclusion and safety zones shall commence 2 hours prior to the first firing.

(5) The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing may commence until the OCE declares the safety and exclusion zones free of marine mammals.

(6) If a protected species observed within the exclusion zone is diving, firing shall be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes have elapsed. After 30 minutes, if the animal has not been re-sighted it would be assumed to have left the exclusion zone.

(7) During breaks in the exercise of 30 minutes or more, the exclusion zone shall again be surveyed for any protected species. If marine mammals are sighted within the exclusion zone, the OCE shall be notified, and the procedure described in paragraph (a)(3)(x)(C)(6) of this section would be followed.

(8) Upon sinking of the vessel, a final surveillance of the exclusion zone shall be monitored for 2 hours, or until sunset, to verify that no marine mammals were harmed.

(D) Aerial surveillance shall be conducted using helicopters or other aircraft based on necessity and availability. The Navy has several types of aircraft capable of performing this task; however, not all types are available for every exercise. Each exercise, the available asset best suited for identifying objects on and near the surface of the ocean would be used. These aircraft would be capable of flying at the slow safe speeds necessary to enable viewing of marine vertebrates with unobstructed, or minimally obstructed, downward and outward visibility. The exclusion and safety zone surveys may be cancelled in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

(E) Where practicable, the Navy shall conduct the exercise in sea states that are ideal for marine mammal sighting, i.e., Beaufort Sea State 3 or less. In the event of a 4 or above, survey efforts shall be increased within the zones. This shall be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

(F) The exercise shall not be conducted unless the exclusion zone can be adequately monitored visually.

(G) In the event that any marine mammals are observed to be harmed in the area, a detailed description of the animal shall be taken, the location noted, and if possible, photos taken. This information shall be provided to NMFS via the Navy’s regional environmental coordinator for purposes of
identification (see the Stranding Plan for detail).

(H) An after action report detailing the exercise’s time line, the time the surveys commenced and terminated, amount, and types of all ordnance expended, and the results of survey efforts for each event shall be submitted to NMFS.

(xi) Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER/AEER):

(A) Crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search shall be conducted at an altitude below 457 m (500 yd) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct coordinated area clearances.

(B) For IEER (AN/SSQ–110A), crews shall conduct a minimum of 30 minutes of visual and aural monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(C) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 914 m (1,000 yd) of observed marine mammal activity, the Navy shall deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 914 m (1,000 yd) of the intended post position, the Navy shall co-locate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.

(D) When able, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of RF range of these sensors.

(E) Aural Detection—If the presence of marine mammals is detected aurally, then that cue the Navy aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

(F) Visual Detection—If marine mammals are visually detected within 914 m (1,000 yd) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 914 m (1,000 yd) safety buffer. Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 914 m (1,000 yd) safety buffer.

(G) For IEER (AN/SSQ–110A), aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the “Payload 1 Release” command followed by the “Payload 2 Release” command. Aircrews shall refrain from using the “Scuttle” command when two payloads remain at a given post. Aircrews will ensure that a 914 m (1,000 yd) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(H) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(I) The Navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that can not be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(J) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(4) The Navy shall abide by the letter of the “Stranding Response Plan for Major Navy Training Exercises in the SOCAL Range Complex” (available at: http://www.nmfs.noaa.gov/pr/permits/incidental.htm), which is incorporated herein by reference, to include the following measures:

(i) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in §216.271) occurs during a Major Training Exercise (MTE) (as defined in the Stranding Plan, meaning including Sustainment, SHAREM, IAC2, JTFEX,
or COMPTUEX) in the SOCAL Range Complex, the Navy shall implement the procedures described below.

(A) The Navy shall implement a Shutdown (as defined §216.271) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the SOCAL Range Complex Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy shall communicate, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(B) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(C) If the Navy finds an injured or dead marine mammal floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) including carcass condition if the animal(s) is/are dead, location, time of first discovery, observed behaviors (if alive), and photo or video (if available). Based on the information provided, NMFS shall determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(D) In the event, following a USE, that: (a) Qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or (b) animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS/HFAS activities or explosive detonations, though farther than 14 nm from the distressed animal(s), is likely decreasing the likelihood that the animals return to the open water. If so, NMFS and the Navy shall further coordinate to determine what measures are necessary to further minimize that likelihood and implement those measures as appropriate.

(ii) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the SOCAL Range Complex Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using MFAS/HFAS, and marine mammal sightings information associated with training activities occurring within 80 nm (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80 nm (148 km), 72 hours, period prior to the event shall be provided as soon as it becomes available. The Navy shall provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(iii) Memorandum of Agreement (MOA)—The Navy and NMFS shall develop a MOA, or other mechanism consistent with federal fiscal law requirements (and all other applicable laws), that will establish a framework whereby the Navy can (and provide the Navy examples of how they can best) assist NMFS with stranding investigations in certain circumstances.

§216.275 Requirements for monitoring and reporting.

(a) As outlined in the SOCAL Range Complex Stranding Communication Plan, the Navy must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §216.270(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in §216.272(c).

(b) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the SOCAL Range Complex Monitoring Plan.

(c) The Navy shall complete an Integrated Comprehensive Monitoring Plan (ICMP) in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes
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the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan.


(d) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Navy shall consult the Stranding Response Plan to obtain more specific reporting requirements for specific circumstances.

(e) Annual SOCAL Range Complex Monitoring Plan Report—The Navy shall submit a report annually on October 1 describing the implementation and results (through August 1 of the same year) of the SOCAL Range Complex Monitoring Plan. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the SOCAL Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in § 216.275(f)(1). The SOCAL Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from multiple Range Complexes.

(f) Annual SOCAL Range Complex Exercise Report—The Navy shall submit an Annual SOCAL Range Complex Exercise Report on October 1 of every year (covering data gathered through August 1 of the same year). This report shall contain information identified in § 216.275(f)(1) through (5).

(1) MFAS/HFAS Major Training Exercises—This section shall contain the following information for Integrated, Coordinated, and Major Training Exercises (MTEs), which include Ship ASW Readiness and Evaluation Measuring (SHAREM), Sustainment Exercises, Integrated ASW Course Phase II (IAC2), Composite Training Unit Exercises (COMPTUEX), and Joint Task Force Exercises (JTFEX) conducted in the SOCAL Range Complex:

(i) Exercise Information (for each MTE):

(A) Exercise designator

(B) Date that exercise began and ended

(C) Location

(D) Number and types of active acoustic sources used in the exercise

(E) Number and types of passive acoustic sources used in exercise

(F) Number and types of vessels, aircraft, etc., participating in exercise

(G) Total hours of observation by watchstanders

(H) Total hours of all active sonar source operation

(i) Individual marine mammal sighting info (for each sighting in each MTE)

(A) Location of sighting

(B) Species (if not possible—indication of whale/dolphin/pinniped)

(C) Number of individuals

(D) Calves observed (y/n)

(E) Initial Detection Sensor

(F) Indication of specific type of platform observation made from (including, for example, what type of
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surface vessel, i.e., FFG, DDG, or CG.

(G) Length of time observers maintained visual contact with marine mammal.

(H) Wave height (in feet).

(I) Visibility.

(J) Sonar source in use (y/n).

(K) Indication of whether animal is < 200 yd, 200–500 yd, 500–1000 yd, 1000–2000 yd, or > 2000 yd from sonar source in paragraph (f)(1)(ii)(J) of this section.

(L) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered on or shut down, and how long the delay was.

(M) If source in use (i.e., in paragraph (f)(1)(ii)(J) of this section) is hull-mounted, true bearing of animal from ship, true direction of ship’s travel, and estimation of animal’s motion relative to ship (opening, closing, parallel).

(N) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.)

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to mid-frequency sonar. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) ASW Summary—This section shall include the following information as summarized from both MTEs and non-major training exercises (unit-level exercises, such as TRACKEXs):

(i) Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.))

(ii) Cumulative Impact Report—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major (i.e., other than MTEs) training exercises utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across the SOCAL Range Complex. The Navy shall include (in the SOCAL Range Complex annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with NMFS) method has been developed and implemented.

(3) SINKEXs—This section shall include the following information for each SINKEX completed that year:

(i) Exercise information (gathered for each SINKEX):

(A) Location

(B) Date and time exercise began and ended

(C) Total hours of observation by watchstanders before, during, and after exercise

(D) Total number and types of rounds expended / explosives detonated

(E) Number and types of passive acoustic sources used in exercise

(F) Total hours of passive acoustic search time

(G) Number and types of vessels, aircraft, etc., participating in exercise

(H) Wave height in feet (high, low and average during exercise)

(I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted

(ii) Individual marine mammal observation (by Navy lookouts) information (gathered for each marine mammal sighting)

(A) Location of sighting

(B) Species (if not possible, indicate whale, dolphin or pinniped)

(C) Number of individuals

(D) Whether calves were observed

(E) Initial detection sensor

(F) Length of time observers maintained visual contact with marine mammal

(G) Wave height

(H) Visibility

(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after
(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance:

(1) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (738 m for SINKEX in the SOCAL Range Complex);

(2) The required exclusion zone (1 nm for SINKEX in the SOCAL Range Complex);

(3) The required observation distance (if different than the exclusion zone (2 nm for SINKEX in the SOCAL Range Complex); and

(4) Greater than the required observed distance. For example, in this case, the observer would indicate if < 738 m, from 738 m to 1 nm, from 1 nm to 2 nm, and > 2 nm.

(K) Observed behavior—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction.

(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(M) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.

(4) IEER Summary—This section shall include an annual summary of the following IEER information:

(i) Total number of IEER events conducted in the SOCAL Range Complex

(ii) Total expended/detonated rounds (buoys)

(iii) Total number of self-scuttled IEER rounds

(5) Explosives Summary—To the extent practicable, the Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy’s explosive tracking methods, including improvements from the previous year.

(i) Total annual number of each type of explosive exercises (of those identified as part of the “specified activity” in this final rule) conducted in the SOCAL Range Complex.

(ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(g) Sonar Exercise Notification—The Navy shall submit to the NMFS Office of Protected Resources (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any MTE (Sustainment, IAC2, SHAREM, COMPTUEX, or JTFEX) indicating:

(1) Location of the exercise

(2) Beginning and end dates of the exercise

(3) Type of exercise (e.g., SHAREM, JTFEX, etc.)

(h) SOCAL Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual SOCAL Range Complex Exercise Reports and SOCAL Range Complex Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012.

(i) Comprehensive National ASW Report—By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for the SOCAL Range Complex, the Atlantic Fleet Active Sonar Training, the HRC, the Marianas Range Complex, the Northwest Training Range, the Gulf of Alaska, and the East Coast Undersea Warfare Training Range.
(j) The Navy shall respond to NMFS comments and requests for additional information or clarification on the SOCAL Range Complex Comprehensive Report, the Comprehensive National ASW report, the Annual SOCAL Range Complex Exercise Report, or the Annual SOCAL Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS’ comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(k) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy’s Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 216.276 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by §216.103) conducting the activity identified in §216.270(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §216.277 or a renewal under §216.278.

§ 216.277 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §216.278.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).


(a) A Letter of Authorization issued under §216.106 and §216.277 for the activity identified in §216.270(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §216.276 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt (by the dates indicated in these regulations) of the monitoring reports required under §216.275(c) through (j); and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under §216.274 and the Letter of Authorization issued under §§216.106 and 216.277, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 216.278 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and
§ 216.279 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 216.277 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §216.278, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.272(c), a Letter of Authorization issued pursuant to §§216.106 and 216.277 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

PART 217 [RESERVED]
Subpart U—Taking Of Marine Mammals Incidental To The Port of Anchorage Marine Terminal Redevelopment Project

§ 217.200 Specified activities and specified geographical region.
(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in § 217.202(b) by the Port of Anchorage and the U.S. Department of Transportation Maritime Administration (MARAD), and those persons it authorizes to engage in construction activities associated with the Port of Anchorage Marine Terminal Redevelopment Project, specifically in-water pile driving, at the Port of Anchorage, Alaska.
(b) [Reserved]

§ 217.201 Effective dates.
Regulations in this subpart are effective from July 15, 2009, through July 14, 2014.

§ 217.202 Permissible methods of taking.
(a) Under Letters of Authorization issued pursuant to § 216.106 of this chapter and § 217.207, the Port of Anchorage and MARAD, and persons under their authority, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 217.200, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.
(b) The taking of marine mammals under a Letter of Authorization is limited to the incidental take, by Level B harassment only, of the following species under the activities identified in § 217.200(a): Cook Inlet beluga whales (Delphinapterus leucas), harbor seals (Phoca vitulina), harbor porpoises (Phocoena phocoena), and killer whales (Orcinus orca).
(c) The taking by injury or death of the species listed in paragraph (b) of this section or the taking by Level B harassment, injury or death of any other marine mammal species is prohibited and may result in the modification, suspension, or revocation of a Letter of Authorization.

§ 217.203 Prohibitions.
Notwithstanding takings contemplated in § 217.202(b) and authorized by a Letter of Authorization issued under § 216.106 of this chapter and § 217.207, no person in connection with the activities described in § 217.200 may:
(a) Take any marine mammal not specified in § 217.202(b);
(b) Take any marine mammal specified in § 217.202(b) other than by incidental, unintentional Level B harassment;
(c) Take a marine mammal specified in § 217.202(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under § 216.106 of this chapter and § 217.207.

§ 217.204 Mitigation.
(a) When conducting operations identified in § 217.200(a), the mitigation measures contained in the Letter of Authorization, issued under § 216.106 of this chapter and § 217.207, must be implemented. These mitigation measures are:
(1) Through monitoring described under § 217.205, the Holder of a Letter of Authorization will ensure that no marine mammal is subjected to a sound pressure levels of 190 or 180 dB re: 1 microPa or greater for pinnipeds and cetaceans, respectively. If a marine mammal is detected within or approaching a distance 200 m from in-water pile driving or in-water chipping, operations shall be immediately delayed or suspended until the marine mammal moves outside these designated zones or the animal is not detected within 15 minutes of the last sighting.
(2) If a marine mammal is detected within or approaching the Level B harassment zone designated for impact pile driving (350 m) prior to in-water impact pile driving, operations shall not commence until the animal moves outside this zone or it is not detected within 15 minutes of the last sighting.
(3) If a marine mammal is detected within or approaching the Level B harassment zone designated for vibratory
§ 217.205 Requirements for monitoring and reporting.

(a) The Holder of a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 217.207, for activities described in § 217.200(a) is required to cooperate with NMFS, and any other Federal, state or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of

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Authorization must notify the Administrator, Alaska Region, NMFS, by letter, e-mail, or telephone, at least 2 weeks prior to commencement of seasonal activities and dock demolition possibly involving the taking of marine mammals. If the activity identified in §217.200(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in §217.202(b), the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by e-mail or telephone (301–713–2289), within 24 hours of the discovery of the injured or dead animal.

(b) The Holder of a Letters of Authorization must designate qualified, on-site marine mammal observers (MMOs), approved in advance by NMFS, as specified in the Letter of Authorization, to:

1. Conduct visual marine mammal monitoring at the Port of Anchorage beginning 30 minutes prior to and during all in-water pile driving or chipping and out-of-water blasting.

2. Record the following information on NMFS-approved marine mammal sighting sheets whenever a marine mammal is detected:
   (i) Date and time of initial sighting to end of sighting, tidal stage, and weather conditions (including Beaufort Sea State);
   (ii) Species, number, group composition, initial and closest distance to pile driving hammer, and behavior (e.g., activity, group cohesiveness, direction and speed of travel, etc.) of animals throughout duration of sighting;
   (iii) Any discrete behavioral reactions to in-water work;
   (iv) The number (by species) of marine mammals that have been taken;
   (v) Pile driving, chipping, or out of water blasting activities occurring at the time of sighting and if and why shut down was or was not implemented.

3. Employ a scientific marine mammal monitoring team separate from the on-site MMOs to characterize beluga whale abundance, movements, behavior, and habitat use around the Port of Anchorage and observe, analyze, and document potential changes in behavior in response to in-water construction work. This monitoring team is not required to be present during all in-water pile driving operations but will continue monitoring one-year post in-water construction. The on-site MMOs and this marine mammal monitoring team shall remain in contact to alert each other to marine mammal presence when both teams are working.

(c) The Holder of a Letter of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) The Holder of a Letter of Authorization shall submit a monthly report to NMFS’ Headquarters Permits, Education and Conservation Division and the Alaska Region, Anchorage for all months in-water pile driving or chipping takes place. This report must contain the information listed in paragraph (b)(2) of this section.

(e) An annual report must be submitted at the time of application for renewal of a Letter of Authorization. This report will summarize all in-water construction activities and marine mammal monitoring from January 1–December 31, annually, and any discernable short or long term impacts from the Marine Terminal Expansion Project.

(f) A final report must be submitted to NMFS upon application for a subsequent incidental take authorization or, if no future authorization is requested, no later than 90 days post expiration of these regulations. This report will:
   (1) Summarize the activities undertaken and the results reported in all previous reports;
   (2) Assess the impacts to marine mammals from the port expansion project; and
   (3) Assess the cumulative impacts on marine mammals.


(a) To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103 of this chapter) conducting the activity identified in §217.200(a) (the Port of Anchorage and MARAD) must apply for and obtain either an initial Letter of Authorization in accordance with §217.207 or a renewal under §217.208.
§ 217.207 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §217.208.

(b) The application must be submitted to NMFS at least 60 days before the expiration of the initial or current Letter of Authorization.

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

(1) Name of the U.S. citizen requesting the authorization,

(2) The date(s), duration, and the specified geographic region where the activities specified in §217.200 will occur; and

(3) The most current population estimate of Cook Inlet beluga whales and the estimated percentage of marine mammal populations potentially affected for the 12-month period of effectiveness of the Letter of Authorization;

(4) A summary of take levels, monitoring efforts and findings at the Port of Anchorage to date.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with this section and, if adequate and complete, issue a Letter of Authorization.

§ 217.208 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §216.106 of this chapter and §217.207 for the activity identified in §217.200(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §217.206 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §217.205(d) and (e), and the Letter of Authorization issued under §217.207, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§217.204 and 217.205 and the Letter of Authorization issued under §216.106 of this chapter and §217.207, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(4) A determination by NMFS that the number of marine mammals taken during the period of the Letter of Authorization will be small, that the total taking of marine mammals by the activities specified in §217.200(a) will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for subsistence uses.

(b) If a request for a renewal of a Letter of Authorization issued under §216.106 of this chapter and this section indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days.
for review and comment on the request.

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


(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to § 216.106 of this chapter and § 217.207 and subject to the provisions of this subpart, shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 217.208, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.202(b), a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 217.207 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart A—Taking Marine Mammals Incidental to U.S. Navy Training in the Virginia Capes Range Complex (VACAPES Range Complex)

Sec.

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AUTHORITY: 16 U.S.C. 1361 et seq.

SOURCE: 74 FR 28343, June 15, 2009, unless otherwise noted.

Subpart A—Taking Marine Mammals Incidental to U.S. Navy Training in the Virginia Capes Range Complex (VACAPES Range Complex)

§ 218.1 Specified activity, specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the VACAPES Range Complex Operation Area (OPAREA), which is located in the coastal and offshore waters of the western North Atlantic Ocean adjacent to Delaware, Maryland, Virginia, and North Carolina. The northernmost boundary of the VACAPES Range Complex OPAREA lies 3 nm from the shoreline at the boundary separating state and Federal waters.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

(A) Underwater Explosives:
   (i) AGM–114 (Hellfire missile)
   (ii) AGM–65 E/F (Maverick missile)
   (iii) MK–83/GBU–32 (1,000 lb High Explosive bomb)
   (iv) Airborne Mine Neutralization system (AMNS)
   (v) 20 lb NEW charges
   (vi) AGM–88 (HARM)
   (vii) 5” Naval Gunfire
   (ii) Training Events:
      (A) Mine Exercise (MINEX) (Mine Neutralization [AMNS])—up to 150 exercises over the course of 5 years (an average of 30 per year);
      (B) Mine Exercise (MINEX) (Mine Neutralization [20 lb NEW charges])—up to 120 exercises over the course of 5 years (an average of 24 per year);
      (C) Bombing Exercise (BOMBEX) (Air-to-Surface)—up to 100 exercises over the course of 5 years (an average of 20 per year);
      (D) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 100 exercises over the course of 5 years (an average of 20 per year);
      (E) Missile Exercise (MISSILEX) (Air-to-Surface; Maverick, HE)—up to 100 exercises over the course of 5 years (an average of 20 per year); and
      (F) FIREX with IMPASS—up to 110 exercises over the course of 5 years (an average of 22 per year).

(d) Regulations are effective June 8, 2009 and are applicable to the Navy on June 5, 2009 through June 4, 2014.

§ 218.2 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §216.106 of this chapter and §218.7, the Holder of the Letter of Authorization may incidentally, but...
not intentionally, take marine mammals within the area described in §218.1(b), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The activities identified in §218.1(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §218.1(c) is limited to the following species, by the indicated method of take and the indicated number of times:

- Level B Harassment:
  - Mysticetes:
    - Humpback whale (*Megaptera novaeangliae*)—10 (an average of 2 annually); and
    - Fin whale (*Balaenoptera physalus*)—10 (an average of 2 annually).
  - Odontocetes:
    - Sperm whale (*Physeter macrocephalus*)—10 (an average of 2 annually);
    - Pygmy or dwarf sperm whales (*Kogia sp.*)—15 (an average of 3 annually);
    - Rough-toothed dolphin (*Steno bredanensis*)—5 (an average of 1 annually);
    - Bottlenose dolphin (*Tursiops truncatus*)—145 (an average of 29 annually);
    - Pantropical spotted dolphin (*Stenella attenuata*)—350 (an average of 70 annually);
    - Striped dolphin (*S. coeruleoalba*)—340 (an average of 68 annually);
    - Clymene dolphin (*S. clymene*)—165 (an average of 33 annually);
    - Atlantic spotted dolphin (*S. frontalis*)—215 (an average of 43 annually);
    - Common dolphin (*Delphinus delphis*)—10,965 (an average of 2,193 annually);
    - Risso’s dolphin (*Grampus griseus*)—80 (an average of 16 annually); and
    - Pilot whales (* Globicephala sp.* )—50 (an average of 10 annually).

- Level A Harassment (injury):
  - Common dolphin—100 (an average of 20 annually);
  - Pantropical spotted dolphin—5 (an average of 1 annually); and
  - Striped dolphin—15 (an average of 3 annually).

§218.3 Prohibitions.

Notwithstanding takings contemplated in §218.2 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.7, no person in connection with the activities described in §218.1 may:

- Take any marine mammal not specified in §218.2(c);
- Take any marine mammal specified in §218.2(c) other than by incidental take as specified in §218.2(c)(1) and (2);
- Take a marine mammal specified in §218.2(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
- Violate, or fail to comply with, the terms, conditions, and requirements of this Subpart or a Letter of Authorization issued under §216.106 of this chapter and §218.7.

§218.4 Mitigation.

(a) When conducting training activities identified in §218.1(c), the mitigation measures contained in the Letter of Authorization issued under §216.106 of this chapter and §218.7 must be implemented. These mitigation measures include, but are not limited to:

- General Maritime Measures:
  - Personnel Training—Lookouts
    - All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete Marine Species Awareness Training (MSAT).


- Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the
Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses shall be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(F) At night, lookouts shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts shall also have night vision devices available for use.

(ii) Operating Procedures and Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts shall watch for and report to the OOD the presence of marine mammals.

(D) Personnel on lookout shall employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(E) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed” so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(G) When whales have been sighted in the area, Navy vessels shall increase vigilance and implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Such measures shall include changing speed and/or direction and would be dictated by environmental and other conditions (e.g., safety or weather).

(H) Naval vessels shall maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel’s safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale.

(I) Where feasible and consistent with mission and safety, vessels shall avoid
closing to within 200-yd (183 m) of marine mammals other than whales (whales addressed above).

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(2) Coordination and Reporting Requirements. (i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during or within 24 hours after completion of training activities. (ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(3) Mitigation Measures Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and the VACAPES Range Complex.

(i) Mid-Atlantic, Offshore of the Eastern United States: (A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety (at a speed that does not compromise safety of navigation) during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:

(B) During the months indicated in paragraph (a)(3)(i)(A) of this section, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in paragraph (a)(3)(i)(A) of this section.

(C) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(D) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States—for the purposes of the measures below (paragraphs (a)(3)(ii)(A) & (B) of this section), the “southeast” encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30–15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15–April 15 and also apply to an associated area of concern which extends 9 km (5
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NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(1) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(2) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(3) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(4) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited.

(5) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(iii) Northeast Atlantic, Offshore of the Eastern United States

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–05° W. long.; 41–45° N. lat., 69–45° W. long.; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the north-eastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(1) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(2) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(3) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(4) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited.

(5) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(iii) Northeast Atlantic, Offshore of the Eastern United States

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–05° W. long.; 41–45° N. lat., 69–45° W. long.; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the north-eastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(1) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(2) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(3) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(4) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited.

(5) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).
whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(2) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum speed at which mission goals or safety will not be compromised) so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(3) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(4) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions per Rule 6 of International Navigational Rules.

(5) Mitigation Measures for Specific At-sea Training Events—If a marine mammal is killed as a result of the proposed Navy training activities (e.g., instances in which it is clear that munitions explosions caused the death), the Navy shall suspend its activities immediately and report the incident to NMFS.


(A) FIREX using IMPASS would only be conducted in the four designated areas specified in the Navy’s LOA application in the VACAPES Range Complex.

(B) Pre-exercise monitoring of the target area shall be conducted with “Big Eyes” prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall be required to maintain a lookout dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

(C) “Big Eyes” on the ship shall be used to monitor a 600 yd (548 m) buffer zone around the target area for marine mammals during naval-gunfire events.

(D) Ships shall not fire on the target if any marine mammals are detected within or approaching the 600 yd (548 m) buffer zone until the area is cleared. If marine mammals are present, operations shall be suspended. Visual observation shall occur for approximately 45 minutes, or until the animal has been observed to have cleared the area and is heading away from the buffer zone.

(E) Post-exercise monitoring of the entire target area shall take place with “Big Eyes” and the naked eye during the retrieval of the IMPASS sonobuoy array following each firing exercise.

(F) FIREX with IMPASS shall take place during daylight hours only.

(G) FIREX with IMPASS shall only be used in Beaufort Sea State three (3) or less.

(H) The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

(I) No firing shall occur if marine mammals are detected within 70 yd (64 m) of the vessel.

(ii) Air-to-Surface At-Sea Bombing Exercises (250-lbs to 2,000-lbs explosive bombs):

(A) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at the slowest safe speed.

(B) A buffer zone of 5,100-yd (4,663 m) radius shall be established around the intended target zone. The exercises shall be conducted only when marine mammals are observed to be outside the buffer zone.

(C) At-sea BOMBEXs using live ordnance shall occur during daylight hours only.

(iii) Air-to-Surface Missile Exercises (Explosive):

(A) Aircraft shall initially survey the intended ordnance impact area for marine mammals.
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(B) During the actual firing of the weapon, the aircraft involved must be able to observe the intended ordnance impact area to ensure the area is free of marine mammal transiting the range.

(C) Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at slowest safe speed.

(D) Explosive ordnance shall not be targeted to impact within 1,800 yd (1,646 m) of sighted marine mammals.

(iv) Mine Neutralization Training Involving Underwater Detonations (up to 20-lb charges):
(A) This activity shall only occur in W-50 of the VACAPES Range Complex.

(B) Observers shall survey the Zone of Influence (ZOI), a 700 yd (640 m) radius from detonation location for marine mammals from all participating vessels during the entire operation. A survey of the ZOI (minimum of 3 parallel tracklines 219 yd [200 m] apart) using support craft shall be conducted at the detonation location 30 minutes prior through 30 minutes post detonation. Aerial survey support shall be utilized whenever assets are available.

(C) Detonation operations shall be conducted during daylight hours only.

(D) If a marine mammal is sighted within the ZOI, the animal shall be allowed to leave of its own volition. The Navy shall suspend detonation exercises and ensure the area is clear of marine mammals for a full 30 minutes prior to detonation.

(E) Divers placing the charges on mines and dive support vessel personnel shall survey the area for marine mammals and shall report any sightings to the surface observers. These animals shall be allowed to leave of their own volition and the ZOI shall be clear of marine mammals for 30 minutes prior to detonation.

(F) No detonations shall take place within 3.2 nm (6 km) of an estuarine inlet (Chesapeake Bay Inlets).

(G) No detonations shall take place within 1.6 nm (3 km) of shoreline.

(H) Personnel shall record any protected species observations during the exercise as well as measures taken if species are detected within the ZOI.

(b) [Reserved]

§ 218.5 Requirements for monitoring and reporting.
(a) The Holder of the Letter of Authorization issued pursuant to §216.106 of this chapter and §218.7 for activities described in §218.1(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §218.1(c) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in §218.2(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the VACAPES Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.

(1) Vessel or aerial surveys. (i) The Holder of this Authorization shall visually survey a minimum of 2 explosive events per year, one of which shall be a multiple detonation event. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs).

(ii) Where operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(iv) When conducting a particular survey, the survey team shall collect:

(A) Location of sighting;

(B) Species (if not possible, indicate whale, dolphin or pinniped);

(C) Number of individuals;

(D) Whether calves were observed;
(E) Initial detection sensor;
(F) Length of time observers maintained visual contact with marine mammal;
(G) Wave height;
(H) Visibility;
(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;
(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated);
(K) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction;
(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and
(M) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.
(i) Any time a towed hydrophone array is employed during shipboard surveys the towed array shall be deployed during daylight hours for each of the days the ship is at sea.
(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).
(iii) The array shall have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms. (i) As required in §218.5(c)(1), MMOs selected for aerial or vessel survey shall be placed on a Navy platform during one of the explosive exercises being monitored per year, the other designated exercise shall be monitored by the Navy lookouts/watchstanders. 
(ii) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.
(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.
(iv) MMOs shall observe from the same height above water as the lookouts.
(v) The MMOs shall not be part of the Navy’s formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.
(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs be the same as those collected by Navy lookout/watchstanders described in §218.5(c)(1)(iv).

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:
(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.
(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.
(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the
§ 218.6 Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan.


(e) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

(f) Annual VACAPES Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the VACAPES Range Complex Monitoring Plan. Data collection methods shall be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the VACAPES Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in §218.5(g). The VACAPES Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from VACAPES Range Complex and multiple range complexes.

(g) Annual VACAPES Range Complex Exercise Report—The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall provide an annual update on the Navy’s explosive tracking methods, including improvements from the previous year.

(1) Total annual number of each type of explosive exercise (of those identified as part of the “specified activity” in this final rule) conducted in the VACAPES Range Complex.

(2) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(h) VACAPES Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the VACAPES Range Complex exercises for which annual reports are required (Annual VACAPES Range Complex Exercise Reports and VACAPES Range Complex Monitoring Plan Reports). This report shall be submitted at the end of the fourth year of the rule (May 2013), covering activities that have occurred through December 1, 2012.

(i) The Navy shall respond to NMFS’ comments and requests for additional information or clarification on the VACAPES Range Complex Comprehensive Report, the Annual VACAPES Range Complex Exercise Report, or the Annual VACAPES Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports shall be considered final after the Navy has addressed NMFS’ comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(j) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy’s Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 218.6 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations in this subpart, the U.S. citizen (as defined by §216.103) conducting the activity identified in §218.1(c) (the U.S.
Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.7 or a renewal under §218.8.

§ 218.7 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §218.8.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.8 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §216.106 of this chapter and §218.7 for the activity identified in §218.1(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §218.6 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §218.5(c) through (i); and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.4 and the Letter of Authorization issued under §216.106 of this chapter and §218.7, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §216.106 of this chapter and §218.8 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy’s monitoring from the previous year (either from VACAPES Range Complex or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§218.5(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§218.5(d)).

(4) Results from specific stranding investigations (either from the VACAPES Range Complex Study Area or other locations, and involving coincident explosives training or not involving coincident use).

(5) Results from general marine mammal and sound research (funded by the Navy or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

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§ 218.9 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to § 216.106 of this chapter and § 218.7 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.8, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.2(c), a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.7 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart B—Taking Marine Mammals Incidental to U.S. Navy Training in the Jacksonville Range Complex (JAX Range Complex)

SOURCE: 74 FR 28365, June 15, 2009, unless otherwise noted.

§ 218.10 Specified activity and specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the JAX Range Complex Operation Areas (OPAREAs), which are located along the southern east coast of the U.S. The two principal OPAREAs within the JAX Study Area are the Jacksonville OPAREA and the Charleston OPAREA (sometimes referred to collectively as the JAX/CHASN OPAREA, or simply the OPAREA). The northernmost point of the JAX/CHASN OPAREA is just north of Wilmington, North Carolina (34°37′ N) in waters less than 20 m (65.6 ft) deep, while the easternmost boundary lies 261 nm (518.6 km) offshore of Jacksonville, Florida (77°00′ W in waters with a bottom depth of nearly 2,000 m [1.243 mi]).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:

(A) AGM–114 (Hellfire missile);

(B) AGM–65 E/F (Maverick missile);

(C) Mine Neutralization (20 lb NEW charges);

(D) 5” Naval Gunfire;

(E) MK3A2 anti-swimmer concussion grenades.

(ii) Training Events:

(A) Mine Neutralization (20 lb NEW charges)—up to 60 exercises over the course of 5 years (an average of 12 per year);

(B) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 350 exercises over the course of 5 years (an average of 70 per year);

(C) Missile Exercise (MISSILEX) (Air-to-Surface; Maverick)—up to 15 exercises over the course of 5 years (an average of 3 per year);

(D) FIREX with IMPASS—up to 50 exercises over the course of 5 years (an average of 10 per year); and

(E) Small Arms Training with MK3A2 anti-swimmer concussion grenade (0.5 lbs NEW)—up to 400 grenades over the course of 5 years (an average of 80 HE grenades used per year).

(2) [Reserved]

(d) Regulations are effective June 8, 2009 and are applicable to the Navy on June 5, 2009 through June 4, 2014.
§ 218.11 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 of this chapter and 218.16, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.10(b), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 218.10(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.10(c) is limited to the following species, by the indicated method of take and the indicated number of times:

1. Level B Harassment:
   (i) Bottlenose dolphin (*Tursiops truncatus*)—150 (an average of 30 annually);
   (ii) Pantropical spotted dolphin (*Stenella attenuata*)—100 (an average of 20 annually);
   (iii) Clymene dolphin (*S. clymene*)—100 (an average of 20 annually);
   (iv) Atlantic spotted dolphin (*S. frontalis*)—310 (an average of 62 annually);
   (v) Striped dolphin (*S. coeruleoalba*)—100 (an average of 20 annually);
   (vi) Risso’s dolphin (*Grampus griseus*)—150 (an average of 30 annually);
   (vii) Common dolphin (*Delphinus delphis*)—150 (an average of 30 annually);
   (viii) Pilot whales (*Globicephala sp.*)—100 (an average of 20 annually);
   (ix) Dwarf or pygmy sperm whales (*Kogia sp.*)—15 (an average of 3 annually);
   (x) Beaked whales—100 (an average of 20 annually);
   (xi) Minke whales (*Balaenoptera acutorostrata*)—15 (an average of 3 annually).

2. Level A Harassment (injury):
   (i) Atlantic spotted dolphin—10 (an average of 2 annually).
   (ii) [Reserved]

§ 218.12 Prohibitions.

Notwithstanding takings contemplated in § 218.11 and authorized by a Letter of Authorization issued under § 216.106 of this chapter and § 218.16, no person in connection with the activities described in § 218.10 may:

(a) Take any marine mammal not specified in § 218.11(c);

(b) Take any marine mammal specified in § 218.11(c) other than by incidental take as specified in § 218.11(c)(1) and (2);

(c) Take a marine mammal specified in § 218.11(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal;

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this Subpart or a Letter of Authorization issued under § 216.106 of this chapter and § 218.16.

§ 218.13 Mitigation.

(a) When conducting training activities identified in § 218.10(c), the mitigation measures contained in the Letter of Authorization issued under § 216.106 of this chapter and § 218.16 must be implemented. These mitigation measures include, but are not limited to:

1. General Maritime Measures:
   (i) Personnel Training—Lookouts:
      (A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete Marine Species Awareness Training (MSAT).
      (B) Lookouts shall undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).
   (C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).
   (D) Lookouts shall be trained in the most effective means to ensure quick...
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and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses shall be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(F) At night, lookouts shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts shall also have night vision devices available for use.

(ii) Operating Procedures & Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts shall watch for and report to the OOD the presence of marine mammals.

(D) Personnel on lookout shall employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(E) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed” (the minimum speed at which mission goals or safety will not be compromised) so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(G) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Such measures shall include changing speed and/or course direction and would be dictated by environmental and other conditions (e.g., safety or weather).

(H) Naval vessels shall maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel’s safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale.

(I) Where feasible and consistent with mission and safety, vessels shall avoid closing to within 200 yds (183 m) of marine mammals other than whales (whales addressed above).
(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(2) Coordination and Reporting Requirements:
   (i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during or within 24 hours after completion of training activities.
   (ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(3) Mitigation Measures Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and the JAX Range Complex, OPAREA.

   (i) Mid-Atlantic, Offshore of the Eastern United States:
      (A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:
      (I) South and East of Block Island (37 km (20 NM) seaward of line between 41-4.49° N. lat. 071-51.15° W. long. and 41-18.58° N. lat. 070-50.23° W. long): Sept-Oct and Mar-Apr
      (B) During the months indicated in paragraphs (a)(3)(i)(A) & (B) of this section, the “southeast” encompasses seaspace from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30-15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15—April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.
      (A) Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet

(2) New York/New Jersey (40–30.64° N. lat. 073–57.76° W. long.): Sep-Oct and Feb-Apr.


(4) Chesapeake Bay (Hampton Roads and Baltimore) (37-1.11° N. lat. 075–57.56° W. long.): Nov–Dec and Feb–Apr.

(5) North Carolina (34-41.54° N. lat. 076–40.20° W. long.): Dec–Apr

(6) South Carolina (33-11.84° N. lat. 079–8.99° W. long. and 32–43.39° N. lat. 079–48.72° W. long.): Oct–Apr

(B) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(2) Coordination and Reporting Requirements:
   (i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during or within 24 hours after completion of training activities.
   (ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(3) Mitigation Measures Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and the JAX Range Complex, OPAREA.

   (i) Mid-Atlantic, Offshore of the Eastern United States:
      (A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:
      (I) South and East of Block Island (37 km (20 NM) seaward of line between 41-4.49° N. lat. 071-51.15° W. long. and 41-18.58° N. lat. 070-50.23° W. long): Sept-Oct and Mar-Apr
      (B) During the months indicated in paragraphs (a)(3)(i)(A) & (B) of this section, the “southeast” encompasses seaspace from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30-15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15—April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.
      (A) Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet
§218.13  Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(i) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(ii) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(iii) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(iv) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited, except for Precise Anchoring drills and the Shipboard Electronic System Evaluation Facility range that necessarily operate at slow, safe speed.

(v) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(6) Naval vessel operations in the North Atlantic right whale critical habitat and AAOC during the calving season shall be undertaken during daylight and periods of good visibility, to the extent practicable and consistent with mission, training, and operation. When operating in the critical habitat and AAOC at night or during periods of poor visibility, vessels shall operate as if in the vicinity of a recently reported NARW sighting.

(iii) Northeast Atlantic, Offshore of the Eastern United States:

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–05° W. long.; 41–45° N. lat., 69–45° W. long.; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) to the northeast U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported immediately. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted
by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(1) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(2) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum speed at which mission goals or safety will not be compromised) so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(3) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(4) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions as per Rule 6 of International Navigational Rules.

(4) Mitigation Measures for Specific At-sea Training Events—If a marine mammal is injured or killed as a result of the proposed Navy training activities (e.g., instances in which it is clear that munitions explosions caused death), the Navy shall suspend its activities immediately and report such incident to NMFS.


(A) This activity shall only occur in Areas BB and CC, as specified in the Navy’s LOA application, in the JAX Range Complex.

(B) During North Atlantic right whale calving season no explosive ordnance shall be used.

(C) Pre-exercise monitoring of the target area shall be conducted with “Big Eyes” prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall maintain a lookout dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

(D) “Big Eyes” on the ship shall be used to monitor a 600 yard (548 m) buffer zone for marine mammals during naval-gunfire events.

(E) Ships shall not fire on the target if any marine mammals are detected within or approaching the 600 yd (548 m) buffer zone until the area is cleared. If marine mammals are present, operations shall be suspended. Visual observation shall occur for approximately 45 minutes, or until the animal has been observed to have cleared the area and is heading away from the buffer zone.

(F) Post-exercise monitoring of the entire target area shall take place with “Big Eyes” and the naked eye during the retrieval of the IMPASS sonobuoy array following each firing exercise.

(G) FIREX with IMPASS shall take place during daylight hours only.

(H) FIREX with IMPASS shall only be used in Beaufort Sea State three (3) or less.

(I) The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

(J) No firing shall occur if marine mammals are detected within 70 yards (64 m) of the vessel.

(ii) Air-to-Surface Missile Exercises (Explosive):

(A) Aircraft shall initially survey the intended ordnance impact area for marine mammals.

(B) During the actual firing of the weapon, the aircraft involved must be able to observe the intended ordnance impact area to ensure the area is free of marine mammals transiting the range.
§ 218.14 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §216.106 of this chapter and §218.16 for activities described in §218.10(b) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §218.10(b) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in §218.10(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the JAX Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below:

(1) Vessel or aerial surveys:

(i) The Holder of this Authorization shall visually survey a minimum of 2 explosive events per year, one of which shall be a multiple detonation event. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs).

(ii) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel-based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(B) A 200 yd (182 m) radius buffer zone shall be established around the intended target. The exercises shall be conducted only if the buffer zone is clear of marine mammals.
When conducting a particular survey, the survey team shall collect:

(A) Location of sighting;
(B) Species (if not possible, indicate whale, dolphin or pinniped);
(C) Number of individuals;
(D) Whether calves were observed;
(E) Initial detection sensor;
(F) Length of time observers maintained visual contact with marine mammal;
(G) Wave height;
(H) Visibility;
(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;
(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated);
(K) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction;
(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and

(M) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.

2. Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.

(i) Any time a towed hydrophone array is employed during shipboard surveys, the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

(iii) The array shall have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

3. Marine mammal observers on Navy platforms:

(i) As required in §218.14(c)(1), MMOs selected for aerial or vessel survey shall be placed on a Navy platform during one of the explosive exercises being monitored per year, the other designated exercise shall be monitored by the Navy lookouts/watchstanders.

(ii) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) The MMOs shall not be part of the Navy’s formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs shall be the same as those collected by Navy lookout/watchstanders described in §218.14(c)(1)(iv).

The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.
(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan.


(e) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

(f) Annual JAX Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the JAX Range Complex Monitoring Plan. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the JAX Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in §218.14(g). The JAX Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from JAX Range Complex and multiple range complexes.

(g) Annual JAX Range Complex Exercise Report—The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall provide an annual update on the Navy’s explosive tracking methods, including improvements from the previous year:

(i) Total annual number of each type of explosive exercise (of those identified as part of the “specified activity” in this final rule) conducted in the JAX Range Complex.

(ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(h) JAX Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the JAX Range Complex exercises for which annual reports are required (Annual JAX Range Complex Exercise Reports and JAX Range Complex Monitoring Plan Reports). This report shall be submitted at the end of the fourth year of the rule (May 2013), covering activities that have occurred through December 1, 2012.

(i) The Navy shall respond to NMFS’ comments and requests for additional information or clarification on the JAX Range Complex Comprehensive Report, the Annual JAX Range Complex Exercise Report, or the Annual JAX Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS’ comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(j) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy’s Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.
§ 218.15 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103 of this chapter) conducting the activity identified in §218.10(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.16 or a renewal under §218.17.

§ 218.16 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §218.17.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.17 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §§216.106 and 218.16 of this chapter for the activity identified in §218.10(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §218.15 shall be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §218.14; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§218.13 and the Letter of Authorization issued under §§216.106 and 218.16 of this chapter were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 218.17 of this chapter indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

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

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy’s monitoring from the previous year (either from JAX Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§218.14(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§218.14(d)).

(4) Results from specific stranding investigations (either from the JAX Range Complex Study Area or other locations).

(5) Results from general marine mammal and sound research (funded by
§ 218.18 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §216.106 of this chapter and §218.16 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.17, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §218.11(b), a Letter of Authorization issued pursuant to §216.106 of this chapter and §218.16 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart C—Taking Marine Mammals Incidental to U.S. Navy Training in the Cherry Point Range Complex

SOURCE: 74 FR 28385, June 15, 2009, unless otherwise noted.

§ 218.20 Specified activity and specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the Cherry Point Range Complex Operation Area (OPAREA), which is located along the southern east coast of the U.S., as stated in the Navy’s letter of authorization application. The coordinates of the Cherry Point Range Complex OPAREA are: 36°30’ N, 75°25’ W; 34°14’ N, 73°37’ W; 32°12’ N, 76°49’ W; 32°26’ N, 77°20’ W; 33°10’ N, 77°31’ W; and 34°23’30” N, 77°30’ W; then along the 3 nm from and parallel to the shoreline.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:
   (A) AGM–114 (Hellfire missile);
   (B) Tube-launched Optically tracked Wire-guided (TOW) missile;
   (C) Mine Neutralization (20 lb NEW charges); and
   (D) 5" Naval Gunfire.

(ii) Training Exercises:
   (A) Mine Neutralization (20 lb NEW charges)—up to 100 exercises over the course of 5 years (an average of 20 per year);
   (B) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 40 exercises over the course of 5 years (an average of 8 per year);
   (C) Missile Exercise (MISSILEX) (Air-to-Surface; TOW)—up to 40 exercises over the course of 5 years (an average of 8 per year); and
   (D) FIREX with IMPASS—up to 10 exercises over the course of 5 years (an average of 2 per year).

(d) Regulations are effective [June 8, 2009] and are applicable to the Navy on June 5, 2009 through June 4, 2014.

§ 218.21 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 of this chapter and 218.26, the Holder of the
Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.20(b), provided the activity is in compliance with all terms, conditions, and requirements of this Subpart and the appropriate Letter of Authorization.

(b) The activities identified in §218.20(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §218.20(c) is limited to the following species, by the indicated method of take and the indicated number of times:

1. Level B Harassment:
   (i) Bottlenose dolphin (Tursiops truncatus)—150 (an average of 30 annually);
   (ii) Pantropical spotted dolphin (Stenella attenuata)—100 (an average of 20 annually);
   (iii) Clymene dolphin (S. clymene)—150 (an average of 30 annually);
   (iv) Atlantic spotted dolphin (S. frontalis)—100 (an average of 20 annually);
   (v) Striped dolphin (S. coeruleoalba)—100 (an average of 20 annually);
   (vi) Spinner dolphin (S. longirostris)—15 (an average of 3 annually);
   (vii) Risso’s dolphin (Grampus griseus)—150 (an average of 30 annually);
   (viii) Common dolphin (Delphinus delphis)—100 (an average of 20 annually);
   (ix) Atlantic white-sided dolphin (Lagenorhynchus acutus)—100 (an average of 20 annually);
   (x) Pilot whales (Globicephala sp.)—100 (an average of 20 annually);
   (xi) Dwarf or pygmy sperm whales (Kogia sp.)—15 (an average of 3 annually);
   (xii) Beaked whales—100 (an average of 20 annually);
   (xiii) Fraser’s dolphin (Lagenodelphis hosei)—15 (an average of 3 annually);
   (xiv) Melon-headed whale (Peponocephala electra)—15 (an average of 3 annually);
   (xv) Pygmy killer whale (Feresa attenuata)—15 (an average of 3 annually);
   (xvi) Killer whale (Orcinus orca)—15 (an average of 3 annually);
   (xvii) Minke whales (Balaenoptera acutorostrata)—15 (an average of 3 annually).

(2) [Reserved]

§218.22 Prohibitions.

Notwithstanding takings contemplated in §218.21 and authorized by a Letter of Authorization issued under §§216.106 of this chapter and 218.26, no person in connection with the activities described in §218.20 may:

(a) Take any marine mammal not specified in §218.21(c);

(b) Take any marine mammal specified in §218.21(c) other than by incidental take as specified in §218.21(b)(1) and (2);

(c) Take a marine mammal specified in §218.21(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal;

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this Subpart or a Letter of Authorization issued under §§216.106 of this chapter and 218.26.

§218.23 Mitigation.

(a) When conducting training activities identified in §218.20(c), the mitigation measures contained in the Letters of Authorization issued under §§216.106 of this chapter and 218.26 must be implemented. These mitigation measures include, but are not limited to:

1. General Maritime Measures:

   (i) Personnel Training—Lookouts:
      (A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MW) helicopter crews shall complete Marine Species Awareness Training (MSAT).
      (B) Navy lookouts shall undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).
      (C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the
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Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses shall be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(F) At night, lookouts shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts shall also have night vision devices available for use.

(ii) Operating Procedures and Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts shall watch for and report to the OOD the presence of marine mammals.

(D) Personnel on lookout shall employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(E) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed” (the minimum speed at which mission goals or safety will not be compromised) so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(G) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Such measures shall include changing speed and/or course direction and would be dictated by environmental and other conditions (e.g., safety or weather).

(H) Naval vessels shall maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel’s safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale.
(I) Where feasible and consistent with mission and safety, vessels shall avoid closing to within 200-yd (183 m) of marine mammals other than whales (whales addressed above).

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(2) Coordination and Reporting Requirements. (i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training activities.

(ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(3) Mitigation Measures Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessels transiting, including those vessels that would transit to and from the Eastern United States—

(i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed (at a speed that does not compromise safety of navigation) consistent with mission and safety during the months indicated below and within a 37 km (20 NM) arc (except as noted) of the specified associated reference points:

(1) South and East of Block Island (37 km (20 NM) seaward of line between 41–4.49° N. lat. 071–51.15° W. long. and 41–18.58° N. lat. 070–50.23° W. long): Sept-Oct and Mar–Apr.

(2) New York/New Jersey (40–30.64° N. lat. 073–57.76° W. long.): Sep–Oct and Feb–Apr.


(4) Chesapeake Bay (Hampton Roads and Baltimore) (37–1.11° N. lat. 075–57.56° W. long.): Nov–Dec and Feb–Apr.

(5) North Carolina (34–41.54° N. lat. 076–40.20° W. long.): Dec–Apr.


(B) During the months indicated in paragraph (a)(3)(i)(A) of this section, Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in paragraph (a)(3)(i)(A) of this section.

(C) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(D) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States—

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed (at a speed that does not compromise safety of navigation) consistent with mission and safety during the months indicated below and within a 37 km (20 NM) arc (except as noted) of the specified associated reference points:

(B) During the months indicated in paragraph (a)(3)(i)(A) & (B) of this section, the “southeast” encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30–15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15—April 15 and also apply to an associated...
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area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting or training in the critical habitat or associated area of concern (AAOC), ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(1) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(2) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(3) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 557 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(4) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited.

(5) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(6) Naval vessel operations in the North Atlantic right whale critical habitat and AAOC during the calving season shall be undertaken during daylight and periods of good visibility, to the extent practicable and consistent with mission, training, and operation. When operating in the critical habitat and AAOC at night or during periods of poor visibility, vessels shall operate as if in the vicinity of a recently reported NARW sighting.

(iii) Northeast Atlantic, Offshore of the Eastern United States:

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–05° W. long.; 41–45° N. lat, 69–45° W. long.; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported. This report shall include the date, time, and location of
the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos of the whale were taken. Navy personnel are encouraged to take photos of the whale whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(1) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when change of course would create an imminent and serious threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(2) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum speed at which mission goals or safety will not be compromised) so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(3) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(4) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions as per Rule 6 of International Navigational Rules.

(4) Mitigation Measures for Specific At-sea Training Events—If a marine mammal is killed as a result of the proposed Navy training activities (e.g., instances in which it is clear that munitions explosions caused the death), the Navy shall suspend its activities immediately and report the incident to NMFS.

(i) Firing Exercise (FIREX) Using the Integrated Maritime Portable Acoustic Scoring System (IMPASS) (5-in Explosive Rounds)

(A) This activity shall only occur in Areas 4/5 and 13/14, as specified in the Navy’s LOA application, in the Cherry Point Range Complex.

(B) Pre-exercise monitoring of the target area shall be conducted with “Big Eyes” prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall maintain lookouts dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

(C) “Big Eyes” on the ship shall be used to monitor a 600-yd (548-m) buffer zone for marine mammals during naval-gunfire events.

(D) Ships shall not fire on the target if any marine mammals are detected within or approaching the 600-yd (548-m) buffer zone for marine mammals during naval-gunfire events.

(E) Post-exercise monitoring of the entire target area shall take place with “Big Eyes” and the naked eye during the retrieval of the IMPASS sonobuoy array following each firing exercise.

(F) The naval gunfire shall take place during daylight hours only.

(G) FIREX with IMPASS shall only be used in Beaufort Sea State three (3) or less.

(H) The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

(I) No firing shall occur if marine mammals are detected within 70 yd (64 m) of the vessel.

(ii) Air-to-Surface Missile Exercises (Explosive):

(A) Aircraft shall initially survey the intended ordnance impact area for marine mammals.

(B) During the actual firing of the weapon, the aircraft involved must be able to observe the intended ordnance
§ 218.24 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §216.106 of this chapter and §218.26 for activities described in §218.20(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §218.20(c) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in §218.21(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the Cherry Point Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.

(1) Vessel or aerial surveys.

(i) The Holder of this Authorization shall visually survey a minimum of 1 explosive event per year. If possible, the event surveyed shall be one involving multiple detonations. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs). If it is impossible to conduct the required surveys due to lack of training exercises, the missed annual survey requirement shall roll into the subsequent year to ensure that the appropriate number of surveys (i.e., total of five) occurs over the 5-year period of effectiveness of this subject.

(ii) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (i.e., the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel based surveys, a passive acoustic system (hydrophone or towed array) could be used to determine if marine
mammals are in the area before and/or after a detonation event.

(iv) When conducting a particular survey, the survey team shall collect:

(A) Location of sighting;
(B) Species (if not possible, indicate whale, dolphin or pinniped);
(C) Number of individuals;
(D) Whether calves were observed;
(E) Initial detection sensor;
(F) Length of time observers maintained visual contact with marine mammal;
(G) Wave height;
(H) Visibility;
(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;
(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated);
(K) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, parallel course/speed, floating on surface and not swimming etc.), including speed and direction;
(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and

(M) If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.

(i) Any time a towed hydrophone array is employed during shipboard surveys, the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

(iii) The array should have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms:

(i) As required in §218.24(c)(1), MMOs who are selected for aerial or vessel surveys shall be placed on a Navy platform during one of the explosive exercises being monitored per year, the other designated exercise shall be monitored by the Navy lookouts/watchstanders.

(ii) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) The MMOs shall not be part of the Navy’s formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs should be the same as those collected by Navy lookouts/watchstanders described in §218.24(c)(1)(iv).

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes
the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan,

(5) A method for standardizing data collection for Cherry Point Range Complex and across range complexes,

(e) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

(f) Annual Cherry Point Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the Cherry Point Range Complex Monitoring Plan. Data collection methods shall be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the Cherry Point Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in §218.24(g). The Cherry Point Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from Cherry Point Range Complex and multiple range complexes.

(g) Annual Cherry Point Range Complex Exercise Report—The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall provide an annual update on the Navy’s explosive tracking methods, including improvements from the previous year.

(1) Total annual number of each type of explosive exercise (of those identified as part of the “specified activity” in this final rule) conducted in the Cherry Point Range Complex.

(2) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(h) Cherry Point Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the Cherry Point Range Complex exercises for which annual reports are required (Annual Cherry Point Range Complex Exercise Reports and Cherry Point Range Complex Monitoring Plan Reports). This report shall be submitted at the end of the fourth year of the rule (May 2013), covering activities that have occurred through December 1, 2012.

(i) The Navy shall respond to NMFS comments and requests for additional information or clarification on the Cherry Point Range Complex Comprehensive Report, the Annual Cherry Point Range Complex Exercise Report, or the Annual Cherry Point Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS’ comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(j) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy’s Monitoring Plans and monitoring results and make individual recommendations.
§ 218.25 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103 of this chapter) conducting the activity identified in §218.20(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.26 or a renewal under §218.27.

§ 218.26 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §218.27.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.27 Renewal of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under §216.106 and §218.26 of this chapter for the activity identified in §218.20(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §218.25 shall be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §218.24; and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under §218.23 and the Letter of Authorization issued under §§216.106 and 218.26 of this chapter, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 218.27 of this chapter indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy’s monitoring from the previous year (either from Cherry Point Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§218.24(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§218.24(d)).
§ 218.28 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 218.26 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.27, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §218.20(b), a Letter of Authorization issued pursuant to §§216.106 and 218.26 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subparts D–K Reserved

Subpart L—Taking and Importing Marine Mammals; U.S. Navy’s Mariana Islands Training Range Complex (MIRC)

SOURCE: 75 FR 45547, Aug. 3, 2010, unless otherwise noted.

Effective Date Note: At 75 FR 45547, Aug. 3, 2010, Subpart L was added, effective Aug. 3, 2010 through Aug. 3, 2015.

§ 218.100 Specified activity and specified geographical area.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy may be authorized in a Letter of Authorization (LOA) if it occurs within the Mariana Islands Range Complex (MIRC) Study Area (as depicted in Figure 1–1 in the Navy’s application for MIRC), which is bounded by a pentagon with the following five corners: 16°46′29.3376″ N. lat., 138°00′59.835″ E. long.; 20°02′24.8094″ N. lat., 140°10′13.8642″ E. long.; 20°37′55.368″ N. lat., 149°17′41.0388″ E. long.; 7°30′07.02″ N. lat., 149°16′14.8542″ E. long.; and 6°59′24.633″ N. lat., 138°1′29.7228″ E. long.

(c) The taking of marine mammals by the Navy may be authorized in an LOA if it occurs incidental to the following activities within the designated amounts of use:

1. The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources for U.S. Navy anti-submarine warfare (ASW) training, maintenance, and research, development, and evaluation (RDT&E):
   - AN/SQS–53 (hull-mounted active sonar)—up to 10865 hours over the course of 5 years (an average of 2173 hours per year);
   - AN/SQS–56 (hull-mounted active sonar)—up to 705 hours over the course of 5 years (an average of 141 hours per year);
   - AN/SSQ–62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 8270 sonobuoys over the course of 5 years (an average of 1654 sonobuoys per year);
   - AN/AQS–22 (helicopter dipping sonar)—up to 2,960 dips over the course of 5 years (an average of 592 dips per year);
   - AN/BQQ–10 (submarine hull-mounted sonar)—up to 60 hours over the course of 5 years (an average of 12 hours per year)
   - MK–48, MK–46, or MK–54 (torpedoes)—up to 200 torpedoes over the
course of 5 years (an average of 40 torpedoes per year);

(vii) AN/SSQ–110 (IEER)—up to 530 buoys deployed over the course of 5 years (an average of 106 per year);

(viii) AN/SSQ–125 (AEER)—up to 530 buoys deployed over the course of 5 years (an average of 106 per year);

(ix) Range Pingers—up to 1,400 hours over the course of 5 years (an average of 280 hours per year); and

(x) PUTR Transponder—up to 1,400 hours over the course of 5 years (an average of 280 hours per year).

(2) The detonation of the underwater explosives indicated in this paragraph (c)(2)(i) conducted as part of the training events indicated in this paragraph (c)(2)(ii):

Underwater Explosives (Net Explosive Weight (NEW)):

(A) 5” Naval Gunfire (9.5 lbs NEW);

(B) 76 mm rounds (1.6 lbs NEW);

(C) Maverick (78.5 lbs NEW);

(D) Harpoon (448 lbs NEW);

(E) MK–82 (238 lbs NEW);

(F) MK–83 (574 lbs NEW);

(G) MK–84 (945 lbs NEW);

(H) MK–48 (851 lbs NEW);

(I) Demolition Charges (10 lbs NEW);

(J) AN/SSQ–110A (IEER explosive sonobuoy—5 lbs NEW);

(K) Hellfire (16.5 lbs NEW);

(L) GBU 38/32/31.

Training Events:

(A) Gunnery Exercises (S–S GUNEX)—up to 60 exercises over the course of 5 years (an average of 12 per year);

(B) Bombing Exercises (BOMBEX)—up to 20 exercises over the course of 5 years (an average of 4 per year);

(C) Sinking Exercises (SINKEX)—up to 10 exercises over the course of 5 years (an average of 2 per year);

(D) Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems—up to 530 deployments over the course of 5 years (an average of 106 per year);

(E) Demolitions—up to 250 over the course of 5 years (an average of 50 per year); and

(F) Missile exercises (A–S MISSILEX)—up to 10 exercises over the course of 5 years (an average of 2 per year).

(3) The taking of marine mammals may also be authorized in an LOA for the activities and sources listed in §218.100(c) should the amounts (i.e., hours, dips, number of exercises) vary from those estimated in §218.100(c), provided that the variation does not result in exceeding the amount of take indicated in §218.102.

§ 218.101 Effective dates.

Regulations are effective August 3, 2010 through August 3, 2015.

§ 218.102 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 218.107 of this chapter, the Holder of the Letter of Authorization (hereinafter “Navy”) may incidentally, but not intentionally, take marine mammals within the area described in §218.100(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §218.100(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §218.100(c) is limited to the species listed in this paragraph (4), (5), and (6) of this section (c) by the indicated method of take and the indicated number of times (estimated based on the authorized amounts of sound source operation), but with the following allowances for annual variation in activities:

(1) In any given year, annual take, by harassment, of any species of marine mammal may not exceed the amount identified in paragraphs (b)(4) and (b)(5) of this section, for that species by more than 25% (a post-calculation/estimation of which must be provided in the annual LOA application);

(2) In any given year, annual take by harassment of all marine mammal species combined may not exceed the estimated total of all species combined, indicated in paragraphs (b)(4) and (b)(5) of this section, by more than 10%; and

(3) Over the course of the effective period of this subpart, total take, by harassment, of any species may not exceed the 5-year amounts indicated in
§ 218.103 Prohibitions.

No person in connection with the activities described in §218.100 may:

(a) Take any marine mammal not specified in §218.102(c);

(b) Take any marine mammal specified in §218.102(c) other than by incidental take as specified in §§218.102(c)(1) and (c)(2);

(c) Take a marine mammal specified in §218.102(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§216.106 and 218.107 of this chapter.

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Species</th>
<th>Average Annual Take</th>
</tr>
</thead>
<tbody>
<tr>
<td>(4) Level B Harassment:</td>
<td>Mysticetes:</td>
<td></td>
</tr>
<tr>
<td>(i) Megaptera novaeangliae</td>
<td>4,025 (an average of 805 annually)</td>
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<tr>
<td>(B) Balaenoptera physalus</td>
<td>910 (an average of 182 annually)</td>
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<tr>
<td>(C) Balaenoptera musculus</td>
<td>650 (an average of 130 annually)</td>
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<td>(D) Balaenoptera borealis</td>
<td>1,625 (an average of 325 annually)</td>
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<tr>
<td>(E) Balaenoptera acutorostrata</td>
<td>2,225 (an average of 445 annually)</td>
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</tr>
<tr>
<td>(F) Balaenoptera edeni</td>
<td>2,285 (an average of 457 annually)</td>
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<tr>
<td>(G) Balaenoptera spp.</td>
<td>360 (an average of 72 annually)</td>
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<tr>
<td>(ii) Physeter macrocephalus</td>
<td>4,120 (an average of 824 annually)</td>
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</tr>
<tr>
<td>(B) Orcinus orca</td>
<td>1,150 (an average of 230 annually)</td>
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<td>(C) Kogia breviceps</td>
<td>33,530 (an average of 6,706 annually)</td>
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<td>(D) Mesoplodon densirostris</td>
<td>3,850 (an average of 770 annually)</td>
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<td>(E) Mesoplodon ginkgodens</td>
<td>2,150 (an average of 430 annually)</td>
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<td>(F) Delphinus delphis</td>
<td>44,290 (an average of 8,858 annually)</td>
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<td>(G) Tursiops truncatus</td>
<td>14,315 (an average of 2,863 annually)</td>
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<td>(H) Peponocephala electra</td>
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<td>(K) Pseudorca crassidens</td>
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<td>(L) Stenella coeruleoalba</td>
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<td>(M) Delphinus delphis</td>
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<td>(N) Grampus griseus</td>
<td>33,865 (an average of 6,773 annually)</td>
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<td>(O) Tursiops truncatus</td>
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<td>(P) Mesoplodon densirostris</td>
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<tr>
<td>(Q) Stenella attenuata</td>
<td>162,495 (an average of 32,499 annually)</td>
<td></td>
</tr>
<tr>
<td>(R) Ziphius cavirostris</td>
<td>10,720 (an average of 2,144 annually)</td>
<td></td>
</tr>
<tr>
<td>(S) Stenella longirostris</td>
<td>1,030 (an average of 206 annually)</td>
<td></td>
</tr>
<tr>
<td>(T) Stenella attenuata</td>
<td>11,370 (an average of 2,274 annually)</td>
<td></td>
</tr>
</tbody>
</table>
§ 218.104 Mitigation.

(a) When conducting training and utilizing the sound sources or explosives identified in § 218.100(c), the mitigation measures contained in a Letter of Authorization issued under §§ 216.106 and 218.107 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(i) Personnel Training:

(ii) All commanding officers (COs), executive officers (XOs), lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft crews, and Anti-Submarine Warfare (ASW)/Mine Warfare (MIW) helicopter crews shall complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.

(ii) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968–D).

(iii) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced lookout. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). Personnel being trained as lookouts can be counted among required lookouts as long as supervisors monitor their progress and performance.

(iv) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if marine species are spotted.

(v) All lookouts onboard platforms involved in ASW training events will review the NMFS-approved Marine Species Awareness Training material prior to a training event employing the use of MFAS/HFAS.

(b) General Operating Procedures (for all training types):

(i) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species protective measures.

(ii) COs shall make use of marine species detection cues and information to limit interaction with marine mammals to the maximum extent possible consistent with safety of the ship.

(iii) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts will watch for and report to the OOD the presence of marine mammals.

(iv) On surface vessels equipped with a multi-function active sensor, pedestal mounted “Big Eye” (20x110) binoculars shall be properly installed and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

(v) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(vi) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(vii) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed”, which means the speed at which the CO can maintain crew safety and effectiveness of current operational directives, so that the vessel can take action to avoid a collision with any marine mammal.

(viii) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take all reasonable actions to avoid collisions and close interaction of naval assets and marine mammals. Such action
may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

(ix) Navy aircraft participating in exercises at-sea shall conduct and maintain surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(x) All marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate when it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(xi) Naval vessels will maneuver to keep at least 1,500 ft (500 yds) away from any observed whale in the vessel’s path and avoid approaching whales head-on. These requirements do not apply if a vessel’s safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged activities, launching and recovering aircraft or landing craft, minesweeping activities, replenishment while underway and towing activities that severely restrict a vessel’s ability to deviate course. Vessels will take reasonable steps to alert other vessels in the vicinity of the whale. Given rapid swimming speeds and maneuverability of many dolphin species, naval vessels would maintain normal course and speed on sighting dolphins unless some condition indicated a need for the vessel to maneuver.

(3) Operating Procedures (for Anti-submarine Warfare (ASW) Operations):

(i) On the bridge of surface ships, there shall always be at least three people on watch whose duties include observing the water surface around the vessel.

(ii) All surface ships participating in ASW training events shall have, in addition to the three personnel on watch noted in (i), at least two additional personnel on watch as lookouts at all times during the exercise.

(iii) Personnel on lookout and officers on watch on the bridge will have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(iv) Personnel on lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine mammal that may need to be avoided.

(v) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(vi) During MFAS operations, personnel shall utilize all available sensor and optical systems (such as night vision goggles) to aid in the detection of marine mammals.

(vii) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yds (183 m) of the sonobuoy.

(viii) Helicopters shall observe/survey the vicinity of an ASW exercise for 10 minutes before the first deployment of active (dipping) sonar in the water.

(ix) Helicopters shall not dip their sonar within 200 yards of a marine mammal and shall cease pinging if a marine mammal closes within 200 yards after pinging has begun.

(x)(A) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that sonar transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1000 yards (914 m) of the sonar dome (the bow) (i.e., limit to at most 229 dB for AN/SQS–53 and 219 dB for AN/SQS–56, etc.). Ships and submarines shall continue to limit maximum transmission levels by this 6-dB factor until the animal has been seen.
to leave the 1000-yd safety zone, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(B) When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that sonar transmission levels are limited to at least 10 dB below normal operating levels if any detected marine mammals are within 500 yards (457 m) of the sonar dome (the bow). Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the animal has been seen to leave the 500-yd safety zone, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (1829 m) beyond the location of the last detection.

(C) When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that sonar transmission ceases if any detected marine mammals are within 200 yards (183 m) of the sonar dome (the bow). Sonar shall not resume until the animal has been seen to leave the 200-yd safety zone, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yds (457 m) beyond the location of the last detection.

(D) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the OOD concludes that dolphins or porpoises are deliberately closing to ride the vessel’s bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(xi) Prior to start up or restart of active sonar, operators will check that the 1000-m Safety Zone radius around the sound source is clear of marine mammals.

(xii) Active sonar levels (generally)—Navy shall operate active sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xiii) Submarine sonar operators will review detection indicators of close-aboard marine mammals prior to the commencement of ASW training events involving MFAS.

(E) If the need for power-down should arise (as detailed in 218.114(a)(3)(x)) when the Navy is operating a hull-mounted or sub-mounted source above 235 dB (infrequent), the Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 dB active sonar was being operated).

(4) Operating Procedures for Underwater Detonations (up to 10-lb charges):

(i) Exclusion Zones—All demolitions and ship mine countermeasures training exercises involving the use of explosive charges must include exclusion zones for marine mammals to prevent physical and/or acoustic effects to those species. These exclusion zones shall extend in a 700-yard arc radius around the detonation site. Should a marine mammal be present within the surveillance area, the explosive event shall not be started until the animal leaves the area.

(ii) Pre-Exercise Surveys—For Demolition and Ship Mine Countermeasures Operations, pre-exercise surveys shall be conducted for 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air, and personnel shall be alert to the presence of any marine mammal. Should such an animal be present within the survey area, the explosive event shall not be started until the animal voluntarily leaves the area. The Navy will ensure the area is clear of marine mammals for a full 30 minutes prior to initiating the explosive event. Personnel will record any marine mammal observations during the exercise as well as measures taken if species are detected within the exclusion zone.

(iii) Post-Exercise Surveys—Surveys within the same exclusion zone radius shall also be conducted within 30 minutes after the completion of the explosive event.

(iv) Reporting—If there is evidence that a marine mammal may have been stranded, injured or killed by the action, Navy training activities shall be
immediately suspended and the situation immediately reported by the participating unit to the Officer in Charge of the Exercise (OCE), who will follow Navy procedures for reporting the incident to Commander, Pacific Fleet, Commander, Navy Region Marianas, Environmental Director, and the chain-of-command. The situation shall also be reported to NMFS (see Stranding Plan for details).

(5) Sinking Exercise:
   (i) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.
   (ii) An exclusion zone with a radius of 1.0 nm (1.9 km) will be established around each target. An additional buffer of 0.5 nm (0.9 km) will be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which will extend beyond the buffer zone by an additional 0.5 nm (0.9 km), shall be surveyed. Together, the zone extends out 2 nm (3.7 km) from the target.
   (iii) A series of surveillance overflights shall be conducted within the 2-nm zone around the target, prior to and during the exercise, when feasible. Survey protocol shall be as follows:
      (A) Overflights within the 2-nm zone around the target shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy’s Search and Rescue Tactical Aid, which provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.
      (B) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team will have completed the Navy’s marine mammal training program for lookouts.
      (C) In addition to the overflights, the 2-nm zone around the target shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE will be informed of any aural detection of marine mammals and will include this information in the determination of when it is safe to commence the exercise.
   (D) On each day of the exercise, aerial surveillance of the 2-nm zone around the target shall commence 2 hours prior to the first firing.
   (E) The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing may commence until the OCE declares this 2-nm zone around the target is free of marine mammals.
   (F) If a marine mammal is observed within the 2-nm zone around the target, firing will be delayed until the animal is re-sighted outside the 2-nm zone around the target, or 30 minutes have elapsed. After 30 minutes, if the animal has not been re-sighted it can be assumed to have left the 2-nm zone around the target. The OCE will determine if the marine mammal is in danger of being adversely affected by commencement of the exercise.
   (G) During breaks in the exercise of 30 minutes or more, the 2-nm zone around the target shall again be surveyed for any marine mammal. If marine mammals are sighted within the 2-nm zone around the target, the OCE shall be notified, and the procedures described in this section shall be followed.
   (H) Upon sinking of the vessel, a final surveillance of the 2-nm zone around the target shall be monitored for 2 hours, or until sunset, to verify that no marine mammals were harmed.

(iv) Aerial surveillance shall be conducted using helicopters or other aircraft based on necessity and availability. The Navy has several types of aircraft capable of performing this task; however, not all types are available for every exercise. For each exercise, the available asset best suited for identifying objects on and near the surface of the ocean shall be used. These aircraft shall be capable of flying at the slow safe speeds necessary to enable viewing of marine vertebrates
with unobstructed, or minimally ob-
structed, downward and outward visi-
bility. The exclusion and safety zone
surveys may be cancelled in the event
that a mechanical problem, emergency
search and rescue, or other similar and
unexpected event preempts the use of
one of the aircraft onsite for the exer-
cise.

(v) Every attempt shall be made to
conduct the exercise in sea states that
are ideal for marine mammal sighting,
Beaufort Sea State 3 or less. In the
event of a 4 or above, survey efforts
shall be increased within the 2-nm zone
around the target. This shall be accom-
plished through the use of an addi-
tional aircraft, if available, and con-
ducting tight search patterns.

(vi) The exercise shall not be con-
ducted unless the 2-nm zone around the
target could be adequately monitored
visually. Should low cloud cover or sur-
face visibility prevent adequate visual
monitoring as described previously, the
exercise would be delayed until condi-
tions improved, and all of the above
monitoring criteria could be met.

(vii) In the event that any marine
mammals are observed to be harmed in
the area, a detailed description of the
animal shall be taken, the location
noted, and if possible, photos taken of
the marine mammal. This information
shall be provided to NMFS via the
Navy’s regional environmental coordi-
nator for purposes of identification (see
the Stranding Plan for detail).

(viii) An after action report detailing
the exercise’s time line, the time the
surveys commenced and terminated,
amount, and types of all ordnance ex-
pended, and the results of survey ef-
forts for each event shall be submitted
to NMFS.

(6) Surface-to-Surface Gunnery (up to
5-inch Explosive Rounds):

(i) For exercises using targets towed
by a vessel, target-towing vessels shall
maintain a trained lookout for marine
mammals when feasible. If a marine
mammal is sighted in the vicinity, the
tow vessel will immediately notify the
firing vessel, which will suspend the ex-
cercise until the area is clear.

(ii) A 600 yard (585 m) radius buffer
zone will be established around the in-
tended target.

(iii) From the intended firing posi-
tion, trained lookouts will survey the
buffer zone for marine mammals prior
to commencement and during the exer-
cise as long as practicable. Due to the
distance between the firing position
and the buffer zone, lookouts are only
expected to visually detect breaching
whales, whale blows, and large pods of
dolphins and porpoises.

(iv) The exercise will be conducted
only when the buffer zone is visible and
marine mammals are not detected
within it.

(7) Surface-to-Surface Gunnery (non-
explosive rounds):

(i) A 200-yd (183 m) radius buffer zone
shall be established around the in-
tended target.

(ii) From the intended firing posi-
tion, trained lookouts shall survey the
buffer zone for marine mammals prior
to commencement and during the exer-
cise as long as practicable.

(iii) If available, target towing ves-
sels shall maintain a lookout (un-
manned towing vessels will not have a
lookout available). If a marine mam-
mal is sighted in the vicinity of the ex-
ercise, the tow vessel shall imme-
diately notify the firing vessel in order
to secure gunnery firing until the area
is clear.

(iv) The exercise shall be conducted
only when the buffer zone is visible and
marine mammals are not detected
within the target area and the buffer
zone.

(8) Surface-to-Air Gunnery (Explosive
and Non-explosive Rounds):

(i) Vessels will orient the geometry
of gunnery exercises in order to pre-
vent debris from falling in the area of
sighted marine mammals.

(ii) Vessels will attempt to recover
any parachute deploying aerial targets
to the extent practicable (and their
parachutes if feasible) to reduce the po-
tential for entanglement of marine
mammals.

(iii) Target towing aircraft shall
maintain a lookout if feasible. If a ma-
rine mammal is sighted in the vicinity
of the exercise, the tow aircraft will
immediately notify the firing vessel in
order to secure gunnery firing until the
area is clear.

(9) Air-to-Surface Gunnery (Explosive
and Non-explosive Rounds):
§ 218.104

(i) A 200 yard (183 m) radius buffer zone will be established around the intended target.

(ii) If surface vessels are involved, lookout(s) will visually survey the buffer zone for marine mammals to and during the exercise.

(iii) Aerial surveillance of the buffer zone for marine mammals will be conducted prior to commencement of the exercise. Aerial surveillance altitude of 500 feet to 1,500 feet (152–456 m) is optimum. Aircraft crew/pilot will maintain visual watch during exercises. Release of ordnance through cloud cover is prohibited; aircraft must be able to actually see ordnance impact areas.

(iv) The exercise will be conducted only if marine mammals are not visible within the buffer zone.

(10) Small Arms Training (Grenades, Explosive and Non-explosive Rounds)—Lookouts will visually survey for marine mammals. Weapons will not be fired in the direction of known or observed marine mammals.

(11) Air-to-Surface At-sea Bombing Exercises (explosive bombs and rockets):

(i) If surface vessels are involved, trained lookouts will survey for marine mammals. Ordnance shall not be targeted to impact within 1,000 yds (914 m) of known or observed marine mammals.

(ii) A 1,000 yd (914 m) radius buffer zone will be established around the intended target.

(iii) Aircraft will visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area will be made by flying at 1,500 feet (456 m) or lower, if safe to do so, and at the slowest safe speed. When safety or other considerations require the release of weapons without the releasing pilot having visual sight of the target area, a second aircraft, the “wingman,” will clear the target area and perform the clearance and observation functions required before the dropping plane may release its weapons. Both planes must have direct communication to assure immediate notification to the dropping plane that the target area may have been fouled by encroaching animals or people. The clearing aircraft will assure it has visual sight of the target area at a maximum height of 1500 ft. The clearing plane will remain within visual sight of the target until required to clear the area for safety reasons. Survey aircraft shall employ most effective search tactics and capabilities.

(iv) The exercise will be conducted only if marine mammals are not visible within the buffer zone.

(12) Air-to-Surface At-Sea Bombing Exercises (Non-explosive Bombs and Rockets):

(i) If surface vessels are involved, trained lookouts will survey for marine mammals. Ordnance shall not be targeted to impact within 1,000 yards (914 m) of known or observed marine mammals.

(ii) A 1,000 yard (914 m) radius buffer zone will be established around the intended target.

(13) Air-to-Surface Missile Exercises (explosive and non-explosive):

(i) Aircraft will visually survey the target area for marine mammals. Visual inspection of the target area will be made by flying at 1,500 ft (457 m) feet or lower, if safe to do so, and at slowest safe speed. Firing or range clearance
aircraft must be able to actually see ordnance impact areas.

(ii) Explosive ordnance shall not be targeted to impact within 1,800 yds (1646 m) of sighted marine mammals.

(14) Aircraft Training Activities Involving Non-Explosive Devices:

An exclusion zone of 200 yds around the target location, therefore, shall be clear of marine mammals. Pre- and post-surveillance and reporting requirements outlined for underwater detonations shall be implemented during Mining Training Activities.

(15) Extended Echo Ranging/Improved Extended Echo Ranging and Advanced Extended Echo-ranging (EER/IEER/AEER)—The following mitigation measures shall be used with the employment of IEER/AEER sonobuoys:

(i) Crews shall conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search shall be conducted at an altitude below 500 yd (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft operations, crews are allowed to conduct coordinated area clearances.

(ii) For IEER (AN/SSQ–110A), crews shall conduct a minimum of 30 minutes of visual and aural monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(iii) For any part of the intended sonobuoy pattern where a post (source/receiver sonobuoy pair) will be deployed within 1,000 yd (914 m) of observed marine mammal activity, the Navy shall deploy the receiver ONLY (i.e., not the source) and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yd (914 m) of the intended post position, the source sonobuoy (AN/SSQ–110A/SSQ–125) will be co-located with the receiver.

(iv) When operationally feasible, Navy crews shall conduct continuous visual and aural monitoring of marine mammal activity. This shall include monitoring of own-aircraft sensors from the time of the first sensor placement until the aircraft have left the area and are out of RF range of these sensors.

(v) Aural Detection. If the presence of marine mammals is detected aurally, then that shall cue the Navy aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

(vi) Visual Detection. If marine mammals are visually detected within 1,000 yd (914 m) of the explosive source sonobuoy (AN/SSQ–110A/SSQ–125) intended for use, then that payload shall not be activated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 1,000 yd (914 m) safety buffer. Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000 yd (914 m) safety buffer.

(vii) For IEER (AN/SSQ–110A), aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the “Payload 1 Release” command followed by the “Payload 2 Release” command. Aircrews shall refrain from using the “Scuttle” command when two payloads remain at a given post. Aircrews shall ensure that a 1,000 yd (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(viii) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(ix) The Navy shall ensure all pay loads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(x) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(16) The Navy shall implement the “Stranding Response Plan for Major
§ 218.105 Requirements for monitoring and reporting.

(a) General Notification of Injured or Dead Marine Mammals. Navy personnel shall ensure that NMFS is notified immediately (see Communication Plan) or as soon as clearance procedures allow if an injured, stranded, or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with the name of species or description of the animal(s), the condition of the animal(s) including carcass condition if the animal(s) is/are dead, location, time of first discovery, observed behaviors (if alive), and photo or video of the animals (if available). In the event, following a USE, that: (a) Qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or (b) animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS/HFAS activities or explosive detonations, though farther than 14 nm from the distressed animal(s), is likely decreasing the likelihood that the animals return to the open water. If so, NMFS and the Navy shall further coordinate to determine what measures are necessary to further minimize that likelihood and implement those measures as appropriate.

(b) [Reserved]

§ 218.105 Requirements for monitoring and reporting.

(a) General Notification of Injured or Dead Marine Mammals. Navy personnel shall ensure that NMFS is notified immediately (see Communication Plan) or as soon as clearance procedures allow if an injured, stranded, or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with the name of species or description of the animal(s), the condition of the animal(s) including carcass condition if the animal(s) is/are dead, location, time of first discovery, observed behaviors (if alive), and photo or video of the animals (if available). In the event, following a USE, that: (a) Qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or (b) animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS/HFAS activities or explosive detonations, though farther than 14 nm from the distressed animal(s), is likely decreasing the likelihood that the animals return to the open water. If so, NMFS and the Navy shall further coordinate to determine what measures are necessary to further minimize that likelihood and implement those measures as appropriate.

(i) Shutdown Procedures. When an Uncommon Stranding Event (USE—defined in §216.271) occurs during a Major Training Exercise (MTE) (as defined in the Stranding Plan, meaning including Multi-strike group exercises, Joint Expeditionary exercises, and Marine Air Ground Task Force exercises in the MIRC), the Navy shall implement the procedures described in this section.

(A) The Navy shall implement a Shutdown (as defined in the Stranding Response Plan for MIRC) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the MIRC Stranding Communication Protocol that a USE (as defined in the Stranding Response Plan for MIRC) involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy shall communicate, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(B) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(C) If the Navy finds an injured or dead marine mammal floating at sea during an MTE, the Navy shall notify NMFS immediately (see Communication Plan) or as soon as clearance procedures allow if an injured, stranded, or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with the name of species or description of the animal(s), the condition of the animal(s) including carcass condition if the animal(s) is/are dead, location, time of first discovery, observed behaviors (if alive), and photo or video of the animals (if available).

(ii) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the MIRC Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using MFAS/HFAS, and marine mammal sightings information associated with training activities occurring within 80 nm (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80 nm (148 km), 72 hours, period prior to the event shall be provided as soon as it becomes available. The Navy shall provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(b) [Reserved]
event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after, MFAS, HFAS, or underwater explosive detonations, the Navy will report the same information as listed above as soon as operationally feasible and clearance procedures allow.

(b) General Notification of Ship Strike. In the event of a ship strike by any Navy vessel, at any time or place, the Navy shall do the following:

1. Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead, or whether its status is unknown.

2. Report to NMFS as soon as operationally feasible the size and length of animal, an estimate of the injury status (e.g., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status.

3. Provide NMFS a photo or video of the animal(s), if equipment is available.

(c) The Navy must conduct all monitoring and/or research required under the Letter of Authorization, including abiding by the annual MIRC Monitoring Plan. (http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications)

(d) Report on Monitoring required in paragraph (c) of this section. The Navy shall submit a report annually describing the implementation and results of the monitoring required in paragraph (c) of this section. Required submission date will be identified each year in the LOA. Navy will standardize data collection methods across ranges to allow for comparison in different geographic locations.

(e) Sonar Exercise Notification. The Navy shall submit to the NMFS Office of Protected Resources (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any Major Training Exercise for Reporting (MTER) indicating:

1. Location of the exercise;

2. Beginning and end dates of the exercise; and

3. Type of exercise.

(f) Annual MIRC Report. The Navy will submit an Annual Exercise MIRC Report every year. This report shall contain the subsections and information indicated below.

1. MFAS/HFAS Major Training Exercises—This section shall contain the following information for the following Coordinated and Strike Group exercises, which for simplicity will be referred to as MTERs: Joint Multi-strike Group Exercises; Joint Expeditionary Exercises; and Marine Air Ground Task Force MIRC:

   i. Exercise Information (for each MTER):

      A. Exercise designator;

      B. Date that exercise began and ended;

      C. Location;

      D. Number and types of active sources used in the exercise;

      E. Number and types of passive acoustic sources used in exercise;

      F. Number and types of vessels, aircraft, etc., participating in exercise;

      G. Total hours of observation by watchstanders;

      H. Total hours of all active sonar source operation;

      i. Individual marine mammal sighting info (for each sighting in each MTER):

         A. Location of sighting;

         B. Species (if not possible—indication of whale/dolphin/pinniped);

         C. Number of individuals;

         D. Calves observed (y/n);

         E. Initial Detection Sensor;

         F. Indication of specific type of platform observation made from (including, for example, what type of surface vessel, i.e., FFG, DDG, or CG);

         G. Length of time observers maintained visual contact with marine mammal(s);

         H. Wave height (in feet);

         I. Visibility;

         J. Sonar source in use (y/n);

         K. Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–
2,000 yd, or >2,000 yd from sonar source in paragraph (f)(1)(i)(J) of this section;
(L) Mitigation Implementation. Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was;
(M) If source in use in paragraph (f)(1)(i)(J) is hullmounted, true bearing of animal from ship, true direction of ship’s travel, and estimation of animal’s motion relative to ship (opening, closing, parallel); and
(N) Observed behavior. Watchstanders shall describe, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.).

(iii) An evaluation (based on data gathered during all of the MTERs) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to MFAS. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) ASW Summary. This section shall include the following information as summarized from non-major training exercises (unit-level exercises, such as TRACKEXs):

(i) Total Hours. Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.));

(ii) Cumulative Impacts. To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major training (i.e., ULT) utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across MIRC. The Navy shall include (in the MIRC annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with NMFS) method has been developed and implemented.

(3) Sinking Exercises (SINKEXs). This section shall include the following information for each SINKEX completed that year:

(i) Exercise info:
(A) Location;
(B) Date and time exercise began and ended;
(C) Total hours of observation by watchstanders before, during, and after exercise;
(D) Total number and types of rounds expended/explosives detonated;
(E) Number and types of passive acoustic sources used in exercise;
(F) Total hours of passive acoustic search time;
(G) Number and types of vessels, aircraft, etc., participating in exercise;
(H) Wave height in feet (high, low and average during exercise); and
(I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) Individual marine mammal observation during SINKEX (by Navy lookouts) information:
(A) Location of sighting;
(B) Species (if not possible—indication of whale/dolphin/pinniped);
(C) Number of individuals;
(D) Calves observed (y/n);
(E) Initial detection sensor;
(F) Length of time observers maintained visual contact with marine mammal;
(G) Wave height;
(H) Visibility;
(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;
(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance:
(1) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (TBD m for SINKEX in MIRC);
(2) The required exclusion zone (1 nm for SINKEX in MIRC);
(3) The required observation distance (if different than the exclusion zone (2 nm for SINKEX in MIRC); and
(4) Greater than the required observed distance. For example, in this case, the observer shall indicate if < TBD m, from 426 m–1 nm, from 1 nm–2 nm, and >2 nm.
(K) Observed behavior—Watchstanders will describe, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction.

(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(M) If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection.

(4) Improved Extended Echo-Ranging System (IEER)/Advanced Extended Echo-Ranging (AEER) Summary:
   (i) Total number of IEER and AEER events conducted in MIRC;
   (ii) Total expended/detonated rounds (buoys); and
   (iii) Total number of self-scuttled IEER rounds.

(5) Explosives Summary. The Navy is in the process of improving the methods used to track explosive use to provide increased granularity. To the extent practicable, the Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy’s explosive tracking methods, including improvements from the previous year.
   (i) Total annual number of each type of explosive exercise (of those identified as part of the “activity” in this Subpart) conducted in MIRC; and
   (ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(g) MIRC 5-year Comprehensive Report. The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual MIRC Exercise Reports and MIRC Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2014), covering activities that have occurred through July 15, 2014.

(h) Comprehensive National ASW Report. By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans for the Northwest Training Range Complex, the Southern California Range Complex, the Atlantic Fleet Active Sonar Training, the Hawaii Range Complex, the Mariana Islands Range Complex, and the Gulf of Alaska.
   (i) The Navy shall comply with the 2009 Integrated Comprehensive Monitoring Program (ICMP) Plan and continue to improve the program in consultation with NMFS. Changes and improvements to the program made during 2010 (as prescribed in the 2009 ICMP and deemed appropriate by the Navy and NMFS) will be described in an updated 2010 ICMP and submitted to NMFS by October 31, 2010, for review. An updated 2010 ICMP will be finalized by December 31, 2010.

§ 218.106 Applications for Letters of Authorization.
To incidentally take marine mammals pursuant to these regulations, the U.S. Citizen (as defined by §216.103) conducting the activity identified in §218.100(c) (i.e., the Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.107 or a renewal under §218.108.

§ 218.107 Letters of Authorization.
   (a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §218.108.
   (b) Each Letter of Authorization shall set forth:
      (1) Permissible methods of incidental taking;
      (2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and
      (3) Requirements for mitigation, monitoring and reporting.
   (c) Issuance and renewal of the Letter of Authorization shall be based on a

(a) A Letter of Authorization issued under §216.106 and §218.107 of this chapter for the activity identified in §218.100(c) will be renewed annually upon:

1. Notification to NMFS that the activity described in the application submitted under §218.206 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

2. Receipt of the monitoring reports and notifications within the timeframes indicated in the previous LOA; and

3. A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.104 and the Letter of Authorization issued under §§216.106 and 218.107 of this chapter, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 218.206 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request.

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

(d) Adaptive Management. NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

1. Results from the Navy’s monitoring from the previous year (either from the MIRC Study Area or other locations).
2. Findings of the Monitoring Workshop that the Navy will convene in 2011.
3. Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the Integrated Comprehensive Monitoring Plan).
4. Results from specific stranding investigations (either from the MIRC Study Area or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).
5. Results from the Long Term Prospective Study described in the preamble to these regulations.
6. Results from general marine mammal and sound research.
7. Any information which reveals that marine mammals may have been taken in a manner, extent or number not anticipated by these regulations or subsequent Letters of Authorization.


(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 218.107 of this chapter and subject to the provisions of this subpart, shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.108 without modification (except for the period of validity) is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §218.100(b), a Letter of Authorization issued pursuant to §§216.106 and 218.107 of this chapter may be substantively modified.
without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

Subpart S—Taking Marine Mammals Incidental to U.S. Navy Mission Activities in the Naval Surface Warfare Center Panama City Division

SOURCE: 75 FR 3410, Jan. 21, 2010, unless otherwise noted.

EFFECTIVE DATE NOTE: At 75 FR 3410, Jan. 21, 2010, §§218.180–218.188 (Subpart S) was added, effective January 21, 2010 through January 21, 2015.

§ 218.180 Specified activity and specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the NSWC PCD Study Area, which includes St. Andrew Bay (SAB) and military warning areas (areas within the GOM subject to military operations) W–131 (includes Panama City Operating Area), W–135 (includes Pensacola Operating Area), and W–470, as described in Figures 2–1 and 2–2 of the Navy’s application for the Letter of Authorization (LOA). The NSWC PCD Study Area includes a Coastal Test Area, a Very Shallow Water Test Area, and Target and Operational Test Fields. The NSWC PCD Research, Development, Test, and Evaluation (RDT&E) activities may be conducted anywhere within the existing military operating areas and SAB from the mean high water line (average high tide mark) out to 222 km (120 nm) offshore. The locations and environments include:

(1) Test area control sites adjacent to NSWC PCD.
(2) Wide coastal shelf 97 km (52 nm) distance offshore to 183 m (600 ft), including bays and harbors.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The use of the following high frequency active sonar (HFAS) and mid-frequency active sonar (MFAS) or similar sources for U.S. Navy mission activities in territorial waters in the amounts indicated below:

(i) AN/SQS–53/56 Kingfisher—up to 15 hours over the course of 5 years (an average of 3 hours per year);
(ii) Sub-bottom profiler (2–9 kHz)—up to 165 hours over the course of 5 years (an average of 33 hours per year);
(iii) REMUS SAS–LF (center frequency 15 kHz)—up to 60 hours over the course of 5 years (an average of 12 hours per year);
(iv) REMUS Modem—up to 125 hours over the course of 5 years (an average of 25 hours per year);
(v) Sub-bottom profiler (2–16 kHz)—up to 120 hours over the course of 5 years (an average of 24 hours per year);
(vi) AN/SQQ–32—up to 150 hours over the course of 5 years (an average of 30 hours per year);
(vii) REMUS–SAS–LF (center frequency 20 kHz)—up to 100 hours over the course of 5 years (an average of 20 hours per year);
(viii) SAS–LF—up to 175 hours over the course of 5 years (an average of 35 hours per year);
(ix) AN/WLD–1 RMS–ACL—up to 168 hours over the course of 5 years (an average of 33.5 hours per year);
(x) BPAUV Sidescan (center frequency 75 kHz)—up to 125 hours over the course of 5 years (an average of 25 hours per year);
(xi) TVSS—up to 75 hours over the course of 5 years (an average of 15 hours per year);
(xii) F84Y—up to 75 hours over the course of 5 years (an average of 15 hours per year);
(xiii) BPAUV Sidescan (center frequency 102.5 kHz)—up to 125 hours over the course of 5 years (an average of 25 hours per year);
(xiv) REMUS–SAS–HF—up to 50 hours over the course of 5 years (an average of 10 hours per year);
§ 218.181 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 218.186:

(xv) SAS–HF—up to 58 hours over the course of 5 years (an average of 11.5 hours per year);

(xvi) AN/SQS–20—up to 2725 hours over the course of 5 years (an average of 545 hours per year);

(xvii) AN/WLD–11 RMS Navigation—up to 75 hours over the course of 5 years (an average of 15 hours per year); and

(xviii) BPAUV Sidescan (center frequency 120 kHz)—up to 150 hours over the course of 5 years (an average of 30 hours per year).

(2) The use of the following high frequency active sonar (HFAS) and mid-frequency active sonar (MFAS) or similar sources for U.S. Navy mission activities in non-territorial waters in the amounts indicated below:

(i) AN/SQS–53/56 Kingfisher—up to 5 hours over the course of 5 years (an average of 1 hour per year);

(ii) Sub-bottom profiler (2–9 kHz)—up to 5 hours over the course of 5 years (an average of 1 hour per year);

(iii) REMUS Modem—up to 60 hours over the course of 5 years (an average of 12 hours per year);

(iv) Sub-bottom profiler (2–16 kHz)—up to 5 hours over the course of 5 years (an average of 1 hour per year);

(v) AN/SQQ–32—up to 60 hours over the course of 5 years (an average of 1 hour per year);

(vi) SAS–LF—up to 75 hours over the course of 5 years (an average of 15 hours per year);

(vii) AN/WLD–1 RMS–ACL—up to 25 hours over the course of 5 years (an average of 5 hours per year);

(viii) BPAUV Sidescan (center frequency 75 kHz)—up to 190 hours over the course of 5 years (an average of 38 hours per year);

(ix) TVSS—up to 83 hours over the course of 5 years (an average of 16.5 hours per year);

(x) F84Y—up to 75 hours over the course of 5 years (an average of 15 hours per year);

(xi) REMUS–SAS–HF—up to 125 hours over the course of 5 years (an average of 25 hours per year);

(xii) SAS–HF—up to 75 hours over the course of 5 years (an average of 15 hours per year);

(xiii) AN/AQS–20—up to 75 hours over the course of 5 years (an average of 15 hours per year); and

(xiv) BPAUV Sidescan (center frequency 120 kHz)—up to 125 hours over the course of 5 years (an average of 25 hours per year).

(3) Ordnance operations for U.S. Navy mission activities in territorial waters in the amounts indicated below:

(i) Range 1 (0–10 lb)—up to 255 detonations over the course of 5 years (an average of 51 detonations per year); and

(ii) Range 2 (11–75 lb)—up to 15 detonations over the course of 5 years (an average of 3 detonations per year); and

(iii) Line charges—up to 15 detonations over the course of 5 years (an average of 3 detonations per year).

(4) Ordnance operations for U.S. Navy mission activities in non-territorial waters in the amounts indicated below:

(i) Range 3 (76–600 lb)—up to 80 detonations over the course of 5 years (an average of 16 detonations per year).

(ii) Reserved.

(5) Projectile firing operations for U.S. Navy mission activities in non-territorial waters in the amounts indicated below:

(i) 5 in. Naval gunfire—up to 300 rounds over the course of 5 years (an average of 60 rounds per year);

(ii) 40 mm rounds—up to 2,400 rounds over the course of 5 years (an average of 480 rounds per year);

(iii) 30 mm rounds—up to 3,000 rounds over the course of 5 years (an average of 600 rounds per year);

(iv) 20 mm rounds—up to 14,835 rounds over the course of 5 years (an average of 2,967 rounds per year);

(v) 76 mm rounds—up to 1,200 rounds over the course of 5 years (an average of 240 rounds per year); and

(vi) 25 mm rounds—up to 2,625 rounds over the course of 5 years (an average of 525 rounds per year); and

(vii) Small arms—up to 30,000 rounds over the course of 5 years (an average of 6,000 rounds per year).

(d) Regulations are effective January 21, 2010, through January 21, 2015.
of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.180(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The incidental take of marine mammals under the activities identified in §218.180(c) is limited to the following species, by the indicated method of take and the indicated number of times:

- (1) Level B Harassment:
  - (i) Sperm whale (*Physeter macrocephalus*)—10 (an average of 2 annually);
  - (ii) Risso's dolphin (*Grampus griseus*)—10 (an average of 2 annually);
  - (iii) Bottlenose dolphin (*Tursiops truncatus*)—2,355 (an average of 471 annually);
  - (iv) Atlantic spotted dolphin (*Stenella frontalis*)—115 (an average of 23 annually);
  - (v) Pantropical spotted dolphin (*S. attenuata*)—115 (an average of 23 annually);
  - (vi) Striped dolphin (*S. coeruleoalba*)—25 (an average of 5 annually);
  - (vii) Spinner dolphin (*S. longirostris*)—115 (an average of 23 annually);
  - (viii) Melon-headed whale (*Peponocephala electra*)—10 (an average of 2 annually);
  - (ix) Short-finned pilot whale (*Globicephala macrorhynchus*)—5 (an average of 1 annually);

- (2) Level A Harassment:
  - (i) Bottlenose dolphin (*Tursiops truncatus*)—10 (an average of 2 annually);
  - (ii) Atlantic spotted dolphin (*Stenella frontalis*)—10 (an average of 2 annually);
  - (iii) Pantropical spotted dolphin (*S. attenuata*)—5 (an average of 1 annually);
  - (iv) Spinner dolphin (*S. longirostris*)—5 (an average of 1 annually).

§ 218.182 Prohibitions.

Notwithstanding takings contemplated in §218.181 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.186, no person in connection with the activities described in §218.180 may:

- (a) Take any marine mammal not specified in §218.181(b);
- (b) Take any marine mammal specified in §218.181(b) other than by incidental take as specified in §218.181(b)(1) and (2);
- (c) Take a marine mammal specified in §218.181(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal;
- (d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.186.

§ 218.183 Mitigation.

When conducting RDT&E activities identified in §218.180(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §§216.106 of this chapter and §218.186 must be implemented. These mitigation measures include, but are not limited to:

- (a) Mitigation Measures for HFAS/MFAS Operations: (1) Personnel Training: (i) All marine observers onboard platforms involved in NSWC PCD RDT&E activities shall complete Marine Species Awareness Training (MSAT).
- (ii) Marine observers shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

(2) Marine Observer Responsibilities:

- (i) On the bridge of surface vessels, there shall always be at least one to three marine species awareness trained observer(s) on watch whose duties include observing the water surface around the vessel.
  - (A) For vessels with length under 65 ft (20 m), there shall always be at least one marine observer on watch.
  - (B) For vessels with length between 65–200 ft (20–61 m), there shall always be at least two marine observers on watch.
  - (C) For vessels with length above 200 ft (61 m), there shall always be at least three marine observers on watch.
§218.183

(ii) Each marine observer shall have at their disposal at least one set of binoculars available to aid in the detection of marine mammals.

(iii) On surface vessels equipped with AN/SQQ–53C/56, pedestal mounted “Big Eye” (20 x 110) binoculars shall be present and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

(iv) Marine observers shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(v) Marine observers shall scan the water from the vessel to the horizon and be responsible for ensuring that all contacts in their sector follow the below protocols:

(A) In searching the assigned sector, the marine observer shall always start at the forward part of the sector and search aft (toward the back).

(B) To search and scan, the marine observer shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon.

(C) The marine observer shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars.

(D) The marine observer shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view.

(E) At the end of the sector search, the glasses would be lowered to allow the eyes to rest for a few seconds, and then the marine observer shall search back across the sector with the naked eye.

(vi) After sunset and prior to sunrise, marine observers shall employ Night Lookout Techniques in accordance with the Lookout Training Handbook.

(vii) At night, marine observers shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, marine observers shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision.

(viii) Marine observers shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Test Director or the Test Director’s designee.

(3) Operating Procedures:

(i) The Test Director or the Test Director’s designee shall maintain the logs and records documenting RDT&E activities should they be required for event reconstruction purposes. Logs and records will be kept for a period of 30 days following completion of a RDT&E mission activity.

(ii) A Record of Environmental Consideration shall be included in the Test Plan prior to the test event to further disseminate the personnel testing requirement and general marine mammal mitigation measures.

(iii) Test Directors shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the vessel.

(iv) All personnel engaged in passive acoustic sonar operation (including aircraft or surface vessels) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the Test Director or the Test Director’s designee for dissemination and appropriate action.

(v) During HFAS/MFAS mission activities, personnel shall utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(vi) Navy aircraft participating in RDT&E activities at sea shall conduct and maintain surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(vii) Marine mammal detections shall be immediately reported to the Test Director or the Test Director’s designee for further dissemination to vessels in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the vessel will likely result in a closing of the distance to the detected marine mammal.

(viii) Safety Zones—When marine mammals are detected by any means
National Marine Fisheries Service/NOAA, Commerce § 218.183

(a) Aircraft, shipboard marine observer, or acoustically) the Navy will ensure that HFAS/MFAS transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1,000 yards (914 m) of the sonar source (the bow).

(A) Vessels shall continue to limit maximum HFAS/MFAS transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m) beyond the location of the last detection.

(B) The Navy shall ensure that HFAS/MFAS transmissions will be limited to at least 10 dB below the equipment’s normal operating level if any detected animals are within 500 yards (457 m) of the sonar source. Vessels will continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m) beyond the location of the last detection.

(C) The Navy shall ensure that HFAS/MFAS transmissions are ceased if any detected marine mammals are within 200 yards (183 m) of the sonar source. HFAS/MFAS will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m) beyond the location of the last detection.

(Mitigation Measures for Ordnance and Projectile Firing:

(1) No detonations over 34 kg (75 lb) shall be conducted in territorial waters, except the line charge detonation, which is a 107 m (350 ft).

(2) The number of live mine detonations shall be minimized and the smallest amount of explosive material possible to achieve test objectives will be used.

(3) Activities shall be coordinated through the Environmental Help Desk to allow potential concentrations of detonations in a particular area over a short time to be identified and avoided.

(4) Visual surveys and aerial surveys of the clearance zones specified in §218.183(b)(6)(i) through (iii) shall be conducted in accordance with §218.184(c) for all test operations that involve detonation events with large net explosive weight (NEW). Any protected species sighted will be reported.

(E) If the need for power-down should arise as detailed in “Safety Zones” above, Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 sonar was being operated).

(ix) Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.

(x) Sonar levels (generally)—Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet RDT&E objectives.

Mitigation Measures for Surface Operations:

(1) While underway, vessels shall have at least one to three marine species awareness-trained observers (based on vessel length) with binoculars. As part of their regular duties, marine observers shall watch for and
§ 218.184 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§ 216.106 and 218.186 for activities described in § 218.180(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.180(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified or authorized in § 218.181(b).

(c) The Holder of the Letter of Authorization must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the NSWC PCD Study Area Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.

(1) Visual Surveys—Vessel, Aerial and Shore-based: The Holder of this Authorization shall visually survey a minimum of 2 HFAS/MFAS activities and 2 explosive events per year. If the 53C sonar was being operated, such activity must be monitored as one of the HFAS/MFAS activities. For explosive events, one of the monitoring measures shall be focused on a multiple detonation event.

(i) In accordance with all safety considerations, observations shall be maximized by working from all available platforms: Vessels, aircraft, land and/or in combination.

(ii) Vessel and aerial surveys shall be conducted two days before, during, and one to five days after the NSWC PCD mission activities on commercial vessels and aircraft.

(iii) Visual surveys shall be conducted during Navy mission activities that have been identified to provide the highest likelihood of success.

(iv) The visual survey team shall collect the same data that are collected by Navy marine observers, including but not limited to:

(A) Location of sighting;
(B) Species (or to the lowest taxa possible);
(C) Number of individuals;
(D) Number of calves present, if any;
(E) Duration of sighting;
(F) Behavior of marine animals sighted;
(G) Direction of travel;
(H) Environmental information associated with sighting event including Beaufort sea state, wave height, swell direction, wind direction, wind speed, glare, percentage of glare, percentage of cloud cover; and
(I) When in relation to Navy exercises did the sighting occur (before, during or after detonations/exercise).

(v) Animal sightings and relative distance from a particular activity site shall be used post-survey to estimate the number of marine mammals exposed to different received levels (energy and pressure of discharge based on distance to the source, bathymetry, oceanographic conditions and the type and size of detonation) and their corresponding behavior.

(vi) Any digital photographs that are taken of marine mammals during visual surveys shall be provided to local researchers for their regional research.

(vii) The Holder of the Letter of Authorization shall, when conducting RDT&E activities in the NSWC PCD Study Area, implement the following monitoring methods:

(A) Aerial surveys:
(1) During NSWC PCD sonar related mission activities, an aerial survey team shall fly transects relative to a Navy surface vessel that is conducting the mission activities.
(2) The aerial survey team shall collect both visual sightings and behavioral observations of marine animals.
(3) These transect data shall provide an opportunity to collect data of marine mammals at different received levels and their behavioral responses and movement relative to the Navy vessel’s position.
(4) Aerial surveys shall include time with and without test events in order to compare density, geographical distribution and behavioral observations.
(5) Behavioral observation methods shall involve three professionally trained marine mammal observers and a pilot. Two observers shall observe behaviors, one with hand-held binoculars and one with the naked eye.

(6) Detailed behavioral focal observations of cetaceans shall be recorded including the following variables where possible: species (or to the lowest taxa possible), group size and composition (number of calves, etc.), latitude/longitude, surface and dive durations and times, number and spacing/times of respirations, conspicuous behaviors (e.g., breach, tail slap, etc.), behavioral states, orientation and changes in orientation, estimated group travel speed, inter-individual distances, defecation, social interactions, aircraft speed, aircraft altitude, distance to focal group (using the plane’s radar) and any unusual behaviors or apparent reactions.

(B) Vessel Surveys:
(1) Vessel surveys shall be designed to maximize detections of any target species near mission activity event for focal follows.
(2) Systematic transects shall be used to locate marine mammals. In the course of conducting these surveys, the vessel(s) shall deviate from transect protocol to collect behavioral data particularly if a Navy vessel is visible on the horizon or closer.
(3) While the Navy vessels are within view, attempts shall be made to position the dedicated survey vessel in the best possible way to obtain focal follow data in the presence of the Navy mission activities. If Navy vessels are not in view, then the vessel shall begin a systematic line transect surveys within the area to assess marine mammal occurrence and observe behavior.
(4) Post-analysis shall focus on how the location, speed and vector of the survey vessel and the location and direction of the sonar source (e.g., Navy surface vessel) relates to the animal.
(5) Any other vessels or aircraft observed in the area shall also be documented.

(C) Shore-based Surveys:
(1) Shore-based monitors shall observe explosive events that are planned in advance to occur adjacent to nearshore areas where there are elevated coastal structures (e.g. lookout tower at Eglin Air Force Base) or topography, and shall use binoculars or theodolite to augment other visual survey methods.
§ 218.184 50 CFR Ch. II (10–1–10 Edition)

(2) Shore-based surveys of the detonation area and nearby beaches shall be conducted for stranded marine animals following nearshore events. If any distressed, injured or stranded animals are observed, an assessment of the animal’s condition (alive, injured, dead, or degree of decomposition) shall be reported immediately to the Navy for appropriate action and the information shall be transmitted immediately to NMFS.

(3) If animals are observed prior to or during an explosion, a focal follow of that individual or group shall be conducted to record behavioral responses.

(2) Passive Acoustic Monitoring (PAM): The Holder of this Authorization shall visually survey a minimum of 2 HFAS/MFAS activities and 2 explosive events per year. If the 53C sonar was being operated, such activity must be monitored as one of the HFAS/MFAS activities. For explosive events, one of the monitoring measures shall be focused on a multiple detonation event.

(i) The Navy shall use towed or over-the-side passive acoustic monitoring device/hydrophone array when feasible in the NSWC PCD Study Area for PAM.

(ii) The array shall be deployed for each of the days the ship is at sea.

(iii) The array shall be able to detect low frequency vocalizations (less than 1,000 Hz) for baleen whales and relatively high frequency vocalizations (up to 30 kHz) for odontocetes.

(iv) These buoys shall be left in place for a long enough duration (e.g., months) that data are collected before, during and outside of mission activities.

(v) Acoustic data collected from the buoys shall be used in order to detect, locate, and potentially track calling whales/dolphins.

(3) Marine Mammal Observers (MMOs) on Navy vessels:

(i) Civilian MMOs aboard Navy vessels shall be used to research the effectiveness of Navy marine observers, as well as for data collection during other monitoring surveys.

(ii) MMOs shall be field-experienced observers that are Navy biologists or contracted observers.

(iii) MMOs shall be placed alongside existing Navy marine observers during a sub-set of RDT&E events.

(iv) MMOs shall inform the Navy marine observer of any marine mammal sighting so that appropriate action may be taken by the chain of command. For less biased data, it is recommended that MMOs schedule their daily observations to duplicate the marine observers’ schedule.

(v) MMOs shall monitor for marine mammals from the same height above water as the Navy marine observers (e.g., bridge wings) and as all visual survey teams, and they shall collect the same data collected by Navy marine observers, including but not limited to:

(A) Location of sighting;

(B) Species;

(C) Number of individuals;

(D) Number of calves present, if any;

(E) Duration of sighting;

(F) Behavior of marine animals sighted;

(G) Direction of travel;

(H) Environmental information associated with sighting event including Beaufort sea state, wave height, swell direction, wind direction, wind speed, glare, percentage of glare, percentage of cloud cover; and

(I) When in relation to Navy RDT&E activities did the sighting occur (before, during or after detonations/exercise).

(d) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy’s RDT&E activities utilizing underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

(e) If there is clear evidence that a marine mammal is injured or killed as a result of the proposed Navy RDT&E activities (e.g., instances in which it is clear that munitions explosions caused
the injury or death) the Naval activities shall be immediately suspended and the situation immediately reported by personnel involved in the activity to the Test Director or the Test Director’s designee, who will follow Navy procedures for reporting the incident to NMFS through the Navy’s chain-of-command.

(f) Annual NSWC PCD Report—The Navy shall submit a report annually on October 1 describing the RDT&E activities conducted and implementation and results of the NSWC PCD Monitoring Plan (through August 1 of the same year) and RDT&E activities. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the NSWC PCD Monitoring Plan shall, at a minimum, provide the same marine mammal observation data listed below.

(1) RDT&E Information:
   (i) Date and time test began and ended;
   (ii) Location;
   (iii) Number and types of active sources used in the test;
   (iv) Number and types of vessels, aircraft, etc., participated in the test;
   (v) Number and types of underwater detonations;
   (vi) Total hours of observation effort (including observation time when sonar was not operating).
   (vii) Total hours of all active sonar source operation;
   (viii) Total hours of each active sonar source; and
   (ix) Wave height (high, low, and average during the test) in feet.

(2) Individual Marine Mammal Sighting Info:
   (i) Location of sighting;
   (ii) Species;
   (iii) Number of individuals;
   (iv) Calves observed (y/n);
   (v) Initial detection sensor;
   (vi) Indication of specific type of platform observation made from;
   (vii) Length of time observers maintained visual contact with marine mammal(s);
   (viii) Wave height (in feet);
   (ix) Visibility;
   (x) Sonar source in use (y/n);
   (xi) Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from sonar source above;
   (xii) Mitigation implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was;
   (xiii) If the active MFAS in use is hullmounted, true bearing of animal from ship, true direction of ship’s travel, and estimation of animal’s motion relative to ship (opening, closing, parallel);
   (xiv) Observed behavior—Marine observers shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.); and
   (xv) An evaluation of the effectiveness of mitigation measures designed to avoid exposing marine mammals to HFAS/MFAS. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(g) NSWC PCD Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during sonar operations and underwater explosive events for which individual reports are required in §218.184 (d-f). This report will be submitted at the end of the fourth year of the rule (December 2013), covering activities that have occurred through July 1, 2013.

(h) The Navy shall respond to NMFS comments and requests for additional information or clarification on the NSWC PCD Comprehensive Report and the Annual NSWC PCD Report if submitted within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS’ comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(i) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy’s Monitoring Plans and monitoring results and make individual recommendations.
§ 218.185 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by §216.103 of this chapter) conducting the activity identified in §218.180(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.186 or a renewal under §218.187.

§ 218.186 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §218.187.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

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

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.187 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §216.106 of this chapter and §218.186 for the activity identified in §218.180(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §218.185 shall be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §218.184(b); and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under §218.183 and the Letter of Authorization issued under §§216.106 of this chapter and 218.186, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 of this chapter and 218.187 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

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

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy’s monitoring from the previous year (either from NSWC PCD Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§218.184(i)).

(3) Compiled results of Navy-funded research and development (R&D) studies.
(4) Results from specific stranding investigations (either from the NSWC PCD Study Area or other locations).

(5) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 218.188 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §216.106 of this chapter and §218.186 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.187, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §218.181(b), a Letter of Authorization issued pursuant to §216.106 of this chapter and §218.186 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the Federal Register within 30 days subsequent to the action.

PARTS 219–220 [RESERVED]

PART 221—PRESCRIPTIONS IN FERC HYDROPOWER LICENSES

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AUTHORITY: 16 U.S.C. 797(e), 811, 823d.

SOURCE: 70 FR 69840, Nov. 17, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 221.1 What is the purpose of this part, and to what license proceedings does it apply?

(a) Hearing process. (1) The regulations in subparts A and B of this part contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to mandatory prescriptions that the Department of Commerce, acting through the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS) may develop for inclusion in a hydropower license issued by the Federal Energy Regulatory Commission (FERC) under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 et seq. The authority to develop these prescriptions is granted by FPA section 18, 16 U.S.C. 811, which authorizes the Secretary of Commerce to prescribe fishways.

(2) The hearing process under this part does not apply to recommendations that the Department of Commerce may submit to FERC under FPA section 10(a) or (j), 16 U.S.C. 803(a), (j).

(3) The FPA also grants the Department of Agriculture and Interior the authority to develop mandatory conditions, and the Department of the Interior the authority to develop mandatory prescriptions, for inclusion in a hydropower license. Where the Department of Commerce and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments agree to consolidate the hearings under §221.23:

(i) A hearing conducted under this part will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this part will be conducted by one of the other Departments, pursuant to 7 CFR 1.601 et seq. or 43 CFR 45.1 et seq., as applicable.

(b) Alternatives process. The regulations in subparts A and C of this part contain rules of procedure applicable to the submission and consideration of alternative prescriptions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a fishway prescribed by NMFS under section 18.

(c) Reservation of authority. Where NMFS notifies FERC that it is reserving its authority to develop one or more prescriptions during the term of the license, the hearing and alternatives processes under this part for such prescriptions will be available if and when NMFS exercises its reserved authority. NMFS will consult with FERC and notify the license parties regarding how to initiate the hearing process and alternatives process at that time.
(d) Applicability. (1) This part applies to any hydropower license proceeding for which the license has not been issued as of November 17, 2005 and for which one or more preliminary prescriptions or prescriptions have been or are filed with FERC.

(2) If NMFS has already filed one or more preliminary prescriptions or prescriptions as of November 17, 2005, the special applicability provisions of §221.4 also apply.

§ 221.2 What terms are used in this part?

As used in this part:

ALJ means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under subpart B of this part.

Alternative means a prescription that a license party other than NMFS or another Department develops as an alternative to a preliminary prescription from NMFS or another Department, under FPA sec. 33, 16 U.S.C. 823d.

Condition means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

Day means a calendar day.

Department means the Department of Agriculture, Department of Commerce, or Department of the Interior.

Department of Commerce’s designated ALJ office means the ALJ office that is assigned to preside over the hearing process for NMFS.

Discovery means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

Ex parte communication means an oral or written communication to the ALJ that is made without providing all parties reasonable notice and an opportunity to participate.

FERC means the Federal Energy Regulatory Commission.


Intervention means a process by which a person who did not request a hearing under §221.21 can participate as a party to the hearing under §221.22.

License proceeding means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR parts 4 or 5.

Material fact means a fact that, if proved, may affect a Department’s decision whether to affirm, modify, or withdraw any condition or prescription.

NEPA document means an environmental assessment or environmental impact statement issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.

NMFS means the National Marine Fisheries Service, a constituent agency of the Department of Commerce, acting by and through the Assistant Administrator for Fisheries or one of NMFS’s six Regional Administrators, as appropriate.


Party means, with respect to NMFS’s hearing process under subpart B of this part:

(1) A license party that has filed a timely request for a hearing under:
   (i) Section 221.21; or
   (ii) Either 7 CFR 1.621 or 43 CFR 45.21, with respect to a hearing process consolidated under §221.23;

(2) A license party that has filed a timely notice of intervention and response under:
   (i) Section 221.22; or
   (ii) Either 7 CFR 1.622 or 43 CFR 45.22, with respect to a hearing process consolidated under §221.23;

(3) NMFS, if it has filed a preliminary prescription; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under §221.23.

Person means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any federal, state, tribal, county, district, territorial, or local government or agency.
Preliminary condition or prescription means a preliminary condition or prescription filed by a Department with FERC under 18 CFR 4.34(b), 4.34(i), or 5.22(a) for potential inclusion in a hydropower license.

Prescription means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

Representative means a person who:
(1) Is authorized by a party to represent the party in a hearing process under this subpart; and
(2) Has filed an appearance under §221.10.

Secretary means the Secretary of Commerce or his or her designee.

Senior Department employee has the same meaning as the term “senior employee” in 5 CFR 2637.211(a).

You refers to a party other than a Department.

§221.3 How are time periods computed?

(a) General. Time periods are computed as follows:
(1) The day of the act or event from which the period begins to run is not included.
(2) The last day of the period is included.
   (i) If that day is a Saturday, Sunday, or federal holiday, the period is extended to the next business day.
   (ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.
(3) If the period is less than 7 days, any Saturday, Sunday, or federal holiday that falls within the period is not included.

(b) Extensions of time. (1) No extension of time can be granted to file a request for a hearing under §221.21, a notice of intervention and response under §221.22, an answer under §221.24, or any document under subpart C of this part.
(2) An extension of time to file any other document under subpart B of this part may be granted only upon a showing of good cause.
   (i) To request an extension of time, a party must file a motion under §221.35 stating how much additional time is needed and the reasons for the request.
   (ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.
   (iii) The ALJ may grant the extension only if:
(A) It would not unduly prejudice other parties; and
(B) It would not delay the decision under §221.60.

§221.4 What deadlines apply to pending applications?

(a) Applicability. (1) This section applies to any case in which NMFS has filed a preliminary prescription or prescription with FERC before November 17, 2005 and FERC has not issued a license as of that date.
(2) The deadlines in this section will apply in such a case, in lieu of any inconsistent deadline in other sections of this part.

(b) Hearing process. (1) Any request for a hearing under §221.21 must be filed with the Office of Habitat Conservation by December 19, 2005.
(2) Any notice of intervention and response under §221.22 must be filed by January 3, 2006.
(3) Upon receipt of a hearing request under paragraph (b)(1) of this section, NMFS must do the following by March 17, 2006:
   (i) Comply with the requirements of §221.23;
   (ii) Determine jointly with any other Department that has received a hearing request, after consultation with FERC, a time frame for the hearing process and a corresponding deadline for NMFS to file an answer under §221.24; and
   (iii) Issue a notice to each party specifying the time frame for the hearing process, including the deadline for NMFS to file an answer.

(c) Alternatives process. (1) Any alternative under §221.71 must be filed with the Office of Habitat Conservation by December 19, 2005.
(2) Upon receipt of an alternative under paragraph (c)(1) of this section, if no hearing request is filed under paragraph (b)(1) of this section, NMFS must do the following by February 15, 2006:
   (i) Determine jointly with any other Department that has received a related alternative, after consultation with FERC, a time frame for the filing of a
modified prescription under §221.72(b); and
(ii) Issue a notice to the license party that has submitted the alternative, specifying the time frame for the filing of a modified prescription.
(3) Upon receipt of an alternative under paragraph (c)(1) of this section, if a hearing request is also filed under paragraph (b)(1) of this section, NMFS will follow the provisions of paragraph (b)(3) of this section.

Subpart B—Hearing Process

§221.10 Who may represent a party, and what requirements apply to a representative?

(a) Individuals. A party who is an individual may either represent himself or herself in the hearing process under this subpart or authorize an attorney to represent him or her.
(b) Organizations. A party that is an organization or other entity may authorize one of the following to represent it:
   (1) An attorney;
   (2) A partner, if the entity is a partnership;
   (3) An officer or full-time employee, if the entity is a corporation, association, or unincorporated organization;
   (4) A receiver, administrator, executor, or similar fiduciary, if the entity is a receivership, trust, or estate; or
   (5) An elected or appointed official or an employee, if the entity is a federal, state, tribal, county, district, territorial, or local government or component.
(c) Appearance. A representative must file a notice of appearance. The notice must:
   (1) Meet the form and content requirements for documents under §221.11;
   (2) Include the name and address of the person on whose behalf the appearance is made;
   (3) If the representative is an attorney, include a statement that he or she is a member in good standing of the bar of the highest court of a state, the District of Columbia, or any territory or commonwealth of the United States (identifying which one); and
   (4) If the representative is not an attorney, include a statement explaining his or her authority to represent the entity.
(d) Disqualification. The ALJ may disqualify any representative for misconduct or other good cause.

DOCUMENT FILING AND SERVICE

§221.11 What are the form and content requirements for documents under this subpart?

(a) Form. Each document filed in a case under this subpart must:
   (1) Measure 8½ by 11 inches, except that a table, chart, diagram, or other attachment may be larger if folded to 8½ by 11 inches and attached to the document;
   (2) Be printed on just one side of the page;
   (3) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;
   (4) Use 10 point font size or larger;
   (5) Be double-spaced except for footnotes and long quotations, which may be single-spaced;
   (6) Have margins of at least 1 inch; and
   (7) Be bound on the left side, if bound.
(b) Caption. Each document filed under this subpart must begin with a caption that sets forth:
   (1) The name of the case under this subpart and the docket number, if one has been assigned;
   (2) The name and docket number of the license proceeding to which the case under this subpart relates; and
   (3) A descriptive title for the document, indicating the party for whom it is filed and the nature of the document.
(c) Signature. The original of each document filed under this subpart must be signed by the representative of the person for whom the document is filed. The signature constitutes a certification by the representative that he or she has read the document; that to the best of his or her knowledge, information, and belief, the statements made in the document are true; and that the document is not being filed for the purpose of causing delay.
(d) Contact information. Below the representative’s signature, the document must provide the representative’s
§ 221.12 Where and how must documents be filed?

(a) Place of filing. Any documents relating to a case under this subpart must be filed with the appropriate office, as follows:

(1) Before NMFS refers a case for docketing under §221.25, any documents must be filed with the Office of Habitat Conservation. The Office of Habitat Conservation’s address, telephone number, and facsimile number are set forth in §221.2.

(2) NMFS will notify the parties of the date on which it refers a case for docketing under §221.25. After that date, any documents must be filed with:

(i) The Department of Commerce’s designated ALJ office. The name, address, telephone number, and facsimile number of the Department of Commerce’s designated ALJ office will be provided in the referral notice from NMFS; or

(ii) The hearings component of or used by another Department, if that Department will be conducting the hearing under §221.25. The name, address, telephone number, and facsimile number of the appropriate hearings component will be provided in the referral notice from NMFS.

(b) Method of filing. (1) A document must be filed with the appropriate office under paragraph (a) of this section using one of the following methods:

(i) By hand delivery of the original document;

(ii) By sending the original document by express mail or courier service for delivery on the next business day; or

(iii) By sending the document by facsimile if:

(A) The document is 20 pages or less, including all attachments;

(B) The sending facsimile machine confirms that the transmission was successful; and

(C) The original of the document is sent by regular mail on the same day.

(2) Parties are encouraged, but not required, to supplement any original document by providing the appropriate office with an electronic copy of the document on compact disc.

(c) Date of filing. A document under this subpart is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(d) Nonconforming documents. If any document submitted for filing under this subpart does not comply with the requirements of this subpart or any applicable order, it may be rejected. If the defect is minor, the party may be notified of the defect and given a chance to correct it.

§ 221.13 What are the requirements for service of documents?

(a) Filed documents. Any document related to a case under this subpart must be served at the same time the document is delivered or sent for filing. Copies must be served as follows:

(1) A complete copy of any request for a hearing under §221.21 must be served on FERC and each license party, using one of the methods of service in paragraph (c) of this section.

(2) A complete copy of any notice of intervention and response under §221.22 must be:

(i) Served on FERC, the license applicant, any person who has filed a request for hearing under §221.21, and NMFS, using one of the methods of service in paragraph (c) of this section; and

(ii) Sent to any other license party using regular mail.

(3) A complete copy of any other filed document must be served on each party, using one of the methods of service in paragraph (c) of this section.

(b) Documents issued by the ALJ. A complete copy of any notice, order, decision, or other document issued by the ALJ under this subpart must be served on each party, using one of the methods of service in paragraph (c) of this section.

(c) Method of service. Service must be accomplished by one of the following methods:

(1) By hand delivery of the document;

(2) By sending the document by express mail or courier service for delivery on the next business day;
§ 221.21 How do I request a hearing?

(a) General. To request a hearing on disputed issues of material fact with respect to any prescription filed by NMFS, you must:

(1) Be a license party; and

(2) File with the Office of Habitat Conservation a written request for a hearing within 30 days after the deadline for the Departments to file preliminary prescriptions with FERC.

(b) Content. Your hearing request must contain:

(1) A numbered list of the factual issues that you allege are in dispute, each stated in a single, concise sentence; and

(2) The following information with respect to each issue:

(i) The specific factual statements made or relied upon by [the bureau] under § 221.20(a) that you dispute;

(ii) The basis for your opinion that those factual statements are unfounded or erroneous;

(iii) The basis for your opinion that any factual dispute is material; and

(iv) With respect to any scientific studies, literature, and other documented information supporting your opinions under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, specific citations to the information relied upon. If any such document is not already in the license proceeding record, you must provide a copy with the request.

(c) Witnesses and exhibits. Your hearing request must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) Page limits. (1) For each disputed factual issue, the information provided under paragraph (b)(2) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 221.20 What supporting information must NMFS provide with its preliminary prescriptions?

(a) Supporting information. (1) When NMFS files a preliminary prescription with FERC, it must include a rationale for the prescription and an index to NMFS’s administrative record that identifies all documents relied upon.

(2) If any of the documents relied upon are not already in the license proceeding record, NMFS must:

(i) File them with FERC at the time it files the preliminary prescription; and

(ii) Provide copies to the license applicant.

(b) Service. NMFS will serve a copy of its preliminary prescription on each license party.
§ 221.22 How do I file a notice of intervention and response?

(a) General.

(1) To intervene as a party to the hearing process, you must:

(i) Be a license party; and

(ii) File with the Office of Habitat Conservation a notice of intervention and a written response to any request for a hearing within 15 days after the date of service of the request for a hearing.

(2) A license party filing a notice of intervention and response may not raise issues of material fact beyond those raised in the hearing request.

(b) Content.

In your notice of intervention and response you must explain your position with respect to the issues of material fact raised in the hearing request under § 221.21(b).

(1) If you agree with the information provided by NMFS under § 221.20(a) or by the requester under § 221.21(b), your response may refer to NMFS’s explanation or the requester’s hearing request for support.

(2) If you wish to rely on additional information or analysis, your response must provide the same level of detail with respect to the additional information or analysis as required under § 221.21(b).

(c) Witnesses and exhibits.

Your response and notice must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony; and

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) Page limits.

(1) For each disputed factual issue, the information provided under paragraph (b) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 221.23 When will hearing requests be consolidated?

(a) Initial Department coordination.

If NMFS has received a copy of a hearing request, it must contact the other Departments within 10 days after the deadline for filing hearing requests under § 221.21 and determine:

(1) Whether any of the other Departments has also filed a preliminary condition or prescription relating to the license with FERC; and

(2) If so, whether the other Departments have also received a hearing request with respect to the preliminary condition or prescription.

(b) Decision on consolidation.

Within 25 days after the deadline for filing hearing requests under § 221.21, if NMFS has received a hearing request, NMFS must:

(1) Consult with any other Department that has also received a hearing request; and

(2) Decide jointly with the other Department:

(i) Whether to consolidate the cases for hearing under paragraphs (c)(3)(ii) through (c)(3)(iv) of this section; and

(ii) If so, which Department will conduct the hearing on their behalf.

(c) Criteria.

Cases will or may be consolidated as follows:

(1) All hearing requests with respect to any prescriptions from NMFS will be consolidated for hearing.

(2) Any or all of the following may be consolidated for hearing if NMFS determines that there are common issues of material fact or that consolidation is otherwise appropriate:

(i) Two or more hearing requests with respect to prescriptions from NMFS and the Department of the Interior; or

(ii) Two or more hearing requests with respect to any condition from another Department and any prescription from NMFS.

§ 221.24 How will NMFS respond to any hearing requests?

(a) General.

NMFS will determine whether to file an answer to any hearing request under § 221.21.

(b) Content.

If NMFS files an answer:

(1) For each of the numbered factual issues listed under § 221.21(b)(1), the answer must explain NMFS’s position with respect to the issues of material fact raised by the requester, including one or more of the following statements as appropriate:
§ 221.25 What will NMFS do with any hearing requests?

(a) Case referral. Within 50 days after the deadline in §221.21(a), NMFS will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by NMFS, NMFS will refer the case to the Department of Commerce’s designated ALJ office.

(2) If the hearing is to be conducted by another Department, NMFS will refer the case to the hearings component used by that Department.

(b) Content. The case referral will consist of the following:

(1) A copy of any preliminary prescription under §221.20;

(2) The original of any hearing request under §221.21;

(3) The original of any notice of intervention and response under §221.22;

(4) The original of any answer under §221.24; and

(5) An original referral notice under paragraph (c) of this section.

(c) Notice. At the time NMFS refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

(4) The date on which NMFS is referring the case for docketing.

(d) Delivery and service. (1) NMFS must refer the case to the appropriate Department hearings component by one of the methods identified in §221.12(b)(1) through (b)(3).

(2) NMFS must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in §221.13(c)(1) and (c)(2).

§ 221.26 What regulations apply to a case referred for a hearing?

(a) If NMFS refers the case to the Department of Commerce’s designated ALJ office, the regulations in this subpart will continue to apply to the hearing process.
§ 221.30 What will the Department of Commerce’s designated ALJ office do with a case referral?

Within 5 days after issuance of the referral notice under §221.25(c), 7 CFR 1.625(c), or 43 CFR 45.25(c):

(a) The Department of Commerce’s designated ALJ office must:
   (1) Docket the case;
   (2) Assign an ALJ to preside over the hearing process and issue a decision; and
   (3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and
(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under §221.40. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 221.31 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process, consistent with the requirements of §221.60(a), including the powers to:

(a) Administer oaths and affirmations;
(b) Issue subpoenas to the extent authorized by law;
(c) Rule on motions;
(d) Authorize discovery as provided for in this subpart;
(e) Hold hearings and conferences;
(f) Regulate the course of hearings;
(g) Call and question witnesses;
(h) Exclude any person from a hearing or conference for misconduct or other good cause;
(i) Issue a decision consistent with §221.60(b) regarding any disputed issues of material fact relating to any Department’s condition or prescription that has been referred to the ALJ for hearing; and
(j) Take any other action authorized by law.

§ 221.32 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in §221.31, the Department of Commerce’s designated ALJ office shall designate a successor.
(b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 221.33 Under what circumstances may the ALJ be disqualified?

(a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.
(b) At any time before issuance of the ALJ’s decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.

(1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.
(2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.
(c) The ALJ must rule upon the motion, stating the grounds for the ruling.

(1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.
(2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 221.34 What is the law governing ex parte communications?

(a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).
§ 221.40 What are the requirements for prehearing conferences?

(a) Initial prehearing conference. The ALJ will conduct an initial prehearing conference with the parties at the time specified in the docketing notice under §221.30, on or about the 20th day after issuance of the referral notice under §221.25(c).

(1) The initial prehearing conference will be used:
   (i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;
   (ii) To consider the parties’ motions for discovery under §221.41 and to set a deadline for the completion of discovery;
   (iii) To discuss the evidence on which each party intends to rely at the hearing;
   (iv) To set the deadline for submission of written testimony under §221.52; and
   (v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:
   (i) To discuss limiting and grouping witnesses to avoid duplication;
   (ii) To discuss stipulations of fact and of the content and authenticity of documents;
   (iii) To consider requests that the ALJ take official notice of public records or other matters;
   (iv) To discuss the submission of written testimony, briefs, or other documents in electronic form; and
   (v) To consider any other matters that may aid in the disposition of the case.

(b) Other conferences. The ALJ may in his or her discretion direct the parties to attend one or more other prehearing conferences, if consistent with the need to complete the hearing process within 90 days. Any party may by motion request a conference.

(c) Notice. The ALJ must give the parties reasonable notice of the time...
and place of any conference. A conference will ordinarily be held by telephone, unless the ALJ orders otherwise.

(d) **Preparation.** (1) Each party’s representative must be fully prepared for a discussion of all issues properly before the conference, both procedural and substantive. The representative must be authorized to commit the party that he or she represents respecting those issues.

(2) Before the date set for the initial prehearing conference, the parties’ representatives must make a good faith effort:

(i) To meet in person, by telephone, or by other appropriate means; and

(ii) To reach agreement on discovery and the schedule of remaining steps in the hearing process.

(e) **Failure to attend.** Unless the ALJ orders otherwise, a party that fails to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in the conference and to any consequent orders or rulings.

(f) **Scope.** During a conference, the ALJ may dispose of any procedural matters related to the case.

(g) **Order.** Within 2 days after the conclusion of each conference, the ALJ must issue an order that recites any agreements reached at the conference and any rulings made by the ALJ during or as a result of the conference.

§ 221.41 How may parties obtain discovery of information needed for the case?

(a) **General.** By agreement of the parties or with the permission of the ALJ, a party may obtain discovery of information to assist the party in preparing or presenting its case. Available methods of discovery are:

(1) Written interrogatories;

(2) Depositions as provided in paragraph (h) of this section; and

(3) Requests for production of designated documents or tangible things or for entry on designated land for inspection or other purposes.

(b) **Criteria.** Discovery may occur only as agreed to by the parties or as authorized by the ALJ in a written order or during a prehearing conference. The ALJ may authorize discovery only if the party requesting discovery demonstrates:

(1) That the discovery will not unreasonably delay the hearing process;

(2) That the information sought:

(i) Will be admissible at the hearing or appears reasonably calculated to lead to the discovery of admissible evidence;

(ii) Is not already in the license proceeding record or otherwise obtainable by the party;

(iii) Is not cumulative or repetitious; and

(iv) Is not privileged or protected from disclosure by applicable law;

(3) That the scope of the discovery is not unduly burdensome;

(4) That the method to be used is the least burdensome method available;

(5) That any trade secrets or proprietary information can be adequately safeguarded; and

(6) That the standards for discovery under paragraphs (f) through (h) of this section have been met, if applicable.

(c) **Motions.** A party may initiate discovery:

(1) Pursuant to an agreement of the parties; or

(2) By filing a motion that:

(i) Briefly describes the proposed method(s), purpose, and scope of the discovery;

(ii) Explains how the discovery meets the criteria in paragraphs (b)(1) through (b)(6) of this section; and

(iii) Attaches a copy of any proposed discovery request (written interrogatories, notice of deposition, or request for production of designated documents or tangible things or for entry on designated land).

(d) **Timing of motions.** A party must file any discovery motion under paragraph (c)(2) of this section within 7 days after issuance of the referral notice under §221.25(c).

(e) **Objections.** (1) A party must file any objections to a discovery motion or to specific portions of a proposed discovery request within 7 days after service of the motion.

(2) An objection must explain how, in the objecting party’s view, the discovery sought does not meet the criteria in paragraphs (b)(1) through (b)(6) of this section.
Materials prepared for hearing. A party generally may not obtain discovery of documents and tangible things otherwise discoverable under paragraph (b) of this section if they were prepared in anticipation of or for the hearing by or for another party’s representative (including the party’s attorney, expert, or consultant).

(1) If a party wants to discover such materials, it must show:
   (i) That it has substantial need of the materials in preparing its own case; and
   (ii) That the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(2) In ordering discovery of such materials when the required showing has been made, the ALJ must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

Experts. Unless restricted by the ALJ, a party may discover any facts known or opinions held by an expert concerning any relevant matters that are not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at the hearing; or
(2) The expert is relied on by another expert who is expected to be a witness at the hearing, and the party shows:
   (i) That it has a compelling need for the information; and
   (ii) That it cannot practicably obtain the information by other means.

Limitations on depositions. (1) A party may depose a witness only if the party shows that the witness:
   (i) Will be unable to attend the hearing because of age, illness, or other incapacity; or
   (ii) Is unwilling to attend the hearing voluntarily, and the party is unable to compel the witness’s attendance at the hearing by subpoena.

(2) Paragraph (b)(1)(ii) of this section does not apply to any person employed by or under contract with the party seeking the deposition.

(3) A party may depose a senior Department employee only if the party shows:
   (i) That the employee’s testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and
   (ii) That the deposition would not significantly interfere with the employee’s ability to perform his or her government duties.

Completion of discovery. All discovery must be completed within 25 days after the initial prehearing conference, unless the ALJ sets a different deadline.

§ 221.42 When must a party supplement or amend information it has previously provided?

(a) Discovery. A party must promptly supplement or amend any prior response to a discovery request if it learns that the response:
   (1) Was incomplete or incorrect when made; or
   (2) Though complete and correct when made, is now incomplete or incorrect in any material respect.

(b) Witnesses and exhibits. (1) Within 5 days after the date set for completion of discovery, each party must file an updated version of the list of witnesses and exhibits required under §§221.21(c), 221.22(c), or 221.24(c).

(2) If a party wishes to include any new witness or exhibit on its updated list, it must provide an explanation of why it was not feasible for the party to include the witness or exhibit on its list under §§221.21(c), 221.22(c), or 221.24(c).

(c) Failure to disclose. (1) A party that fails to disclose information required under §§221.21(c), 221.22(c), or 221.24(c), or paragraphs (a) or (b) of this section, will not be permitted to introduce as evidence at the hearing testimony from a witness or other information that it failed to disclose.

(2) Paragraph (c)(1) of this section does not apply if the failure to disclose was substantially justified or is harmless.

(3) Before or during the hearing, a party may object to the admission of evidence under paragraph (c)(1) of this section.

(4) The ALJ will consider the following in determining whether to exclude evidence under paragraphs (c)(1) through (c)(3) of this section:
   (i) The prejudice to the objecting party:
§ 221.43 What are the requirements for written interrogatories?

(a) Motion. Except upon agreement of the parties, a party wishing to propound interrogatories must file a motion under §221.41(c).

(b) ALJ order. During or promptly after the initial prehearing conference, the ALJ will issue an order under §221.41(b) with respect to any discovery motion requesting the use of written interrogatories. The order will:

(1) Grant the motion and approve the use of some or all of the proposed interrogatories; or

(2) Deny the motion.

(c) Answers to interrogatories. Except upon agreement of the parties, the party to whom the proposed interrogatories are directed must file its answers to any interrogatories approved by the ALJ within 15 days after issuance of the order under paragraph (b) of this section.

(1) Each approved interrogatory must be answered separately and fully in writing.

(2) The party or its representative must sign the answers to interrogatories under oath or affirmation.

(d) Access to records. A party’s answer to an interrogatory is sufficient when:

(1) The information may be obtained from an examination of records, or from a compilation, abstract, or summary based on such records;

(2) The burden of obtaining the information from the records is substantially the same for all parties;

(3) The answering party specifically identifies the individual records from which the requesting party may obtain the information and where the records are located; and

(4) The answering party provides the requesting party with reasonable opportunity to examine the records and make a copy, compilation, abstract, or summary.

§ 221.44 What are the requirements for depositions?

(a) Motion and notice. Except upon agreement of the parties, a party wishing to take a deposition must file a motion under §221.41(c). Any notice of deposition filed with the motion must state:

(1) The time and place that the deposition is to be taken;

(2) The name and address of the person before whom the deposition is to be taken;

(3) The name and address of the witness whose deposition is to be taken; and

(4) Any documents or materials that the witness is to produce.

(b) ALJ order. During or promptly after the initial prehearing conference, the ALJ will issue an order under §221.41(b) with respect to any discovery motion requesting the taking of a deposition. The order will:

(1) Grant the motion and approve the taking of the deposition, subject to any conditions or restrictions the ALJ may impose; or

(2) Deny the motion.

(c) Arrangements. If the parties agree to or the ALJ approves the taking of the deposition, the party requesting the deposition must make appropriate arrangements for necessary facilities and personnel.

(1) The deposition will be taken at the time and place agreed to by the parties or indicated in the ALJ’s order.

(2) The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(3) Any party that objects to the taking of a deposition because of the disqualification of the person before whom it is to be taken must do so:

(i) Before the deposition begins; or

(ii) As soon as the disqualification becomes known or could have been discovered with reasonable diligence.

(4) A deposition may be taken by telephone conference call, if agreed to by the parties or approved in the ALJ’s order.
(d) **Testimony.** Each witness deposed must be placed under oath or affirmation, and the other parties must be given an opportunity for cross-examination.

(e) **Representation of witness.** The witness being deposed may have counsel or another representative present during the deposition.

(f) **Recording and transcript.** Except as provided in paragraph (g) of this section, the deposition must be stenographically recorded and transcribed at the expense of the party that requested the deposition.

1. Any other party may obtain a copy of the transcript at its own expense.

2. Unless waived by the deponent, the deponent will have 3 days after receiving the transcript to read and sign it.

3. The person before whom the deposition was taken must certify the transcript following receipt of the signed transcript from the deponent or expiration of the 3-day review period, whichever occurs first.

(g) **Video recording.** The testimony at a deposition may be recorded on video-tape, subject to any conditions or restrictions that the parties may agree to or the ALJ may impose, at the expense of the party requesting the recording.

1. The video recording may be in conjunction with an oral examination by telephone conference held under paragraph (c)(3) of this section.

2. After the deposition has been taken, the person recording the deposition must:
   (i) Provide a copy of the videotape to any party that requests it, at the requesting party’s expense; and
   (ii) Attach to the videotape a statement identifying the case and the deponent and certifying the authenticity of the video recording.

(h) **Use of deposition.** A deposition may be used at the hearing as provided in §221.53.

§ 221.46 What sanctions may the ALJ impose for failure to comply with discovery?

(a) Upon motion of a party, the ALJ may impose sanctions under paragraph (b) of this section if any party:

1. Fails to comply with an order approving discovery; or

2. Fails to supplement or amend a response to discovery under §221.42(a).

(b) The ALJ may impose one or more of the following sanctions:

1. Infer that the information, testimony, document, or other evidence withheld would have been adverse to the party;

2. Order that, for the purposes of the hearing, designated facts are established;
§ 221.47 What are the requirements for subpoenas and witness fees?

(a) Request for subpoena. (1) Except as provided in paragraph (a)(2) of this section, any party may file a motion requesting the ALJ to issue a subpoena to the extent authorized by law for the attendance of a person, the giving of testimony, or the production of documents or other relevant evidence during discovery or for the hearing.

(2) A party may subpoena a senior Department employee only if the party shows:
   (i) That the employee’s testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and
   (ii) That the employee’s attendance would not significantly interfere with the ability to perform his or her government duties.

(b) Service. (1) A subpoena may be served by any person who is not a party and is 18 years of age or older.

(2) Service must be made by hand delivering a copy of the subpoena to the person named therein.

(3) The person serving the subpoena must:
   (i) Prepare a certificate of service setting forth:
      (A) The date, time, and manner of service; or
      (B) The reason for any failure of service; and
   (ii) Swear to or affirm the certificate, attach it to a copy of the subpoena, and return it to the party on whose behalf the subpoena was served.

(c) Witness fees. (1) A party who subpoenas a witness who is not a party must pay him or her the same fees and mileage expenses that are paid witnesses in the district courts of the United States.

(2) A witness who is not a party and who attends a deposition or hearing at the request of any party without having been subpoenaed to do so is entitled to the same fees and mileage expenses as if he or she had been subpoenaed. However, this paragraph does not apply to federal employees who are called as witnesses by a Department.

(d) Motion to quash. (1) A person to whom a subpoena is directed may request by motion that the ALJ quash or modify the subpoena.

   (2) The motion must be filed:
      (i) Within 5 days after service of the subpoena; or
      (ii) At or before the time specified in the subpoena for compliance, if that is less than 5 days after service of the subpoena.

(3) The ALJ may quash or modify the subpoena if it:
   (i) Is unreasonable;
   (ii) Requires evidence during discovery that is not discoverable; or
   (iii) Requires evidence during a hearing that is privileged or irrelevant.

(e) Enforcement. For good cause shown, the ALJ may apply to the appropriate United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence as set forth in a subpoena that has been duly issued and served.

§ 221.50 When and where will the hearing be held?

(a) Except as provided in paragraph (b) of this section, the hearing will be held at the time and place set at the initial prehearing conference under § 221.40, generally within 15 days after the date set for completion of discovery.

(b) On motion by a party or on the ALJ’s initiative, the ALJ may change the date, time, or place of the hearing if he or she finds:
   (1) That there is good cause for the change; and
   (2) That the change will not unduly prejudice the parties and witnesses.
§ 221.51 What are the parties’ rights during the hearing?

Consistent with the provisions of this subpart, each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

(a) To present direct and rebuttal evidence;
(b) To make objections, motions, and arguments; and
(c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

§ 221.52 What are the requirements for presenting testimony?

(a) Written direct testimony. Unless otherwise ordered by the ALJ, all direct hearing testimony must be prepared and submitted in written form.
(1) Prepared written testimony must:
   (i) Have line numbers inserted in the left-hand margin of each page;
   (ii) Be authenticated by an affidavit or declaration of the witness;
   (iii) Be filed within 5 days after the date set for completion of discovery, unless the ALJ sets a different deadline; and
   (iv) Be offered as an exhibit during the hearing.
(2) Any witness submitting written testimony must be available for cross-examination at the hearing.
(b) Oral testimony. Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.
(c) Telephonic testimony. The ALJ may by order allow a witness to testify by telephonic conference call.
(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.
(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.
(3) The ALJ may issue a subpoena under §221.47 directing a witness to testify by telephonic conference call.

§ 221.53 How may a party use a deposition in the hearing?

(a) In general. Subject to the provisions of this section, a party may use in the hearing any part or all of a deposition taken under §221.44 against any party who:
   (1) Was present or represented at the taking of the deposition; or
   (2) Had reasonable notice of the taking of the deposition.
(b) Admissibility. (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.
   (2) The ALJ will exclude from evidence any question and response to which an objection:
      (i) Was noted at the taking of the deposition; and
      (ii) Would have been sustained if the witness had been personally present and testifying at a hearing.
(3) If a party offers only part of a deposition in evidence:
   (i) An adverse party may require the party to introduce any other part that ought in fairness to be considered with the part introduced; and
   (ii) Any other party may introduce any other parts.
(c) Videotaped deposition. If the deposition was recorded on videotape and is admitted into evidence, relevant portions will be played during the hearing and transcribed into the record by the reporter.

§ 221.54 What are the requirements for exhibits, official notice, and stipulations?

(a) General. (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.
   (2) Each exhibit offered by a party must be marked for identification.
(3) Any party who seeks to have an exhibit admitted into evidence must provide:
   (i) The original of the exhibit to the reporter, unless the ALJ permits the substitution of a copy; and
   (ii) A copy of the exhibit to the ALJ.
(b) Material not offered. If a document offered as an exhibit contains material not offered as evidence:
   (1) The party offering the exhibit must:
      (i) Designate the matter offered as evidence;
§ 221.55 What evidence is admissible at the hearing?

(a) General. (1) Subject to the provisions of §221.42(b), the ALJ may admit any written, oral, documentary, or demonstrative evidence that is:
   (i) Relevant, reliable, and probative; and
   (ii) Not privileged or unduly repetitious or cumulative.
   (2) The ALJ may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or delay.
   (3) Hearsay evidence is admissible. The ALJ may consider the fact that evidence is hearsay when determining its probative value.
   (4) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the ALJ and the parties in interpreting and applying the provisions of this section.

(b) Objections. Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on every objection must appear in the record.

§ 221.56 What are the requirements for transcription of the hearing?

(a) Transcript and reporter’s fees. The hearing will be transcribed verbatim.
   (1) The Department of Commerce’s designated ALJ office will secure the services of a reporter and pay the reporter’s fees to provide an original transcript to the Department of Commerce’s designated ALJ office on an expedited basis.
   (2) Each party must pay the reporter for any copies of the transcript obtained by that party.

(b) Transcript Corrections. (1) Any party may file a motion proposing corrections to the transcript. The motion must be filed within 5 days after receipt of the transcript, unless the ALJ sets a different deadline.
   (2) Unless a party files a timely motion under paragraph (b)(1) of this section, the transcript will be presumed to be correct and complete, except for obvious typographical errors.
   (3) As soon as practicable after the close of the hearing and after consideration of any motions filed under paragraph (b)(1) of this section, the ALJ will issue an order making any corrections to the transcript that the ALJ finds are warranted.

§ 221.57 What is the standard of proof?

The standard of proof is a preponderance of the evidence.

§ 221.58 When will the hearing record close?

(a) The hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise.
   (b) Evidence may not be added after the hearing record is closed, but the transcript may be corrected under §221.56(b).

§ 221.59 What are the requirements for post-hearing briefs?

(a) General. (1) Each party may file a post-hearing brief within 10 days after the close of the hearing, unless the ALJ sets a different deadline.
§ 221.71 How do I propose an alternative?

(a) General. To propose an alternative, you must:

(2) A party may file a reply brief only if requested by the ALJ. The deadline for filing a reply brief, if any, will be set by the ALJ.

(3) The ALJ may limit the length of the briefs to be filed under this section.

(b) Content. (1) An initial brief must include:

(i) A concise statement of the case;

(ii) A separate section containing proposed findings regarding the issues of material fact, with supporting citations to the hearing record;

(iii) Arguments in support of the party’s position; and

(iv) Any other matter required by the ALJ.

(2) A reply brief, if requested by the ALJ, must be limited to any issues identified by the ALJ.

(c) Form. (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief.

(i) Such an exhibit may be reproduced, within reasonable limits, in an appendix to the brief.

(ii) Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, it must contain:

(i) A table of contents and of points made, with page references; and

(ii) An alphabetical list of citations to legal authority, with page references.

§ 221.60 What are the requirements for the ALJ’s decision?

(a) Timing. The ALJ must issue a decision within the shorter of the following time periods:

(1) 30 days after the close of the hearing under §221.58; or

(2) 90 days after issuance of the referral notice under §221.25(c), 7 CFR 1.625(c), or 43 CFR 45.25(c).

(b) Content. (1) The decision must contain:

(i) Findings of fact on all disputed issues of material fact;

(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and

(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be adopted or rejected.

(c) Service. Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing; and

(2) Forward a copy of the decision to FERC, along with the complete hearing record, for inclusion in the license proceeding record.

(d) Finality. The ALJ’s decision under this section will be final, with respect to the disputed issues of material fact, for NMFS and any other Department involved in the hearing. To the extent the ALJ’s decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825(b).
§ 221.72 What will NMFS do with a proposed alternative?

If any license party proposes an alternative to a preliminary prescription under §221.71(a)(1), NMFS must do the following within 60 days after the deadline for filing comments to FERC’s NEPA document under 18 CFR 5.25(c):

(a) Analyze the alternative under §221.73; and

(b) File with FERC:

(1) Any prescription that NMFS adopts as its modified prescription; and

(2) Its analysis of the modified prescription and any proposed alternatives under §221.73(c).

§ 221.73 How will NMFS analyze a proposed alternative and formulate its modified prescription?

(a) In deciding whether to adopt a proposed alternative, NMFS must consider evidence and supporting material provided by any license party or otherwise available to NMFS including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on NMFS’s preliminary prescription;

(3) Any ALJ decision on disputed issues of material fact issued under §221.60 with respect to the preliminary prescription;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party’s proposal under §221.71.

(b) NMFS must adopt a proposed alternative if NMFS determines, based on substantial evidence provided by any license party or otherwise available to NMFS, that the alternative will be no less protective than NMFS’s preliminary prescription and will, as compared to NMFS’s preliminary prescription:

(1) Cost significantly less to implement; or

(2) Result in improved operation of the project works for electricity production.

(c) When NMFS files with FERC the prescription that NMFS adopts as its modified prescription under §§221.72(b), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted prescription; and

(ii) If NMFS is not adopting any alternative, its reasons for not doing so; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(d) The written statement under paragraph (c)(1) of this section must demonstrate that NMFS gave equal consideration to the effects of the prescription adopted and any alternative prescription not adopted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;
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(3) Navigation;
(4) Water supply;
(5) Air quality; and
(6) Preservation of other aspects of environmental quality.

§ 221.74 Has OMB approved the information collection provisions of this subpart?

Yes. This rule contains provisions that would collect information from the public. It therefore requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. (PRA). According to the PRA, a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number that indicates OMB approval. OMB has reviewed the information collection in this rule and approved it under OMB control number 1094–0001.

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

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SOURCE: 64 FR 14054, Mar. 23, 1999, unless otherwise noted.

Subpart A—Introduction and General Provisions
§ 222.101 Purpose and scope of regulations.

(a) The regulations of parts 222, 223, and 224 of this chapter implement the Endangered Species Act (Act), and govern the taking, possession, transportation, sale, purchase, barter, exportation, importation of, and other requirements pertaining to wildlife and plants under the jurisdiction of the Secretary of Commerce and determined to be threatened or endangered pursuant to section 4(a) of the Act. These regulations are implemented by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, This part pertains to general provisions and definitions. Specifically, parts 223 and 224 pertain to provisions to threatened species and endangered species, respectively. Part 226 enumerates designated critical habitat for endangered and threatened species. Certain of the endangered and threatened marine species enumerated in §§ 224.102 and 223.102 are included in Appendix I or II to the Convention on International Trade of Endangered Species of Wild Fauna and Flora. The importation, exportation, and re-exportation of such species are subject to additional regulations set forth at 50 CFR part 23, chapter I.
(b) For rules and procedures relating to species determined to be threatened or endangered under the jurisdiction of the Secretary of the Interior, see 50 CFR parts 10 through 17. For rules and procedures relating to the general implementation of the Act jointly by the Departments of the Interior and Commerce and for certain species under the joint jurisdiction of both the Secretaries of the Interior and Commerce, see 50 CFR Chapter IV. Marine mammals listed as endangered or threatened and subject to these regulations may also be subject to additional requirements pursuant to the Marine Mammal Protection Act (for regulations implementing that act, see 50 CFR part 216).

(c) No statute or regulation of any state shall be construed to relieve a person from the restrictions, conditions, and requirements contained in parts 222, 223, and 224 of this chapter. In addition, nothing in parts 222, 223, and 224 of this chapter, including any permit issued pursuant thereto, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any state or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or any other National Marine Fisheries Service enforced statutes or regulations.

§ 222.102 Definitions.

Accelerator funnel means a device used to accelerate the flow of water through a shrimp trawl net.


Adequately covered means, with respect to species listed pursuant to section 4 of the Act, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act for the species covered by the plan and, with respect to unlisted species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act that would otherwise apply if the unlisted species covered by the plan were actually listed. For the Services to cover a species under a conservation plan, it must be listed on the section 10(a)(1)(B) permit.

Alaska Regional Administrator means the Regional Administrator for the Alaska Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Alaska Regional Administrator should be addressed: Alaska Regional Administrator, F/PAK, Alaska Regional Office, National Marine Fisheries Service, NOAA, P.O. Box 21668 Juneau, AK 99802–1668.

Approved turtle excluder device (TED) means a device designed to be installed in a trawl net forward of the cod end for the purpose of excluding sea turtles from the net, as described in 50 CFR 223.207.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his authorized representative. Mail sent to the Assistant Administrator should be addressed: Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910.

Atlantic Area means all waters of the Atlantic Ocean south of 36°33′00.8″ N. lat. (the line of the North Carolina/Virginia border) and adjacent seas, other than waters of the Gulf Area, and all waters shoreward thereof (including ports).

Atlantic Shrimp Fishery—Sea Turtle Conservation Area (Atlantic SFSTCA) means the inshore and offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Georgia and South Carolina from the Georgia-Florida border (defined as the line along 30°42′45.6″ N. lat.) to the North Carolina-South Carolina border (defined as the line extending in a direction of 135°34′55″ from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 078°32′32.6″ W. long.).

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or enforcement officer of the National Marine Fisheries Service.
(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the Coast Guard to enforce the provisions of the Act; or
(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

_Bait shrimper_ means a shrimp trawler that fishes for and retains its shrimp catch alive for the purpose of selling it for use as bait.

_Beam trawl_ means a trawl with a rigid frame surrounding the mouth that is towed from a vessel by means of one or more cables or ropes.

_Certificate of exemption_ means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends or renews any certificate of exemption.

_Chain mat_ means a device designed to be installed in a scallop dredge forward of the sweep, as described in 50 CFR 223.206, for the purpose of excluding sea turtles from the dredge.

_Changed circumstances_ means changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and NMFS and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

_Commercial activity_ means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: Provided, however, that it does not include the exhibition of commodities by museums or similar cultural or historical organizations.

_Conservation plan_ means the plan required by section 10(a)(2)(A) of the Act that an applicant must submit when applying for an incidental take permit. Conservation plans also are known as “habitat conservation plans” or “HCPs.”

_Conserved habitat areas_ means areas explicitly designated for habitat restoration, acquisition, protection, or other conservation purposes under a conservation plan.

_Cooperative Agreement_ means an agreement between a state(s) and the National Marine Fisheries Service, NOAA, Department of Commerce, which establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened pursuant to section 6(c)(1) of the Endangered Species Act.

_Diamonds_, with respect to dredge or dredge gear as defined in this section, means the triangular shaped portions of the ring bag on the “dredge bottom” as defined in 50 CFR 648.2.

_Dredge or dredge gear_, with respect to the fishery operating under the Atlantic Sea Scallop Fishery Management Plan, 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 sea scallops.

_Fishing, or to fish_, means:
(1) The catching, taking, or harvesting of fish or wildlife;
(2) The attempted catching, taking, or harvesting of fish or wildlife;
(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish or wildlife; or
(4) Any operations on any waters in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

_Footrope_ means a weighted rope or cable attached to the lower lip (bottom edge) of the mouth of a trawl net along the forward most webbing.

_Footrope length_ means the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forward-most webbing.

_Foreign commerce_ includes, among other things, any transaction between persons within one foreign country, or between persons in two or more foreign countries, or between a person within the United States and a person in one or more foreign countries, or between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.
Four-seam, straight-wing trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of webbing are parallel over the entire length.

Four-seam, tapered-wing trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of webbing converge toward the rear of the trawl.

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.

Gulf Area means all waters of the Gulf of Mexico west of 81° W. long. (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports).

Gulf Shrimp Fishery-Sea Turtle Conservation Area (Gulf SFSTCA) means the offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Texas and Louisiana from the South Pass of the Mississippi River (west of 89°08.5′ W. long.) to the U.S.-Mexican border.

Habitat restoration activity means an activity that has the sole objective of restoring natural aquatic or riparian habitat conditions or processes.

Harm in the definition of “take” in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.

Headrope means a rope that is attached to the upper lip (top edge) of the mouth of a trawl net along the forward-most webbing.

Headrope length means the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forward-most webbing.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

Inshore means marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Modified pound net leader means a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that: The mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; at any particular point along the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; the vertical lines are equal to or greater than $\frac{5}{16}$ inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a $\frac{5}{16}$ inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.

Northeast Regional Administrator means the Regional Administrator for the Northeast Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northeast Regional Administrator should be addressed: Northeast Regional Administrator, F/NE, Northeast Regional Office, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930-2298.
Northwest Regional Administrator means the Regional Administrator for the Northwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northwest Regional Administrator should be addressed: Northwest Regional Administrator, F/NW, Northwest Regional Office, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

Office of Enforcement means the national fisheries enforcement office of the National Marine Fisheries Service. Mail sent to the Office of Enforcement should be addressed: Office of Enforcement, F/EN, National Marine Fisheries Service, NOAA, 8484 Suite 415, Georgia Ave., Silver Spring, MD 20910.

Office of Protected Resources means the national program office of the endangered species and marine mammal programs of the National Marine Fisheries Service. Mail sent to the Office of Protected Resources should be addressed: Office of Protected Resources, F/PR, National Marine Fisheries Service, NOAA, 1315 East West Highway, Silver Spring, MD 20910.

Offshore means marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Operating conservation program means those conservation management activities which are expressly agreed upon and described in a Conservation Plan or its Implementing Agreement. These activities are to be undertaken for the affected species when implementing an approved Conservation Plan, including measures to respond to changed circumstances.

Permit means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends, or renews any permit.
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(Route 17; approximately 37°14.55′ N. lat., 76°30.40′ W. long.)

Pound Net Regulated Area II means Virginia waters of the Chesapeake Bay outside of Pound Net Regulated Area I defined above, extending to the Maryland-Virginia State line (approximately 37°55′ N. lat., 75°55′ W. long.), the Great Wicomico River downstream of the Jessie Dupont Memorial Highway Bridge (Route 200; approximately 37°50.84′ N. lat., 76°22.09′ W. long.), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37°37.44′ N. lat., 76°25.40′ W. long.), and the Piankatank River downstream of the Route 3 Bridge (approximately 37°30.62′ N. lat., 76°25.19′ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay.

Pre-Act endangered species part means any sperm whale oil, including derivatives and products thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

Properly implemented conservation plan means any conservation plan, implementing agreement, or permit whose commitments and provisions have been or are being fully implemented by the permittee.

Pusher-head trawl (chopsticks) means a trawl that is spread by two poles suspended from the bow of the trawler in an inverted “V” configuration.

Resident species means, for purposes of entering into cooperative agreements with any state pursuant to section 6(c) of the Act, a species that exists in the wild in that state during any part of its life.

Right whale means, as used in §224.103(c), any whale that is a member of the western North Atlantic population of the northern right whale species (Eubalaena glacialis).

Roller trawl means a variety of beam trawl that is used, usually by small vessels, for fishing over uneven or vegetated sea bottoms.

Scrimshaw product means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from any bone or tooth of any marine mammal of the order Cetacea. For purposes of this part, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

Secretary means the Secretary of Commerce or an authorized representative.

Shrimp means any species of marine shrimp (Order Crustacea) found in the Atlantic Area or the Gulf Area, including, but not limited to:

2. White shrimp (Penaeus setiferus).
3. Pink shrimp (Penaeus duorarum).
4. Rock shrimp (Sicyonia brevirostris).
5. Royal red shrimp (Hymenopenaeus robustus).
6. Seabob shrimp (Xiphopenaeus kroyeri).

Shrimp trawler means any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Skimmer trawl means a trawl that is fished along the side of the vessel and is held open by a rigid frame and a lead weight. On its outboard side, the trawl is held open by one side of the frame extending downward and, on its inboard side, by a lead weight attached by cable or rope to the bow of the vessel.

Southeast Regional Administrator means the Regional Administrator for the Southeast Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Southeast Regional Administrator should be addressed: Southeast Regional Administrator, F/SE, Southeast Regional Office, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432.

Southwest Regional Administrator means the Regional Administrator for the Southwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or
their authorized representative. Mail sent to the Southwest Regional Administrator should be addressed: Southwest Regional Administrator, F/SW, Southwest Regional Office, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802-4233.

Stretched mesh size means the distance between the centers of the two opposite knots in the same mesh when pulled taut.

Summer flounder means the species Paralichthys dentatus.

Summer flounder fishery-sea turtle protection area means all offshore waters, bounded on the north by a line along 37° 05′ N. lat. (Cape Charles, VA) and bounded on the south by a line extending in a direction of 135° 34′ 55″ from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33° 51′ 07.9″ N. lat., 078° 32′ 32.6″ W. long. (the North Carolina-South Carolina border).

Summer flounder trawler means any vessel that is equipped with one or more bottom trawl nets and that is capable of, or used for, fishing for flounder or whose on-board or landed catch of flounder is more than 100 lb (45.4 kg).

Sweep, with respect to dredge or dredge gear as defined in this section, means a chain extending, usually in an arc, from one end of the dredge frame to the other to which the ring bag, including the diamonds, is attached. The sweep forms the edge of the opening of the dredge bag.

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

Taper, in reference to the webbing used in trawls, means the angle of a cut used to shape the webbing, expressed as the ratio between the cuts that reduce the width of the webbing by cutting into the panel of webbing through one row of twine (bar cuts) and the cuts that extend the length of the panel of webbing by cutting straight aft through two adjoining rows of twine (point cuts). For example, sequentially cutting through the lengths of twine on opposite sides of a mesh, leaving an uncut edge of twines all lying in the same line, produces a relatively strong taper called “all-bars”; making a sequence of 4-bar cuts followed by 1-point cut produces a more gradual taper called “4 bars to 1 point” or “4b1p”; similarly, making a sequence of 2-bar cuts followed by 1-point cut produces a still more gradual taper called “2b1p”; and making a sequence of cuts straight aft does not reduce the width of the panel and is called a “straight” or “all-points” cut.

Taut means a condition in which there is no slack in the net webbing.

Test net, or try net, means a net pulled for brief periods of time just before, or during, deployment of the primary net(s) in order to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

Tongue means any piece of webbing along the top, center, leading edge of a trawl, whether lying behind or ahead of the headrope, to which a towing bridle can be attached for purposes of pulling the trawl net and/or adjusting the shape of the trawl.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Triple-wing trawl means a trawl with a tongue on the top, center, leading edge of the trawl and an additional tongue along the bottom, center, leading edge of the trawl.

Two-seam trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top and a bottom panel of webbing that are directly attached to each other down the sides of the trawl.

Underway with respect to a vessel, means that the vessel is not at anchor, or made fast to the shore, or aground.

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and NMFS at the time of the conservation plan’s negotiation and development, and that result in a substantial and adverse change in the status of the covered species.
§ 222.103 Federal/state cooperation in the conservation of endangered and threatened species.

(a) Application for and renewal of cooperative agreements. (1) The Assistant Administrator may enter into a Cooperative Agreement with any state that establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened. In order for a state program to be deemed an adequate and active program, the Assistant Administrator must find, and annually reconfirm that the criteria of either sections 6(c)(1) (A) through (E) or sections 6(c)(1)(i) and (ii) of the Act have been satisfied.

(2) Following receipt of an application by a state for a Cooperative Agreement with a copy of a proposed state program, and a determination by the Assistant Administrator that the state program is adequate and active, the Assistant Administrator shall enter into an Agreement with the state.

(3) The Cooperative Agreement, as well as the Assistant Administrator’s finding upon which it is based, must be reconfirmed annually to ensure that it reflects new laws, species lists, rules or regulations, and programs and to demonstrate that it is still adequate and active.

(b) Allocation and availability of funds. (1) The Assistant Administrator shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various states using the following as the basis for the determination:

(i) The international commitments of the United States to protect endangered or threatened species;

(ii) The readiness of a state to proceed with a conservation program consistent with the objectives and purposes of the Act;

(iii) The number of federally listed endangered and threatened species within a state;

(iv) The potential for restoring endangered and threatened species within a state; and

(v) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

(2) Funds allocated to a state are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. Obligation of allocated funds occurs when an award or contract is signed by the Assistant Administrator.

(c) Financial assistance and payments. (1) A state must enter into a Cooperative Agreement before financial assistance is approved by the Assistant Administrator for endangered or threatened species projects. Specifically, the Agreement must contain the actions that are to be taken by the Assistant Administrator and/or by the state, the benefits to listed species expected to be derived from these actions, and the estimated cost of these actions.

(2) Subsequent to such Agreement, the Assistant Administrator may further agree with a state to provide financial assistance in the development and implementation of acceptable
projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an application for Federal assistance and an award or a contract. The availability of Federal funds shall be contingent upon the continued existence of the Cooperative Agreement and compliance with all applicable Federal regulations for grant administration and cost accounting principles.

3(i) The payment of the Federal share of costs incurred when conducting activities included under a contract or award shall not exceed 75 percent of the program costs as stated in the agreement. However, the Federal share may be increased to 90 percent when two or more states having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such states, jointly enter into an agreement with the Assistant Administrator.

(ii) The state share of program costs may be in the form of cash or in-kind contributions, including real property, subject to applicable Federal regulations.

(4) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all necessary or required documents are first submitted to and approved by the Assistant Administrator. Payments shall only be made for expenditures reported and certified by the state agency. Payments shall be made only to the state office or official designated by the state agency and authorized under the laws of the state to receive public funds for the state.

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

§ 222.201 General requirements.

(a) The Assistant Administrator may exempt any pre-Act endangered species part from the prohibitions of sections 9(a)(1)(A), 9(a)(1)(E), or 9(a)(1)(F) of the Act.

(b) No person may export, deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid Certificate of Exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

(c) Any person engaged in activities otherwise prohibited under the Act or regulations shall bear the burden of proving that the exemption or certificate is applicable, was granted, and was valid and in force at the time of the otherwise prohibited activity.

(d) Certificates of Exemption issued under this subpart are no longer available to new applicants. However, the Assistant Administrator may renew or modify existing Certificates of Exemptions as authorized by the provisions set forth in this subpart.

(e) Any person granted a Certificate of Exemption, including a renewal, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including full identification number) of the part sold and must inform the purchaser in writing of the purchaser’s obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser’s report is to be sent.

(f) Any purchaser of pre-Act endangered species parts included in a valid Certificate of Exemption, unless an ultimate user, within 30 days after the receipt of such parts, must submit a written report to the address given in the certificate. The report must specify the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers, weight, and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. The term “ultimate user”, for purposes of this paragraph,
means any person who acquired such endangered species part or product for his or her own consumption or for other personal use (including gifts) and not for resale.

§ 222.202 Certificate renewal.

(a) Any person to whom a Certificate of Exemption has been issued by the National Marine Fisheries Service may apply to the Assistant Administrator for renewal of such certificate. Any person holding a valid Certificate of Exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, may apply to the Secretary for one renewal for a period not to exceed 5 years.

(b) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of paragraph (c) of this section. At least 15 days should be allowed for processing. When an application for a renewal has been received and deemed sufficient, the Assistant Administrator shall issue a Certificate of Renewal to the applicant as soon as practicable.

(c) The following information will be used as the basis for determining whether an application for renewal of a Certificate of Exemption is complete:

(1) Title: Application for Renewal of Certificate of Exemption.

(2) The date of application.

(3) The identity of the applicant, including complete name, original Certificate of Exemption number, current address, and telephone number. If the applicant is a corporation, partnership, or association, set forth the details.

(4) The period of time for which a renewal of the Certificate of Exemption is requested. However, no renewal of Certificate of Exemption, or right claimed thereunder, shall be effective after the close of the 5-year period beginning on the date of the expiration of the previous renewal of the certificate of exemption.

(5)(i) A complete and detailed updated inventory of all pre-Act endangered species parts for which the applicant seeks exemption. Each item on the inventory must be identified by the following information: A unique serial number; the weight of the item to the nearest whole gram; and a detailed description sufficient to permit ready identification of the item. Small lots, not exceeding five pounds (2,270 grams), of scraps or raw material, which may include or consist of one or more whole raw whale teeth, may be identified by a single serial number and total weight. All finished scrimshaw items subsequently made from a given lot of scrap may be identified by the lot serial number plus additional digits to signify the piece number of the individual finished item. Identification numbers will be in the following format: 00-000000-0000. The first two digits will be the last two digits of the appropriate certificate of exemption number; the next six digits, the serial number of the individual piece or lot of scrap or raw material; and the last four digits, where applicable, the piece number of an item made from a lot of scrap or raw material. The serial numbers for each certificate holder’s inventory must begin with 000001, and piece numbers, where applicable, must begin with 0001 for each separate lot.

(ii) Identification numbers may be affixed to inventory items by any means, including, but not limited to, etching the number into the item, attaching a label or tag bearing the number to the item, or sealing the item in a plastic bag, wrapper or other container bearing the number. The number must remain affixed to the item until the item is sold to an ultimate user, as defined in § 222.201(d).

(iii) No renewals will be issued for scrimshaw products in excess of any quantities declared in the original application for a Certificate of Exemption.

(6) A Certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a renewal of my Certificate of Exemption under the Endangered Species Act, as amended, and the Department of Commerce regulations issued thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties under the Act.

(7) Signature of the applicant.
§ 222.204 Administration of certificates.

(a) The Certificate of Exemption covers the business or activity specified in the Certificate of Exemption at the address described therein. No Certificate of Exemption is required to cover a separate warehouse facility used by the certificate holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the Certificate of Exemption served by the warehouse or storage facility.

(b) Certificates of Exemption issued under this subpart are not transferable. However, in the event of the lease, sale, or other transfer of the operations or activity authorized by the Certificate of Exemption, the successor is not required to obtain a new Certificate of Exemption prior to commencing such operations or activity. In such case, the successor will be treated as a purchaser and must comply with the record and reporting requirements set forth in §222.201(d).

(c) The Certificate of Exemption holder must notify the Assistant Administrator, in writing, of any change in address, in trade name of the business, or in activity specified in the certificate. The Assistant Administrator must be notified within 10 days of a change of address, and within 30 days of a change in trade name. The certificate with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended certificate to the person to whom it was issued. A certificate holder who seeks amendment of a certificate may continue all authorized activities while awaiting action by the Assistant Administrator.

(d) A Certificate of Exemption issued under this subpart confers no right or privilege to conduct a business or an activity contrary to state or other law. Similarly, compliance with the provisions of any state or other law affords no immunity under any Federal laws or regulations of any other Federal agency.

(e) Any person authorized to enforce the Act may enter the premises of any Certificate of Exemption holder or of any purchaser during business hours, including places of storage, for the purpose of inspecting or of examining any records or documents and any endangered species parts.

(f) The records pertaining to pre-Act endangered species parts prescribed by this subpart shall be in permanent form and shall be retained at the address shown on the Certificate of Exemption or at the principal address of a purchaser in the manner prescribed by this subpart.

(g)(1) Holders of Certificates of Exemption must maintain records of all pre-Act endangered species parts they receive, sell, transfer, distribute or dispose of otherwise. Purchasers of pre-Act endangered species parts, unless ultimate users, as defined in
§ 222.205 Import and export requirements.

(a) Any fish and wildlife subject to the jurisdiction of the National Marine Fisheries Service and is intended for importation into or exportation from the United States, shall not be imported or exported except at a port(s) designated by the Secretary of the Interior. Shellfish and fishery products that are neither endangered nor threatened species and that are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes are excluded from this requirement. The Secretary of the Interior may permit the importation or exportation at non-designated ports in the interest of the health or safety of the species for other reasons if the Secretary deems it appropriate and consistent with the purpose of facilitating enforcement of the Act and reducing the costs thereof. Importers and exporters are advised to see 50 CFR part 14 for importation and exportation requirements and information.

(b) No pre-Act endangered species part shall be imported into the United States. A Certificate of Exemption issued in accordance with the provisions of this subpart confers no right or privilege to import into the United States any such part.

(c) (1) Any person exporting from the United States any pre-Act endangered species part must possess a valid Certificate of Exemption issued in accordance with the provisions of this subpart. In addition, the exporter must provide to the Assistant Administrator, in writing, not less than 10 days prior to shipment, the following information: The name and address of the foreign consignee, the intended port of exportation, and a complete description of the parts to be exported. No shipment may be made until these requirements are met by the exporter.

(2) The exporter must send a copy of the Certificate of Exemption, and any endorsements thereto, to the District Director of Customs at the port of exportation, which must precede or accompany the shipment in order to permit the appropriate inspection prior to lading. Upon receipt, the District Director may order such inspection, as deemed necessary; the District will clear the merchandise for export, prior to the lading of the merchandise. If they are satisfied that the shipment is proper and complies with the information contained in the certificate and any endorsement thereto. The certificate, and any endorsement, will be forwarded to the Chief of the Office of Enforcement for NMFS.
§ 222.301 General requirements.

(a)(1) The regulations in this subpart provide uniform rules and procedures for application, issuance, renewal, conditions, and general administration of permits issuable pursuant to parts 222, 223, and 224 of this chapter. While this section provides generic rules and procedures applicable to all permits, other sections may provide more specific rules and procedures with respect to certain types of permits. In such cases, the requirements in all applicable sections must be satisfied.

(2) Notwithstanding paragraph (a)(1) of this section, the Assistant Administrator may approve variations from the requirements of parts 222, 223, and 224 of this chapter when the Assistant Administrator finds that an emergency exists and that the proposed variations will not hinder effective administration of those parts and will not be unlawful. Other sections within parts 222, 223, and 224 of this chapter may allow for a waiver or variation of specific requirements for emergency situations, upon certain conditions. In such cases, those conditions must be satisfied in order for the waiver or variation to be lawful.

(b) No person shall take, import, export or engage in any other prohibited activity involving any species of fish or wildlife under the jurisdiction of the Secretary of Commerce that has been determined to be endangered under the Act, or that has been determined to be threatened and for which the prohibitions of section 9(a)(1) of the Act have been applied by regulation, without a valid permit issued pursuant to these regulations. The permit shall entitle the person to whom it is issued to engage in the activity specified in the permit, subject to the limitations of the Act and the regulations in parts 222, 223, and 224 of this chapter, for the period stated on the permit, unless sooner modified, suspended or revoked.

(c) Each person intending to engage in an activity for which a permit is required by parts 222, 223, and 224 of this chapter or by the Act shall, before commencing such activity, obtain a valid permit authorizing such activity. Any person who desires to obtain permit privileges authorized by parts 222, 223, and 224 of this chapter must apply for such permit in accordance with the requirements of these sections. If the information required for each specific, permitted activity is included, one application may be accepted for all permits required, and a single permit may be issued.

(d)(1) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or of an agent of such person) while any animal subject to the permit is in the possession of such person or agent. Specifically, a person or his/her agent must be in possession of a permit during the time of the authorized taking, importation, exportation, or of any other act and during the period of any transit incident to such taking, importation, exportation, or to any other act.

(2) A duplicate copy of the issued permit must be physically attached to the tank, container, package, enclosure, or other means of containment, in which the animal is placed for purposes of storage, transit, supervision, or care.

(e) The authorizations on the face of a permit setting forth specific times, dates, places, methods of taking, numbers and kinds of fish or wildlife, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall
§ 222.302 Procedure for obtaining permits.

(a) Applications must be submitted to the Assistant Administrator, by letter containing all necessary information, attachments, certification, and signature, as specified by the regulations in parts 222, 223, and 224 of this chapter, or by the Act. In no case, other than for emergencies pursuant to §222.301(a)(2), will applications be accepted either orally or by telephone.

(b) Applications must be received by the Assistant Administrator at least 90 calendar days prior to the date on which the applicant desires to have the permit made effective, unless otherwise specified in the regulations or guidelines pertaining to a particular permit. The National Marine Fisheries Service will attempt to process applications deemed sufficient in the shortest possible time, but does not guarantee that the permit will be issued 90 days after notice of receipt of the application is published in the Federal Register.

§ 222.303 Issuance of permits.

(a)(1) No permit may be issued prior to the receipt of a written application unless an emergency pursuant to §222.301(a)(2) exists, and a written variation from the requirements is recorded by the National Marine Fisheries Service.

(2) No representation of an employee or agent of the United States shall be construed as a permit unless it meets the requirements of a permit defined in §222.102.
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(3) Each permit shall bear a serial number. Upon renewal, such a number may be reassigned to the permittee to whom issued so long as the permittee maintains continuity of renewal.

(b) When an application for a permit received by the Assistant Administrator is deemed sufficient, the Assistant Administrator shall, as soon as practicable, publish a notice in the Federal Register. Information received by the Assistant Administrator as a part of the application shall be available to the public as a matter of public record at every stage of the proceeding. An interested party, within 30 days after the date of publication of such notice, may submit to the Assistant Administrator written data, views, or arguments with respect to the taking, importation, or to other action proposed in the application, and may request a hearing in connection with the action to be taken thereon.

(c) If a request for a hearing is made within the 30-day period referred to in paragraph (b) of this section, or if the Assistant Administrator determines that a hearing would otherwise be advisable, the Assistant Administrator may, within 60 days after the date of publication of the notice referred to in paragraph (b) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the Federal Register at least 15 days in advance of such hearing. Any interested person may appear at such hearing in person or through a representative and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(d) Except as provided in subpart D to 15 CFR part 904, as soon as practicable but not later than 30 days after the close of the hearing, if no hearing is held, as soon as practicable but not later than 30 days from the publication of the notice in the Federal Register, the Assistant Administrator shall issue or deny issuance of the permit. Notice of the decision of the Assistant Administrator shall be published in the Federal Register within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(e)(1) The Assistant Administrator shall issue the permit unless:

(i) Denial of the permit has been made pursuant to subpart D to 15 CFR part 904;

(ii) The applicant has failed to disclose material or information required, or that has made false statements as to any material fact, in connection with the application;

(iii) The applicant has failed to demonstrate a valid justification for the permit or a showing of responsibility;

(iv) The authorization requested potentially threatens a fish or wildlife population; or

(v) The Assistant Administrator finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(2) The applicant shall be notified in writing of the denial of any permit request, and the reasons thereof. If authorized in the notice of denial, the applicant may submit further information or reasons why the permit should not be denied. Such further information shall not be considered a new application. The final action by the Assistant Administrator shall be considered the final administrative decision of the Department of Commerce.

(f) If a permit is issued under § 222.308, the Assistant Administrator shall publish notice thereof in the Federal Register, including the Assistant Administrator's finding that such permit—

(1) Was applied for in good faith;

(2) Will not operate to the disadvantage of such endangered species; and

(3) Will be consistent with the purposes and policy set forth in section 2 of the Act.

(g) The Assistant Administrator may waive the 30-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published by the Assistant Administrator in the Federal Register within 10 days following the issuance of the permit.
§ 222.304 Renewal of permits.

When the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, the permittee shall, unless otherwise notified in writing by the Assistant Administrator, file a request for permit renewal, together with a certified statement, verifying that the information in the original application is still currently correct. If the information is incorrect the permittee shall file a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of the permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by the expired permit until the renewal application is acted upon.

§ 222.305 Rights of succession and transfer of permits.

(a)(1) Except as otherwise provided in this section, permits issued pursuant to parts 222, 223, and 224 of this chapter are not transferable or assignable. In the event that a permit authorizes certain business activities in connection with a business or commercial enterprise, which is then subject to any subsequent lease, sale or transfer, the successor to that enterprise must obtain a permit prior to continuing the permitted activity, with the exceptions provided in paragraphs (a)(2) and (a)(3) of this section.

(2) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit, provided that they furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity. Such persons are the following:

(i) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee, and

(ii) The receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(3) Incidental take permits issued under §222.307, and enhancement permits issued under §222.308, as part of a Safe Harbor Agreement with Assurances or Candidate Conservation Agreement with Assurances, may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee’s legal representative and the proposed transferee, provided NMFS determines in writing that:

(i) The proposed transferee meets all of the qualifications under parts 222, 223, or 224 (as applicable) for holding a permit;

(ii) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or other agreement or plan associated with the permit and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(iii) The proposed transferee has provided such other information as NMFS determines is relevant to process the transfer.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.


Effective Date Note: At 64 FR 14054, Mar. 23, 1999, part 222 was revised, effective Mar. 23, 1999, with the exception of §222.305, paragraph (a), which contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 222.306 Modification, amendment, suspension, cancellation, and revocation of permits.

(a) When circumstances have changed so that an applicant or a permittee desires to have any term or condition of the application or permit modified, the applicant or permittee must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications
for modification are subject to the same issuance criteria as original applications.

(b) Notwithstanding the requirements of paragraph (a) of this section, a permittee may change the mailing address or trade name under which business is conducted without obtaining a new permit or being subject to the same issuance criteria as original permits. The permittee must notify the Assistant Administrator, in writing within 30 days, of any change in address or of any change in the trade name for the business or activity specified in the permit. The permit with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended permit to the person to whom it was issued.

(c) All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

(d) When any permittee discontinues the permitted activity, the permittee shall, within 30 days thereof, mail the permit and a request for cancellation to the issuing officer, and the permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made when the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

(e) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a term or condition of the permit may subject the permittee to both the penalties provided in the Act and suspension, revocation, or amendment of the permit, as provided in subpart D to 15 CFR part 904.

§ 222.307 Permits for incidental taking of species.

(a) Scope. (1) The Assistant Administrator may issue permits to take endangered and threatened species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Act. The regulations in this section apply to all endangered species, and those threatened species for which the prohibitions of section 9(a)(1) of the Act, under the jurisdiction of the Secretary of Commerce, apply.

(2) If the applicant represents an individual or a single entity, such as a corporation, the Assistant Administrator will issue an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on listed species for which a permit is required, the Assistant Administrator will issue a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of this section.

(b) Permit application procedures. Applications should be sent to the Assistant Administrator. The Assistant Administrator shall determine the sufficiency of the application in accordance with the requirements of this section. At least 120 days should be allowed for processing. Each application must be signed and dated and must include the following:

(1) The type of application, either:

   (i) Application for an Individual Incidental Take Permit under the Act; or

   (ii) Application for a General Incidental Take Permit under the Act;

(2) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity or is representing a group or an organization, the applicable details;

(3) The species or stocks, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species or stocks;

(4) A detailed description of the proposed activity, including the anticipated dates, duration, and specific location. If the request is for a general incidental take permit, an estimate of the total level of activity expected to be conducted;

(5) A conservation plan, based on the best scientific and commercial data available, which specifies the following:
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(i) The anticipated impact (i.e., amount, extent, and type of anticipated taking) of the proposed activity on the species or stocks;

(ii) The anticipated impact of the proposed activity on the habitat of the species or stocks and the likelihood of restoration of the affected habitat;

(iii) The steps (specialized equipment, methods of conducting activities, or other means) that will be taken to monitor, minimize, and mitigate such impacts, and the funding available to implement such measures;

(iv) The alternative actions to such taking that were considered and the reasons why those alternatives are not being used; and

(v) A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

(c) Issuance criteria. (1) In determining whether to issue a permit, the Assistant Administrator will consider the following:

(i) The status of the affected species or stocks;

(ii) The potential severity of direct, indirect, and cumulative impacts on the species or stocks and habitat as a result of the proposed activity;

(iii) The availability of effective monitoring techniques;

(iv) The use of the best available technology for minimizing or mitigating impacts; and

(v) The views of the public, scientists, and other interested parties knowledgeable of the species or stocks or other matters related to the application.

(2) To issue the permit, the Assistant Administrator must find that—

(i) The taking will be incidental;

(ii) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;

(iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(iv) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and

(v) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

(d) Permit conditions. In addition to the general conditions set forth in this part, every permit issued under this section will contain such terms and conditions as the Assistant Administrator deems necessary and appropriate, including, but not limited to the following:

(1) Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with;

(2) The species and number of animals covered;

(3) The authorized method of taking;

(4) The procedures to be used to handle or dispose of any animals taken; and

(5) The payment of an adequate fee to the National Marine Fisheries Service to process the application.

(e) Duration of permits. The duration of permits issued under this section will be such as to provide adequate assurances to the permit holder to commit funding necessary for the activities authorized by the permit, including conservation activities. In determining the duration of a permit, the Assistant Administrator will consider the duration of the proposed activities, as well as the possible positive and negative effects on listed species associated with issuing a permit of the proposed duration, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species or to increase the long-term survivability of the species.

(f) Certificates of inclusion. (1) Any individual who wishes to conduct an activity covered by a general incidental take permit must apply to the Assistant Administrator for a Certificate of Inclusion. Each application must be signed and dated and must include the following:

(i) The general incidental take permit under which the applicant wants coverage;
(ii) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity, the applicable details;

(iii) A description of the activity the applicant seeks to have covered under the general incidental take permit, including the anticipated dates, duration, and specific location; and

(iv) A signed certification that the applicant has read and understands the general incidental take permit and the conservation plan, will comply with their terms and conditions, and will fund and implement applicable measures of the conservation plan.

(2) To issue a Certificate of Inclusion, the Assistant Administrator must find that:

(i) The applicant will be engaged in the activity covered by the general permit, and

(ii) The applicant has made adequate assurances that the applicable measures of the conservation plan will be funded and implemented.

(g) Assurances provided to permittee in case of changed or unforeseen circumstances. The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised as a result of this rulemaking.

(1) Changed circumstances provided for in the plan. If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan’s operating conservation program, the permittee will implement the measures specified in the plan.

(2) Changed circumstances not provided for in the plan. If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan’s operating conservation program, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(3) Unforeseen circumstances. (i) In negotiating unforeseen circumstances, NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented. However, such additional measures are limited to modifications within any conserved habitat areas or to the conservation plan’s operating conservation program for the affected species. The original terms of the conservation plan will be maintained to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(iii) NMFS has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will consider, but not be limited to, the following factors:

(A) Size of the current range of the affected species;

(B) Percentage of range adversely affected by the conservation plan;

(C) Percentage of range conserved by the conservation plan;

(D) Ecological significance of that portion of the range affected by the conservation plan;
§ 222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.

(a) Scope. The Assistant Administrator may issue permits for scientific purposes or for the enhancement of the propagation or survival of the affected endangered or threatened species in accordance with the regulations in parts 222, 223, and 224 of this chapter and under such terms and conditions as the Assistant Administrator may prescribe, authorizing the taking, importation, or other acts otherwise prohibited by section 9 of the Act. Within the jurisdiction of a State, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(b) Application procedures. Any person desiring to obtain such a permit may make application therefor to the Assistant Administrator. Permits for marine mammals shall be issued in accordance with the provisions of part 216, subpart D of this chapter. Permits relating to sea turtles may involve the Fish and Wildlife Service, in which case the applicant shall follow the procedures set out in §222.309. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or for enhancement of propagation or survival of the affected species should be issued by the Assistant Administrator. An application for a permit shall provide the following information and such other information that the Assistant Administrator may require:

1. Title, as applicable, either—
   (i) Application for permit for scientific purposes under the Act; or
   (ii) Application for permit for the enhancement of the propagation or survival of the endangered species Under the Act.

2. The date of the application.

3. The identity of the applicant including complete name, address, and telephone number. If the applicant is a partnership or a corporate entity, set forth the details. If the endangered species is to be utilized by a person other than the applicant, set forth the name of that person and such other information as would be required if such person were an applicant.

4. A description of the purpose of the proposed acts, including the following:
   (i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and
   (ii) A detailed description of how the species will be used.

5. A detailed description of the project, or program, in which the endangered species is to be used, including the following:
   (i) The period of time over which the project or program will be conducted;
   (ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;
   (iii) A copy of the formal research proposal or contract if one has been prepared;

6. A statement of whether the proposed project or program has broader significance than the individual researcher’s goals. For example, does the proposed project or program respond directly or indirectly to recommendations of any national or international scientific body charged with research or management of the endangered species? If so, how?: and

7. A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains in a museum or other institutional collection for the continued benefit to science.
(6) A description of the endangered species which is the subject of the application, including the following:
   (i) A list of each species and the number of each, including the common and scientific name, the subspecies (if applicable), population group, and range;
   (ii) A physical description of each animal, including the age, size, and sex;
   (iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit for each animal and the location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;
   (iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;
   (v) A description of the manner of taking for each animal, including the gear to be used;
   (vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals; and
   (vii) If the capture or other taking is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompanying such statement shall be a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise take the animals, should a permit be granted.

(7) A description of the manner of transportation for any live animal taken, imported, exported, or shipped in interstate commerce, including the following:
   (i) Mode of transportation;
   (ii) Name of transportation company;
   (iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;
   (iv) Length of time in transit for any planned future move or transfer of the animals;
   (v) The qualifications of the common carrier or agent used for transportation of the animals;
   (vi) A description of the pen, tank, container, cage, crate, or other devices used to hold the animal at both the capture site and during transportation;
   (vii) Special care before and during transportation, such as salves, antibiotics, moisture; and
   (viii) A statement as to whether the animals will be accompanied by a veterinarian or by another similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals sought, including a complete description of the facilities where any such animals will be maintained including:
   (i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;
   (ii) The water supply, amount, and quality;
   (iii) The diet, amount and type, for all animals;
   (iv) Sanitation practices used;
   (v) Qualifications and experience of the staff;
   (vi) A written certification from a licensed veterinarian or from a recognized expert who are knowledgeable on the species (or related species) or group covered in the application. The certificate shall verify that the veterinarian has personally reviewed the amendments for transporting and maintaining the animal(s) and that, in the veterinarian’s opinion, they are adequate to provide for the well-being of the animal; and
   (vii) The availability in the future of a consulting expert or veterinarian meeting paragraph requirements of (b)(8)(vi) in this section.

(9) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a stud book.

(10) A statement of how the applicant’s proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of application, the applicant shall provide a detailed description of all mortalities involving species under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:
§ 222.308

(i) A list of all endangered species and related species that are the subject of this application that have been captured, transported, maintained, or utilized by the applicant for scientific purposes or for the enhancement of propagation or survival of the affected species, and/or of related species that are captured, transported, maintained, or utilized by the applicant for scientific purposes or for enhancement of propagation or survival of the affected species;

(ii) The numbers of mortalities among such animals by species, by date, by location of capture, i.e., from which population, and the location of such mortalities;

(iii) The cause(s) of any such mortality; and

(iv) The steps which have been taken by applicant to avoid or decrease any such mortality.

(12) A certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act, as amended, and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Act.

(13) The applicant and/or an officer thereof must sign the application.

(14) Assistance in completing this application may be obtained by writing Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or calling the Office of Protected Resources at 301–713–1401. Allow at least 90 days for processing.

(c) Issuance criteria. In determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species, the Assistant Administrator shall specifically consider, among other application criteria, the following:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit, if granted and exercised, will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species and the effect of the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity, the applicant’s qualifications for the proper care and maintenance of the species and the adequacy of the applicant’s facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant’s project or program terminates;

(10) How the applicant’s needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application; and

(12) Opinions or views of scientists or other persons or organizations knowledgeable about the species which is the subject of the application or of other matters germane to the application.

(d) Terms and conditions. Permits applied for under this section shall contain terms and conditions as the Assistant Administrator may deem appropriate, including but not limited to the following:

(1) The number and kind of species covered;

(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care, and maintenance to be used with live species;
(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny, or the species product; and

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

§ 222.309 Permits for listed species of sea turtles involving the Fish and Wildlife Service.

(a) This section establishes specific procedures for issuance of the following permits: scientific purposes or to enhance the propagation or survival of endangered or threatened species of sea turtles; zoological exhibition or educational purposes for threatened species of sea turtles; and permits that requires coordination with the Fish and Wildlife Service. The National Marine Fisheries Service maintains jurisdiction for such species in the marine environment. The Fish and Wildlife Service maintains jurisdiction for such species of sea turtles in the land environment.

(b) For permits relating to any activity in the marine environment exclusively, permit applicants and permittees must comply with the regulations in parts 222, 223, and 224 of this chapter.

(c) For permits relating to any activity in the land environment exclusively, permit applicants must submit applications to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either 50 CFR 17.22(a), if the species is endangered, or 50 CFR 17.32(a), if the species is threatened.

(d) For permits relating to any activity in both the land and marine environments, applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing of those activities under its jurisdiction. Based on this review and processing, WPO will issue either a permit or a letter of denial in accordance with its own regulations.

(e) For permits relating to any activity in a marine environment and that also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (TIAS 8249, July 1, 1975) (50 CFR part 23), applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing, after which WPO will issue a combination ESA/CITES permit or a letter of denial.

§ 222.310 Permit authority for designated agents and employees of specified Federal and state agencies.

(a) This section constitutes a programmatic permit, pursuant to 16 U.S.C. 1539(a)(1)(A), that authorizes activities by agents and employees of Federal and state agencies, as described in paragraph (b) of this section, to aid stranded endangered sea turtles, and to salvage, collect data from, and dispose of, dead carcasses of endangered sea turtles in the marine environment. For purposes of this section, ‘stranded’ means endangered sea turtles, in the marine environment, that are alive but sick, injured, or entangled.

(b) If any member of any endangered species of sea turtle is found stranded or dead in the marine environment, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such endangered sea turtles if such taking is necessary to aid a stranded sea turtle, or dispose of or salvage a dead sea turtle, or collect data from a dead sea turtle which may be useful for scientific and educational purposes. Live turtles will be handled as described in §223.206(d)(1). Whenever possible, live sea turtles shall be returned to their
aquatic environment as soon as possible. The following data collection activities for live turtles while they are in the marine environment are allowed:

1. Turtles may be flipper and passive integrated transponder (PIT) tagged, prior to release. Flipper tags would be applied to the trailing edge of either the front or rear flippers with standard tagging applicators after the tagging area has been cleaned with alcohol or iodine solution. PIT tags would be inserted according to best practice, approved scientific protocols, after cleaning the insertion site with alcohol or iodine solution. Before application of flipper tags or insertion of PIT tags, all flippers and the neck/shoulder area will be examined and scanned for the presence of any pre-existing flipper or PIT tags.

2. Turtles may also be weighed, measured, and photographed prior to release.

3. When handling turtles exhibiting fibropapilloma, all equipment (tagging equipment, tape measures, etc.) that comes in contact with the turtle shall be cleaned with a mild bleach solution.

(c) Every action shall be reported in writing to the Assistant Administrator, or authorized representative, via the agency or institution designated by the state to record such events. Reports shall contain the following information:

1. Name and position of the official or employee involved;
2. Description of the sea turtle(s) involved including species and condition of the animal;
3. When applicable, description of entangling gear, its location on the turtle, and the amount of gear left on the turtle at release;
4. Method, date and location of disposal of the sea turtle(s), including, if applicable, where the sea turtle(s) has been retained in captivity; and
5. Such other information as the Assistant Administrator, or authorized representative, may require.

[70 FR 42509, July 25, 2005]

§ 222.402 Annual determination of fisheries to be observed; notice and comment.

(a) The Assistant Administrator, in consultation with Regional Administrators and Science Center Directors, will make an annual determination identifying which fisheries the agency intends to observe. This determination will be based on the extent to which:

1. The fishery operates in the same waters and at the same time as sea turtles are present;
2. The fishery operates at the same time or prior to elevated sea turtle strandings; or
3. The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and
4. NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

(b) The Assistant Administrator shall publish the proposed determination and any final determination in the FEDERAL REGISTER. Public comment will be sought at the time of publication of the proposed determination. In addition, a written notification of the final determination will be sent to the address specified for the vessel in either the NMFS or state fishing permit.
application, or to the address specified for registration or documentation purposes, or such notification will be otherwise served on the owners or operator of the vessel. Additionally, NMFS will notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and any other means as appropriate. The proposed and any final determinations will include, to the extent practicable, information on fishing sector, targeted gear type, target fishery, temporal and geographic scope of coverage, or other information, as appropriate.

(c) Fisheries listed on the most recent annual Marine Mammal Protection Act List of Fisheries in any given year, in accordance with 16 U.S.C. 1387, will serve as the comprehensive set of commercial fisheries to be considered for inclusion in the annual determination. Recreational fisheries may also be included in the annual determination.

(d) Publication of the proposed and final determinations should be coordinated to the extent possible with the annual Marine Mammal Protection Act List of Fisheries process as specified at 50 CFR 229.8.

(e) Inclusion of a fishery in a proposed or final determination does not constitute a conclusion by NMFS that those participating in the fishery are illegally taking sea turtles.

§ 222.403 Duration of selection; effective date.

(a) Fisheries included in the final annual determination in a given year will remain eligible for observer coverage under this rule for five years, without need for NMFS to include the fishery in the intervening proposed annual determinations, to enable the design of an appropriate sampling program and to ensure collection of scientific data. If NMFS wishes to continue observations beyond the fifth year, NMFS must include the fishery in the proposed annual determination and seek comment, prior to the expiration of the fifth year.

(b) A 30-day delay in effective date for implementing observer coverage will follow the annual notification, except for those fisheries that were included in a previous determination within the preceding five years or where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective without a 30-day delay.

§ 222.404 Observer program sampling.

(a) During the program design, NMFS would be guided by the following standards in the distribution and placement of observers among fisheries and vessels in a particular fishery:

1. The requirements to obtain the best available scientific information;

2. The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

3. The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

4. The need to minimize costs and avoid duplication, where practicable.

(b) Consistent with 16 U.S.C. 1881(b), vessels where the facilities for accommodating an observer or carrying out observer functions are so inadequate or unsafe (due to size or quality of equipment, for example) that the health or safety of the observer or the safe operation of the vessel would be jeopardized, would not be required to take observers under this rule.

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

Subpart A—General Provisions

Sec.

223.101 Purpose and scope.

223.102 Enumeration of threatened marine and anadromous species.

Subpart B—Restrictions Applicable to Threatened Marine and Anadromous Species

223.201 Guadalupe fur seal.

223.202 Steller sea lion.

223.203 Anadromous fish.

223.204 Tribal plans.

223.205 Sea turtles.

223.206 Exceptions to prohibitions relating to sea turtles.

223.207 Approved TEDs.

223.208 Corals.

223.209 [Reserved]
§ 223.101 Purpose and scope.

(a) The regulations contained in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to governing activities involving the species.

(b) The regulations contained in this part apply only to the threatened species enumerated in §223.102.

(c) The provisions of this part are in addition to, and not in lieu of, other regulations of parts 222 through 226 of this chapter which prescribe additional restrictions or conditions governing threatened species.

[64 FR 14068, Mar. 23, 1999]

§ 223.102 Enumeration of threatened marine and anadromous species.

The species determined by the Secretary of Commerce to be threatened pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are listed in the table below. The table lists the common and scientific names of threatened species, the locations where they are listed, and the Federal Register citations for the listings and critical habitat designations.

<table>
<thead>
<tr>
<th>Species 1</th>
<th>Where listed</th>
<th>Citation(s) for listing determination(s)</th>
<th>Citation(s) for critical habitat designation(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Marine Mammals</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Guadalupe fur seal</td>
<td>Arctocephalus townsendi</td>
<td>Wherever found U.S.A. (Farallon Islands of CA) south to Mexico (Islas Revillagigedo)</td>
<td>50 FR 51252; Dec 16, 1985</td>
</tr>
<tr>
<td>(2) Steller sea lion</td>
<td>Eumetopias jubatus</td>
<td>Eastern population, which consists of all Steller sea lions from breeding colonies located east of 144° W. longitude</td>
<td>55 FR 13488; Apr 10, 1990 55 FR 50006; Dec 4, 1990 62 FR 30772; Jun 5, 1997</td>
</tr>
<tr>
<td>(b) Sea Turtles</td>
<td></td>
<td></td>
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<tr>
<td>(1) Green turtle 2</td>
<td>Chelonia mydas</td>
<td>Wherever found, except where listed as endangered under §224.101(c); circumglobal in tropical and temperate seas and oceans</td>
<td>43 FR 32808; Jul 28, 1978</td>
</tr>
<tr>
<td>(2) Loggerhead turtle 2</td>
<td>Caretta caretta</td>
<td>Wherever found; circumglobal in tropical and temperate seas and oceans</td>
<td>43 FR 32808; Jul 28, 1978</td>
</tr>
<tr>
<td>Species ¹</td>
<td>Common name</td>
<td>Scientific name</td>
<td>Where listed</td>
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<tr>
<td>(3) Olive ridley turtle²</td>
<td>Lepidochelys olivacea</td>
<td>Wherever found, except where listed as endangered under § 224.101(c); circumglobal in tropical and temperate seas.</td>
<td>43 FR 32806; Jul 28, 1978</td>
</tr>
<tr>
<td>(c) Fishes</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>(1) Green sturgeon - southern DPS</td>
<td>Acipenser medirostris</td>
<td>U.S.A., CA. The southern DPS includes all spawning populations of green sturgeon south of the Eel River (exclusive), principally including the Sacramento River green sturgeon spawning population.</td>
<td>71 FR 17757; April 7, 2006; 71 FR 19241; April 13, 2006.</td>
</tr>
<tr>
<td>(2) Gulf sturgeon</td>
<td>Acipenser oxyrinchus desotoi</td>
<td>Wherever found.</td>
<td>64 FR 4528; Mar 25, 1999</td>
</tr>
<tr>
<td>(3) Ozette Lake sockeye</td>
<td>Oncorhynchus nerka</td>
<td>U.S.A.- WA, including all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington, as well as two artificial propagation programs: the Umbrella Creek and Big River sockeye hatchery programs.</td>
<td>64 FR 50394; Sep 16, 1999</td>
</tr>
<tr>
<td>(4) Central Valley spring-run Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.- CA, including all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries in California, including the Feather River, as well as the Feather River Hatchery spring-run Chinook program.</td>
<td>64 FR 50394; Sep 16, 1999</td>
</tr>
<tr>
<td>(5) California Coastal Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.-CA, including all naturally spawned populations of Chinook salmon from rivers and streams south of the Klamath River to the Russian River, California, as well as seven artificial propagation programs: the Humboldt Fish Action Council (Freshwater Creek), Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run Chinook hatchery programs.</td>
<td>64 FR 50394; Sep 16, 1999</td>
</tr>
<tr>
<td>Species ¹</td>
<td>Scientific name</td>
<td>Where listed</td>
<td>Citation(s) for listing determination(s)</td>
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<tr>
<td>(6) Upper Willamette River Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.- OR, including all naturally spawned populations of spring-run Chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon, as well as seven artificial propagation programs: the McKenzie River Hatchery (Oregon Department of Fish and Wildlife (ODFW) stock #24), Marion Forks/North Fork Santiam River (ODFW stock #21), South Santiam Hatchery (ODFW stock #23) in the South Fork Santiam River, South Santiam Hatchery in the Calapooia River, South Santiam Hatchery in the Molalla River, Willamette Hatchery (ODFW stock # 22), and Clackamas hatchery (ODFW stock #19) spring-run Chinook hatchery programs.</td>
<td>64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005 70 FR 52630; Sep 2, 2005.</td>
</tr>
<tr>
<td>(7) Lower Columbia River Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.- OR, WA, including all naturally spawned populations of Chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run Chinook salmon in the Clackamas River, as well as seventeen artificial propagation programs: the Sea Resources Tule Chinook Program, Big Creek Tule Chinook Program, Astoria High School (STEP) Tule Chinook Program, Warrenton High School (STEP) Tule Chinook Program, Elochoman River Tule Chinook Program, Cowlitz Tule Chinook Program, North Fork Tule Tule Chinook Program, Kalama Tule Chinook Program, Washougal River Tule Chinook Program, Spring Creek NFH Tule Chinook Program, Cowlitz spring Chinook Program in the Upper Cowlitz River and the Cispus River, Friends of the Cowlitz spring Chinook Program, Kalama River spring Chinook Program, Lewis River spring Chinook Program, Fish First spring Chinook Program, and the Sandy River Hatchery (ODFW stock #11) Chinook hatchery programs.</td>
<td>64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005 70 FR 52630; Sep 2, 2005.</td>
</tr>
<tr>
<td>Species</td>
<td>Common name</td>
<td>Scientific name</td>
<td>Where listed</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>-----------------</td>
<td>--------------</td>
</tr>
<tr>
<td>(8) Puget Sound Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.- WA, including all naturally spawned populations of Chinook salmon from rivers and streams flowing into Puget Sound including the Strats of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington, as well as twenty-six artificial propagation programs: the Kendall Creek Hatchery, Marblemount Hatchery (fall, spring yearlings, spring subyearlings, and summer-runs), Harvey Creek Hatchery, Whitehorse Springs Pond, Wallace River Hatchery (yearlings and subyearlings), Tulalip Bay, Issaquah Hatchery, Soos Creek Hatchery, Icy Creek Hatchery, Keta Creek Hatchery, White River Hatchery, White Acclimation Pond, Hupp Springs Hatchery, Voights Creek Hatchery, Dufu Creek, Clear Creek, Kalama Creek, George Adams Hatchery, Rick's Pond Hatchery, Hamma Hamma Hatchery, Dungeness/ Hurd Creek Hatchery, Elewa Channel Hatchery Chinook hatchery programs.</td>
<td>64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005</td>
</tr>
<tr>
<td>(9) Snake River fall-run Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A.- OR, WA, ID, including all naturally spawned populations of fall-run Chinook salmon in the mainstem Snake River below Hells Canyon Dam, and in the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River, as well as four artificial propagation programs: the Lyons Ferry Hatchery, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery, and Oxbow Hatchery fall-run Chinook hatchery programs.</td>
<td>57 FR 14653; Apr 22, 1992 57 FR 23458; Jun 3, 1992 70 FR 37160; Jun 28, 2005</td>
</tr>
<tr>
<td>Species</td>
<td>Common name</td>
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<td>Where listed</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>----------------</td>
<td>--------------</td>
</tr>
<tr>
<td>(11) Southern Oregon/Northern California Coast coho</td>
<td>Oncorhynchus kisutch</td>
<td>U.S.A.- CA, OR, including all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California, as well three artificial propagation programs: the Cole Rivers Hatchery (ODFW stock # 52), Trinity River Hatchery, and Iron Gate Hatchery coho hatchery programs.</td>
<td>62 FR 24588; May 6, 1997 70 FR 37160; Jun 28, 2005</td>
</tr>
<tr>
<td>Common name</td>
<td>Scientific name</td>
<td>Where listed</td>
<td>Citation(s) for listing determination(s)</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>(12) Lower Columbia River coho</td>
<td>Oncorhynchus kisutch</td>
<td>U.S.A. - OR, WA, including all naturally spawned populations of coho salmon in the Columbia River and its tributaries in Washington and Oregon, from the mouth of the Columbia up to and including the Big White Salmon and Hood Rivers, and includes the Willamette River to Willamette Falls, Oregon, as well as twenty-five artificial propagation programs: the Grays River, Sea Resources Hatchery, Peterson Coho Project, Big Creek Hatchery, Astoria High School (STEP) Coho Program, Warrenton High School (STEP) Coho Program, Elochoman Type-S Coho Program, Elochoman Type-N Coho Program, Cathlamet High School FTA Type-N Coho Program, Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers, Cowlitz Game and Anglers Coho Program, Friends of the Cowlitz Coho Program, North Fork Toutle River Hatchery, Kalama River Type-N Coho Program, Kalama River Type-S Coho Program, Lewis River Type-N Coho Program, Lewis River Type-S Coho Program, Fish First Wild Coho Program, Fish First Type-N Coho Program, Syverson Project Type-N Coho Program, Eagle Creek National Fish Hatchery, Sandy Hatchery, and the Bonneville/CASCADE/Oxbow complex coho hatchery programs.</td>
<td>70 FR 37160; Jun 28, 2005</td>
</tr>
<tr>
<td>(13) Columbia River chum</td>
<td>Oncorhynchus keta</td>
<td>U.S.A. - OR, WA, including all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon, as well as three artificial propagation programs: the Chinook River (Sea Resources Hatchery), Grays River, and Washougal River/Duncan Creek chum hatchery programs.</td>
<td>64 FR 14508; Mar. 25, 1999, 70 FR 37160; Jun 28, 2005</td>
</tr>
<tr>
<td>Species 1</td>
<td>Common name</td>
<td>Scientific name</td>
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<td>--------------</td>
</tr>
<tr>
<td>(14) Hood Canal summer-run chum</td>
<td>Oncorhynchus keta</td>
<td>U.S.A. - WA, including all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington, as well as eight artificial propagation programs: the Quilcene NFH, Lilliwaup Creek Fish Hatchery, Union River/Tahuya, Big Beef Creek Fish Hatchery, Salmon Creek Fish Hatchery, Chimacum Creek Fish Hatchery, and the Jimmycomelately Creek Fish Hatchery summer-run chum hatchery programs.</td>
<td>64 FR 14508; Mar. 25, 1999 70 FR 37160; Jun 28, 2005</td>
</tr>
<tr>
<td>(15) South-Central California Coast Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A. - CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Pajaro River (inclusive), located in Santa Cruz County, California, to (but not including) the Santa Maria River.</td>
<td>62 FR 43937; Aug 18, 1997 71 FR 834; Jan 5, 2006</td>
</tr>
<tr>
<td>(16) Central California Coast Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A. - CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Russian River to Aptos Creek, Santa Cruz County, California (inclusive), and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), Napa County, California. Excludes the Sacramento-San Joaquin River Basin of the Central Valley of California.</td>
<td>62 FR 43937; Aug 18, 1997 71 FR 834; Jan 5, 2006</td>
</tr>
<tr>
<td>(17) California Central Valley Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A. - CA, including all naturally spawned populations of steelhead (and their progeny) in the Sacramento and San Joaquin Rivers and their tributaries, excluding steelhead from San Francisco and San Pablo Bays and their tributaries.</td>
<td>63 FR 13347; Mar. 19, 1998 71 FR 834; Jan 5, 2006</td>
</tr>
<tr>
<td>(18) Northern California Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A. - CA, including all naturally spawned populations of steelhead (and their progeny) in California coastal river basins from Redwood Creek in Humboldt County, California, to the Gualala River, inclusive, in Mendocino County, California.</td>
<td>65 FR 36074; June 7, 2000 71 FR 834; Jan 5, 2006</td>
</tr>
<tr>
<td>(19) Upper Willamette River Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A. - OR, including all naturally spawned populations of winter-run steelhead in the Willamette River, Oregon, and its tributaries upstream from Willamette Falls to the Calapooia River, inclusive.</td>
<td>62 FR 43937; Aug 18, 1997 71 FR 834; Jan 5, 2006</td>
</tr>
<tr>
<td>Species</td>
<td>Common name</td>
<td>Scientific name</td>
<td>Where listed</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>-----------------</td>
<td>--------------</td>
</tr>
<tr>
<td>(20) Lower Columbia River Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A.- OR, WA, including all naturally spawned populations of steelhead (and their progeny) in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington, inclusive, and the Willamette and Hood Rivers, Oregon, inclusive. Excluded are steelhead in the upper Willamette River Basin above Willamette Falls, Oregon, and from the Little and Big White Salmon Rivers, Washington.</td>
<td>63 FR 13347; Mar 19, 1998 71 FR 834; Jan 5, 2006</td>
</tr>
<tr>
<td>(21) Middle Columbia River Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A.- OR, WA, including all naturally spawned populations of steelhead in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington. Excluded are steelhead from the Snake River Basin.</td>
<td>57 FR 14517; Mar 25, 1999 71 FR 834; Jan 5, 2006</td>
</tr>
<tr>
<td>(22) Snake River Basin Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A.- OR, WA, ID, including all naturally spawned populations of steelhead (and their progeny) in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho.</td>
<td>62 FR 43937; Aug 18, 1997 71 FR 834; Jan 5, 2006</td>
</tr>
<tr>
<td>(23) Puget Sound Steelhead</td>
<td>Oncorhynchus mykiss</td>
<td>U.S.A., WA, Distinct Population Segment including all naturally spawned anadromous O. mykiss (steelhead) populations, from streams in the river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal, Washington, bounded to the west by the Elwha River (inclusive) and to the north by the Nooksack River and Dakota Creek (inclusive), as well as the Green River natural and Hanma Hamma winter-run steelhead hatchery stocks.</td>
<td>72 FR 26722; May 11, 2007</td>
</tr>
<tr>
<td>(24) Oregon Coast Coho</td>
<td>Oncorhynchus kisutch</td>
<td>U.S.A., OR, all naturally spawned populations of coho salmon in Oregon coastal streams south of the Columbia River and north of Cape Blanco, including the Cow Creek (ODFW stock #37) coho hatchery program</td>
<td>73 FR 7816; Feb 11, 2008</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Species ¹</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Where listed</th>
<th>Citation(s) for listing determination(s)</th>
<th>Citation(s) for critical habitat designation(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(d) Marine Invertebrates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Elkhorn coral</td>
<td>Acropora palmata</td>
<td>Wherever found. Includes United States Florida, Puerto Rico, U.S. Virgin Islands, Navassa; and wider Caribbean Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela and all the islands of the West Indies.</td>
<td>71 FR 26582, May 9, 2006</td>
<td>73 FR 72210, Nov. 26, 2008</td>
<td></td>
</tr>
<tr>
<td>(2) Staghorn coral</td>
<td>Acropora cervicornis</td>
<td>Wherever found. Includes United States Florida, Puerto Rico, U.S. Virgin Islands, Navassa; and wider Caribbean Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela and all the islands of the West Indies.</td>
<td>71 FR 26582, May 9, 2006</td>
<td>73 FR 72210, Nov. 26, 2008</td>
<td></td>
</tr>
<tr>
<td>(e) Marine Plants</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Johnson’s seagrass</td>
<td>Halophila johnsonii</td>
<td>Wherever found. U.S.A. - Southeastern FL between Sebastian Inlet and north Biscayne Bay.</td>
<td>63 FR 49035; Sep 14, 1998</td>
<td>65 FR 17786; Apr 5, 2000</td>
<td></td>
</tr>
</tbody>
</table>

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

² Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

§ 223.202  Steller sea lion.

(a) General prohibitions. The prohibitions of section 9 of the Act (16 U.S.C. 1538) and the following regulatory provisions shall apply to the eastern population of Steller sea lions:

(1) No discharge of firearms. Except as provided in paragraph (b) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or within 190 yards (91.4 meters) of a Steller sea lion. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(2) No approach in buffer areas. Except as provided in paragraph (b) of this section:

(i) No owner or operator of a vessel may allow the vessel to approach within 3 nautical miles (5.5 kilometers) of a Steller sea lion rookery site listed in paragraph (a)(3) of this section;

(ii) No person may approach on land not privately owned within one-half statutory miles (0.8 kilometers) or within sight of a Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater, except on Marmot Island; and

(iii) No person may approach on land not privately owned within one and one-half statutory miles (2.4 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater.

(3) Listed sea lion rookery sites. Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

<table>
<thead>
<tr>
<th>Island</th>
<th>From</th>
<th>To</th>
<th>NOAA chart</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outer I</td>
<td>59°20’N 150°23.0 W</td>
<td>59°21.0 N 150°24.5 W</td>
<td>16681</td>
<td>S quadrant.</td>
</tr>
<tr>
<td>Sugarloaf I</td>
<td>58°53.5 N 152°02.0 W</td>
<td>58°10.0 N 151°51.0 W</td>
<td>16580</td>
<td>Whole island.</td>
</tr>
<tr>
<td>Marmot I</td>
<td>58°41.5 N 155°39.5 W</td>
<td>55°46.5 N 155°43.0 W</td>
<td>16580</td>
<td>S quadrant.</td>
</tr>
<tr>
<td>Chowet I</td>
<td>56°00.5 N 156°41.5 W</td>
<td>56°00.5 N 156°42.0 W</td>
<td>16613</td>
<td>S quadrant.</td>
</tr>
<tr>
<td>Atkins I</td>
<td>55°03.5 N 159°18.5 W</td>
<td>54°45.5 N 159°33.5 W</td>
<td>16640</td>
<td>SE corner.</td>
</tr>
<tr>
<td>Chernabura I</td>
<td>54°47.5 N 159°31.0 W</td>
<td>54°46.0 N 161°46.0 W</td>
<td>16540</td>
<td>Whole island.</td>
</tr>
<tr>
<td>Pinnacle Rock</td>
<td>45°43.0 N 162°26.5 W</td>
<td>45°43.0 N 162°26.5 W</td>
<td>16540</td>
<td>Whole island.</td>
</tr>
<tr>
<td>Clubbing Rks (N)</td>
<td>54°42.0 N 162°26.5 W</td>
<td>55°28.0 N 163°12.0 W</td>
<td>16520</td>
<td>Whole island.</td>
</tr>
<tr>
<td>Clubbing Rks (S)</td>
<td>55°28.0 N 163°12.0 W</td>
<td>55°28.0 N 163°12.0 W</td>
<td>16520</td>
<td>Whole island.</td>
</tr>
</tbody>
</table>
Table 1 to §223.202—Listed Steller Sea Lion Rookery Sites

<table>
<thead>
<tr>
<th>Island</th>
<th>From Lat.</th>
<th>From Long.</th>
<th>To Lat.</th>
<th>To Long.</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. Ugamak I.</td>
<td>54°14.0' N</td>
<td>164°48.0' W</td>
<td>54°13.0' N</td>
<td>164°48.0' W</td>
<td>E end of island.</td>
</tr>
<tr>
<td>12. Akun I.</td>
<td>54°18.0' N</td>
<td>165°32.5' W</td>
<td>54°18.0' N</td>
<td>165°31.5' W</td>
<td>Billings Head Bight.</td>
</tr>
<tr>
<td>13. Akutan I.</td>
<td>54°03.5' N</td>
<td>168°00.0' W</td>
<td>54°05.5' N</td>
<td>166°05.0' W</td>
<td>SW corner, Cape Morgan.</td>
</tr>
<tr>
<td>14. Bogoslof I.</td>
<td>53°56.0' N</td>
<td>168°02.0' W</td>
<td>165°20'</td>
<td>SW corner, Cape Morgan.</td>
<td></td>
</tr>
<tr>
<td>15. Ochulu I.</td>
<td>53°00.0' N</td>
<td>168°24.0' W</td>
<td>165°00'</td>
<td>Whole island.</td>
<td></td>
</tr>
<tr>
<td>16. Adugak I.</td>
<td>52°55.0' N</td>
<td>169°10.5' W</td>
<td>165°00'</td>
<td>Whole island.</td>
<td></td>
</tr>
<tr>
<td>17. Yunaska I.</td>
<td>52°42.0' N</td>
<td>170°38.5' W</td>
<td>170°34.5' W</td>
<td>NE end.</td>
<td></td>
</tr>
<tr>
<td>18. Seguam I.</td>
<td>52°21.0' N</td>
<td>172°35.0' W</td>
<td>172°33.0' W</td>
<td>N coast, Saddle Ridge Pt.</td>
<td></td>
</tr>
<tr>
<td>19. Aglidak I.</td>
<td>52°06.5' N</td>
<td>172°54.0' W</td>
<td>164°48'</td>
<td>Whole island.</td>
<td></td>
</tr>
<tr>
<td>20. Kasatoki I.</td>
<td>52°10.0' N</td>
<td>175°31.5' W</td>
<td>175°29.0' W</td>
<td>N half of island.</td>
<td></td>
</tr>
<tr>
<td>21. Atsk I.</td>
<td>51°36.5' N</td>
<td>176°59.0' W</td>
<td>176°59.5' W</td>
<td>SW Point, Lake Point.</td>
<td></td>
</tr>
<tr>
<td>22. Gramp rock</td>
<td>51°29.0' N</td>
<td>178°20.5' W</td>
<td>164°48'</td>
<td>Whole island.</td>
<td></td>
</tr>
<tr>
<td>23. Tag I.</td>
<td>51°33.5' N</td>
<td>178°34.5' W</td>
<td>164°46'</td>
<td>Whole island.</td>
<td></td>
</tr>
<tr>
<td>24. Ulak I.</td>
<td>51°20.0' N</td>
<td>178°57.0' W</td>
<td>178°59.5' W</td>
<td>SE corner, Hasgox Pt.</td>
<td></td>
</tr>
<tr>
<td>25. Semisopochnoi</td>
<td>51°58.5' N</td>
<td>179°45.5' E</td>
<td>179°46.0' E</td>
<td>E quadrant, Poschnoi Pt.</td>
<td></td>
</tr>
<tr>
<td>26. Amchitka I.</td>
<td>51°22.5' N</td>
<td>179°28.0' E</td>
<td>179°25.0' E</td>
<td>East Cape.</td>
<td></td>
</tr>
<tr>
<td>27. Amchitka I.</td>
<td>51°32.5' N</td>
<td>178°49.5' E</td>
<td>164°40'</td>
<td>Column Rocks.</td>
<td></td>
</tr>
<tr>
<td>28. Ayugadak Pt.</td>
<td>51°45.5' N</td>
<td>178°24.5' E</td>
<td>164°40'</td>
<td>SE coast of Rat Island.</td>
<td></td>
</tr>
<tr>
<td>29. Kiska I.</td>
<td>51°57.5' N</td>
<td>177°21.0' E</td>
<td>177°20.0' E</td>
<td>W central, Lief Cove.</td>
<td></td>
</tr>
<tr>
<td>30. Kiska I.</td>
<td>51°52.5' N</td>
<td>177°13.0' E</td>
<td>177°12.0' E</td>
<td>Cape St. Stephen.</td>
<td></td>
</tr>
<tr>
<td>31. Walrus I.</td>
<td>57°11.0' N</td>
<td>169°56.0' W</td>
<td>163°80'</td>
<td>Whole island.</td>
<td></td>
</tr>
<tr>
<td>32. Buldir I.</td>
<td>52°20.5' N</td>
<td>175°57.0' E</td>
<td>175°51.0' E</td>
<td>SW point to NW point.</td>
<td></td>
</tr>
<tr>
<td>33. Agattu I.</td>
<td>52°24.0' N</td>
<td>173°21.5' E</td>
<td>164°20'</td>
<td>Gillian Point.</td>
<td></td>
</tr>
<tr>
<td>34. Agattu I.</td>
<td>52°23.5' N</td>
<td>173°43.5' E</td>
<td>173°41.0' E</td>
<td>Cape Sabak.</td>
<td></td>
</tr>
<tr>
<td>35. Attu I.</td>
<td>52°54.5' N</td>
<td>172°28.5' E</td>
<td>172°31.5' E</td>
<td>S Quadrant.</td>
<td></td>
</tr>
</tbody>
</table>

1 Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.
Seguam and Agligadak Island Rookeries

Chart 16480

Rookery
3 Mile buffer zone
(4) Commercial Fishing Operations. The incidental mortality and serious injury of endangered and threatened Steller sea lions in commercial fisheries can be authorized in compliance with sections 101(a)(5) and 118 of the Marine Mammal Protection Act.

(b) Exceptions—(1) Permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the provisions of part 222, subpart C—General Permit Procedures.
§ 223.203 Anadromous fish.

Available guidance documents cited in the regulatory text are listed in Appendix A to this section.

(a) Prohibitions. The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to fish with an intact adipose fin that are part of the threatened species of salmonids listed in § 223.102(c)(3) through (c)(24).

(b) Limits on the prohibitions. The limits to the prohibitions of paragraph (a) of this section relating to threatened Puget Sound steelhead listed in § 223.102(c)(3) through (c)(24) are described in the following paragraphs (b)(1) through (b)(13):

(1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a).

(2) The prohibitions of paragraph (a) of this section relating to threatened Puget Sound steelhead listed in § 223.102(c)(23) do not apply to:

(1) Activities specified in an application for a permit for scientific purposes

<table>
<thead>
<tr>
<th>Rookery</th>
<th>Straits, narrows, or passageways</th>
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<tr>
<td>Akutan Island</td>
<td>Akutan Pass between Cape Morgan and Unalga Island.</td>
</tr>
<tr>
<td>Clubbing Rocks</td>
<td>Between Clubbing Rocks and Chern Island.</td>
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<tr>
<td>Outer Island</td>
<td>Wildcat Pass between Rabbit and Ragged Islands.</td>
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</table>

(c) Penalties. (1) Any person who violates this section or the Act is subject to the penalties specified in section 11 of the Act, and any other penalties provided by law.

(2) Any vessel used in violation of this section or the Endangered Species Act is subject to forfeiture under section 11(e)(4)(B) of the Act.

§ 223.203 Anadromous fish.

Available guidance documents cited in the regulatory text are listed in Appendix A to this section.

(a) Prohibitions. The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to fish with an intact adipose fin that are part of the threatened species of salmonids listed in § 223.102(c)(3) through (c)(24).

(b) Limits on the prohibitions. The limits to the prohibitions of paragraph (a) of this section relating to threatened Puget Sound steelhead listed in § 223.102(c)(3) through (c)(24) are described in the following paragraphs (b)(1) through (b)(13):

(1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a).

(2) The prohibitions of paragraph (a) of this section relating to threatened Puget Sound steelhead listed in § 223.102(c)(23) do not apply to:

(1) Activities specified in an application for a permit for scientific purposes
or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than November 14, 2008. The prohibitions of this section apply to these activities upon the AA’s rejection of the application as insufficient, upon issuance or denial of a permit, or November 14, 2008, whichever occurs earliest, or

(ii) Steelhead harvested in tribal or recreational fisheries prior to June 1, 2009, so long as the harvest is authorized by the State of Washington or a tribe with jurisdiction over steelhead harvest. If NMFS does not receive a fishery management plan for Puget Sound steelhead by November 14, 2008, subsequent take by harvest will be subject to the take prohibitions.

(3) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game (IDFG), Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

(i) Aid a sick, injured, or stranded salmonid,

(ii) Dispose of a dead salmonid, or

(iii) Salvage a dead salmonid which may be useful for scientific study.

(iv) Each agency acting under this limit on the take prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency or other co-manager has authorized in writing to perform the listed functions.

(4) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to fishery harvest activities provided that:

(i) Fisheries are managed in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a letter of concurrence from NMFS. NMFS will approve an FMEP only if it clearly defines its intended scope and area of impact and sets forth the management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Define populations within affected listed ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the listed ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units, describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the listed ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

(B) Utilize the concepts of “viable” and “critical” salmonid population thresholds, consistent with the concepts contained in the technical document entitled “Viable Salmonid Populations (NMFS, 2000b).” The VSP paper provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and ensuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with viable and critical population threshold states and respond accordingly to minimize the long-term risks to population persistence. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or
management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population’s achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population’s achievement of viable function, unless the plan demonstrates that the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to that individual population.

(C) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status and on a harvest program that assures that those rates or objectives are not exceeded. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

(D) Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

(E) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics, such as age, fecundity, size and sex data, and migration timing.

(F) Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

(G) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

(I) Be consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on a regular basis, as defined in NMFS’ letter of concurrence for the FMEP, a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers with NMFS on its fishing regulation changes affecting listed ESUs to ensure consistency with the approved FMEP. Prior to approving a new or amended FMEP, NMFS will publish notification in the FEDERAL REGISTER announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(iv) NMFS provides written concurrence of the FMEP which specifies the implementation and reporting requirements. NMFS’ approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate. On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit for activities associated with that FMEP. Such an announcement will provide for
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(a) A comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that the prohibitions would then apply to those fishery harvest activities. A template for developing FMEPs is available from NMFS Northwest Region’s website (www.nwr.noaa.gov).

(v) The prohibitions of paragraph (a) of this section relating to threatened species of steelhead listed in §223.102 (a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to fisheries managed solely by the states of Oregon, Washington, Idaho, and California until January 8, 2001.

(5) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The HGMP has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet conservation objectives, contribute to the ultimate sustainability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program that will be used to measure the program’s success or failure.

(B) The HGMP utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in the technical document entitled “Viable Salmonid Populations” (NMFS, 2000b). Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the population or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(G) Taking into account health, abundances, and trends in the donor population, broodstock collection programs reflect appropriate priorities. The primary purpose of broodstock collection programs of listed species is to reestablish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitats. After the species’ conservation needs are met and when consistent with survival and recovery of the ESU, broodstock collection programs may be authorized by NMFS such for secondary purposes, as to sustain tribal, recreational, and commercial fisheries.

(D) The HGMP includes protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP evaluates, minimizes, and accounts for the propagation program’s genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by the straying of hatchery fish.

(F) The HGMP describes interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. For programs whose purpose is to sustain fisheries, HGMPs must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) Adequate artificial propagation facilities exist to properly rear progeny of naturally spawned broodstock, to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) Adequate monitoring and evaluation exist to detect and evaluate the success of the hatchery program and...
any risks potentially impairing the recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed;

(J) NMFS provides written concurrence of the HGMP which specifies the implementation and reporting requirements. For Federally operated or funded hatcheries, the ESA section 7 consultation will achieve this purpose.

(K) The HGMP is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on a regular basis a report summarizing this information, and the implementation and effectiveness of the HGMP as defined in NMFS’ letter of concurrence. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on a regular basis regarding intended collections of listed broodstock to ensure congruity with the approved HGMP.

(iv) Prior to final approval of an HGMP, NMFS will publish notification in the Federal Register announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS’ approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level of salmonid productivity commensurate with the conservation of the listed salmonids. If the HGMP is not effective, the NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the Federal Register announcing its intention to withdraw the limit on activities associated with that program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions, like all other activity not within a limit, would then apply to that program. A template for developing HGMPs is available from NMFS Northwest Region’s website (www.nwr.noaa.gov).

(6) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes (joint plan) within the continuing jurisdiction of United States v. Washington or United States v. Oregon, the ongoing Federal court proceedings to enforce and implement reserved treaty fishing rights, provided that:

(i) The Secretary has determined pursuant to 50 CFR 223.209 and the government-to-government processes therein that implementing and enforcing the joint tribal/state plan will not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs.

(ii) The joint plan will be implemented and enforced within the parameters set forth in United States v. Washington or United States v. Oregon.

(iii) In making that determination for a joint plan, the Secretary has taken comment on how any fishery management plan addresses the criteria in §223.203(b)(4), or on how any hatchery and genetic management plan addresses the criteria in §223.203(b)(5).

(iv) The Secretary shall publish notice in the Federal Register of any determination whether or not a joint plan, will appreciably reduce the likelihood of survival and recovery of affected threatened ESUs, together with a discussion of the biological analysis underlying that determination.

(v) On a regular basis, NMFS will evaluate the effectiveness of the joint plan in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If the plan is not effective, then NMFS will identify to the
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jurisdiction ways in which the joint plan needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit on activities associated with that joint plan. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit, so that take prohibitions would then apply to that joint plan as to all other activity not within a limit.

(7) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to scientific research activities provided that:

(i) Scientific research activities involving purposeful take is conducted by employees or contractors of the ODFW, WDFW (Agencies), IDFG, or CDFG (Agencies), or as a part of a monitoring and research program overseen by or coordinated with that Agency.

(ii) The Agencies provide for NMFS’ review and approval a list of all scientific research activities involving direct take planned for the coming year, including an estimate of the total direct take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) The Agencies annually provide to NMFS the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by agency personnel, or are in accord with a permit issued by the Agency.

(v) The Agencies provide NMFS annually, for its review and approval, a report listing all scientific research activities it conducts or permits that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year’s scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accordance with NMFS “Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act” (NMFS, 2000a).

(vii) NMFS’ approval of a research program shall be a written approval by NMFS Northwest or Southwest Regional Administrator.

(8) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iv) of this section, provided that the activity is part of a watershed conservation plan, and:

(i) The watershed conservation plan has been certified by the State of Washington, Oregon, Idaho, or California (State) to be consistent with the state’s watershed conservation plan guidelines.

(ii) The State’s watershed conservation plan guidelines have been found by NMFS to provide for plans that:

(A) Take into account the potential severity of direct, indirect, and cumulative impacts of proposed activities in light of the status of affected species and populations.

(B) Will not reduce the likelihood of either survival or recovery of listed species in the wild.

(C) Ensure that any taking will be incidental.

(D) Minimize and mitigate any adverse impacts.

(E) Provide for effective monitoring and adaptive management.

(F) Use the best available science and technology, including watershed analysis.

(G) Provide for public and scientific review and input.

(H) Include any measures that NMFS determines are necessary or appropriate.

(I) Include provisions that clearly identify those activities that are part of plan implementation.
(J) Control risk to listed species by ensuring funding and implementation of the above plan components.

(iii) NMFS will periodically review state certifications of Watershed Conservation Plans to ensure adherence to approved watershed conservation plan guidelines.

(iv) “Habitat restoration activity” is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. “Primary purpose” means the activity would not be undertaken but for its restoration purpose.

(v) Prior to approving watershed conservation plan guidelines under paragraph (b)(8)(ii) of this section, NMFS will publish notification in the Federal Register announcing the availability of the proposed guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of no less than 30 days.

(9) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS’ engineering staff or any resource agency or tribe NMFS designates (authorized officer) has agreed in writing that the diversion facility is screened, maintained, and operated in compliance with Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS’ Southwest Region “Fish Screening Criteria for Anadromous Salmonids, January 1997” or with any subsequent revision.

(ii) The owner or manager of the diversion allows any NMFS engineer or authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) On a case by case basis, NMFS or an Authorized Officer will review and approve a juvenile fish screen design and construction plan and schedule that the water diverter proposes for screen installation. The plan and schedule will describe interim operation measures to avoid take of threatened salmonids. NMFS may require a commitment of compensatory mitigation if implementation of the plan and schedule is terminated prior to completion. If the plan and schedule are not met, or if a schedule modification is made that is not approved by NMFS or Authorized Officer, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions and mitigation.

(iv) This limit on the prohibitions of paragraph (a) of this section does not encompass any impacts of reduced flows resulting from the diversion or impacts caused during installation of the diversion device. These impacts are subject to the prohibition on take of listed salmonids.

(10) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to routine road maintenance activities provided that:

(i) The activity results from routine road maintenance activity conducted by ODOT employees or agents that complies with ODOT’s Transportation Maintenance Management System Water Quality and Habitat Guide (July, 1999); or by employees or agents of a state, county, city or port that complies with a program substantially similar to that contained in the ODOT Guide that is determined to meet or exceed the protections provided by the ODOT Guide; or by employees or agents of a state, county, city or port that complies with a routine road maintenance program that meets proper functioning habitat conditions as described further in subparagraph (ii) following. NMFS’ approval of state, city, county, or port programs that are equivalent to the ODOT program, or of any amendments, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. Any jurisdiction desiring its routine road maintenance activities to be within this limit must first commit in writing to apply management practices that result in protections equivalent to or better than those provided by the ODOT Guide, detailing how it will assure adequate training, tracking, and reporting, and...
(ii) NMFS finds the routine road maintenance activities of any state, city, county, or port to be consistent with the conservation of listed salmonid's habitat when it contributes, as does the ODOT Guide, to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than one year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days.

(v) Pesticide and herbicide spraying is not included within this limit, even if in accord with the ODOT guidance.

(11) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to activities within the City of Portland, Oregon Parks and Recreation Department’s (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy updated December 1, 1999, provided that:

(i) Use of only the following chemicals is included within this limit on the take prohibitions: Round Up, Rodeo, Garlon 3A, Surfactant LI–700, Napropanide, Cutrine Plus, and Aquashade.

(ii) Any chemical use is initiated in accord with the priorities and decision processes of the Department’s Pest Management Policy, including the Waterways Pest Management Policy, updated December 1, 1999.

(iii) Any chemical use within a 25 ft. (7.5 m) buffer complies with the buffer application constraints contained in PP&R’s Waterways Pest Management Policy (update December 1, 1999).

(iv) Prior to approving any changes to this limit, the PP&R provides NMFS with a copy of the proposed change for review and approval as within this limit.

(v) Prior to approving any substantial change in a program within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(vi) NMFS’ approval of amendments shall be a written approval by NMFS Northwest Regional Administrator.
(vii) NMFS finds the PP&R Pest Management Program activities to be consistent with the conservation of listed salmonids’ habitat by contributing to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of a watershed’s natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate the effectiveness of an approved program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the Federal Register announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(12) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

(A) MRCI development ordinance or plan ensures that development will avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) MRCI development ordinance or plan adequately avoids stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed, including peak and base flows of perennial streams.

(C) MRCI development ordinance or plan provides adequately protective riparian area management requirements to attain or maintain PFC around all rivers, estuaries, streams, lakes, deep-water habitats, and intermittent streams. Compensatory mitigation is provided, where necessary, to offset unavoidable damage to PFC due to MRCI development impacts to riparian management areas.

(D) MRCI development ordinance or plan avoids stream crossings by roads, utilities, and other linear development wherever possible, and, where crossings must be provided, minimize impacts through choice of mode, sizing, and placement.

(E) MRCI development ordinance or plan adequately protects historical stream meander patterns and channel migration zones and avoids hardening of stream banks and shorelines.

NMFS has determined are adequately protective of listed species; or within the jurisdiction of the Metro regional government in Oregon and pursuant to ordinances that Metro has found comply with its Urban Growth Management Functional Plan (Functional Plan) following a determination by NMFS that the Functional Plan is adequately protective. NMFS approval or determinations about any MRCI development ordinances or plans, including the Functional Plan, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. NMFS will apply the following 12 evaluation considerations when reviewing MRCI development ordinances or plans to assess whether they adequately conserve listed salmonids by maintaining and restoring properly functioning habitat conditions:

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(F) MRCI development ordinance or plan adequately protects wetlands and wetland functions, including isolated wetlands.

(G) MRCI development ordinance or plan adequately preserves the hydrologic capacity of permanent and intermittent streams to pass peak flows.

(H) MRCI development ordinance or plan includes adequate provisions for landscaping with native vegetation to reduce need for watering and application of herbicides, pesticides, and fertilizer.

(I) MRCI development ordinance or plan includes adequate provisions to prevent erosion and sediment run-off during construction.

(J) MRCI development ordinance or plan ensures that water supply demands can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) MRCI development ordinance or plan provides necessary enforcement, funding, reporting, and implementation mechanisms and formal plan evaluations at intervals that do not exceed 5 years.

(L) MRCI development ordinance and plan complies with all other state and Federal environmental and natural resource laws and permits.

(ii) The city, county or regional government provides NMFS with annual reports regarding implementation and effectiveness of the ordinances, including: any water quality monitoring information the jurisdiction has available; aerial photography (or some other graphic display) of each MRCI development or MRCI expansion area at sufficient detail to demonstrate the width and vegetation condition of riparian set-backs; information to demonstrate the success of stormwater management and other conservation measures; and a summary of any flood damage, maintenance problems, or other issues.

(iii) NMFS finds the MRCI development activity to be consistent with the conservation of listed salmonids’ habitat when it contributes to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed’s habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iv) Prior to approving any city, county, or regional government ordinances or plans as within this limit, or approving any substantive change in an ordinance or plan within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(13) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in §223.102(a) do not apply to non-Federal
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forest management activities conducted in the State of Washington provided that:

(i) The action is in compliance with forest practice regulations adopted and implemented by the Washington Forest Practices Board that NMFS has found are at least as protective of habitat functions as are the regulatory elements of the Forests and Fish Report dated April 29, 1999, and submitted to the Forest Practices Board by a consortium of landowners, tribes, and state and Federal agencies.

(ii) All non-regulatory elements of the Forests and Fish Report are being implemented.

(iii) Actions involving use of herbicides, pesticides, or fungicides are not included within this limit.

(iv) Actions taken under alternative plans are included in this limit provided that the Washington Department of Natural Resources (WDNR) finds that the alternate plans protect physical and biological processes at least as well as the state forest practices rules and provided that NMFS, or any resource agency or tribe NMFS designates, has the opportunity to review the plan at every stage of the development and implementation. A plan may be excluded from this limit if, after such review, WDNR determines that the plan is not likely to adequately protect listed salmon.

(v) Prior to determining that regulations adopted by the Forest Practice Board are at least as protective as the elements of the Forests and Fish Report, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the Report and regulations for public review and comment.

(vi) NMFS finds the activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed's natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Programs must meet this biological standard in order for NMFS to find they qualify for a habitat-related limit. NMFS uses the best available science to make these determinations. NMFS may review and revise previous findings as new scientific information becomes available, NMFS will evaluate the effectiveness of the program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. If the program is not adequate, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If Washington does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit on activities associated with the program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) take prohibitions.

(vii) NMFS approval of regulations shall be a written approval by NMFS Northwest Regional Administrator.

(c) Affirmative Defense. In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened species of salmonids listed in § 223.102(a), any person claiming the benefit of any limit listed in paragraph (b) of this section or § 223.204(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

(d) Severability. The provisions of this section and the various applications

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thereof are distinct and severable from one another. If any provision or the application thereof to any person or circumstances is stayed or determined to be invalid, such stay or invalidity shall not affect other provisions, or the application of such provisions to other persons or circumstances, which can be given effect without the stayed or invalid provision or application.

APPENDIX A TO §223.203—LIST OF GUIDANCE DOCUMENTS

The following is a list of documents cited in the regulatory text. Copies of these documents may be obtained upon request from the Northwest or Southwest Regional Administrators (see Table 1 in §600.502 of this title).


§ 223.204 Tribal plans.

(a) Limits on the prohibitions. The prohibitions of §223.203(a) of this subpart relating to threatened species of salmonids listed in §223.102 do not apply to any activity undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in compliance with a Tribal resource management plan (Tribal Plan) provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the listed salmonids. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan’s impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary’s trust responsibilities to tribes.

(b) Consideration of a Tribal Plan. (1) A Tribal Plan may include but is not limited to plans that address fishery harvest, artificial production, research, or water or land management, and may be developed by one tribe or jointly with other tribes. The Secretary will consult on a government-to-government basis with any tribe that so requests and will provide to the maximum extent practicable technical assistance in examining impacts on listed salmonids and other salmonids as tribes develop Tribal resource management plans that meet the management responsibilities and needs of the tribes. A Tribal Plan must specify the procedures by which the tribe will enforce its provisions.

(2) Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and implemented within the ongoing Federal Court proceeding. In such circumstances, compliance with the Tribal Plan’s terms shall be determined within that Federal Court proceeding.

(3) The Secretary shall seek comment from the public on the Secretary’s pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed salmonids.

(4) The Secretary shall publish notification in the Federal Register of any determination regarding a Tribal Plan and the basis for that determination.

§ 223.205 Sea turtles.

(a) The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to threatened species of sea turtle, except as provided in §223.206.

(b) Except as provided in §223.206, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) Own, operate, or be on board a vessel, except if that vessel is in compliance with all applicable provisions of §223.206;

(2) Fish for, catch, take, harvest, or possess, fish or wildlife while on board
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a vessel, except if that vessel is in compliance with all applicable provisions of §223.206(d);

(3) Fish for, catch, take, harvest, or possess, fish or wildlife contrary to any notice of tow-time or other restriction specified in, or issued under, §223.206(d)(3) or (d)(4);

(4) Possess fish or wildlife taken in violation of paragraph (b) of this section;

(5) Fail to follow any of the sea turtle handling and resuscitation requirements specified in §223.206(d); (6) Possess a sea turtle in any manner contrary to the handling and resuscitation requirements of §223.206(d)(1);

(7) Fail to comply immediately, in the manner specified at §600.730 (b) through (d) of this Title, with instructions and signals specified therein issued by an authorized officer, including instructions and signals to haul back a net for inspection;

(8) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(9) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;

(10) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;

(12) Resist a lawful arrest for an act prohibited by this section;

(13) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 223;

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED;

(15) Fail to comply with the restrictions set forth in §223.206(d)(10) regarding pound net leaders;

(16) Set, use, or fail to remove a pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15 that does not meet the leader construction specifications described in 50 CFR 223.206(d)(10) and 50 CFR 222.102;

(17) Set, use, or haul a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II defined in 50 CFR 222.102 and referenced in 50 CFR 223.206(d)(10) at any time from May 6 through July 15 unless that leader has been inspected and tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) prior to deploying the leader;

(18) Alter or replace any portion of a pound net leader that has been previously tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) so that the altered or replaced portion is no longer consistent with the modified pound net leader definition in 50 CFR 222.102, unless that altered or replaced portion is inspected and tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) or that alteration or replacement occurs after the regulated period of May 6 through July 15;

(19) Remove, transfer, sell, purchase, affix, or tamper with any tags used by NMFS to mark pound net leaders;

(20) Fish, use, or haul a modified pound net leader at any time from May 6 through July 15 unless the fisherman has on board the vessel a letter issued by NMFS indicating that the leader has passed inspection;

(21) Fail to comply with the restrictions set forth in §223.206(d)(11) regarding sea scallop dredges; or

(22) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

(c) In connection with any action alleging a violation of this section, any
person claiming the benefit of any exemption, exception, or permit under this subpart B has the burden of proving that the exemption, exception, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation. Further, any person claiming that a modification made to a TED that is the subject of such an action complies with the requirements of §223.207 (c) or (d) has the burden of proving such claim.


§ 223.206 Exceptions to prohibitions relating to sea turtles.

(a) Permits—(1) Scientific research, education, zoological exhibition, or species enhancement permits. The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under §223.205(a) for scientific or educational purposes, for zoological exhibition, or to enhance the propagation or survival of threatened species of sea turtles, in accordance with and subject to the conditions of part 222, subpart C—General Permit Procedures.

(2) Incidental-take permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under §223.205(a) in accordance with section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to, the implementing regulations in part 222 of this chapter. Such permits may be issued for the incidental taking of threatened and endangered species of sea turtles.

(b) Exception for injured, dead, or stranded specimens. If any member of any threatened species of sea turtle is found injured, dead, or stranded, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such specimens without a permit if such taking is necessary to aid a sick, injured, or stranded specimen or dispose of a dead specimen or salvage a dead specimen which may be useful for scientific study. Whenever possible, live specimens shall be returned to their aquatic environment as soon as possible. Every action shall be reported in writing to the Assistant Administrator within 30 days, and reports of further occurrence shall be made as deemed appropriate by the Assistant Administrator until the specimen is either returned to its environment or disposed of. Reports shall be mailed by registered or certified mail, return receipt requested, to the Assistant Administrator and shall contain the following information:

(1) Name and position of the official or employee involved;
(2) Description of the specimen(s) involved;
(3) Date and location of disposal;
(4) Circumstances requiring the action;
(5) Method of disposal;
(6) Disposition of the specimen(s), including, where the specimen(s) has been retained in captivity, a description of the place and means of confinement, and the measures taken for its maintenance and care; and
(7) Such other information as the Assistant Administrator may require.

(c) Exception for research or conservation. Any employee or agent of the National Marine Fisheries Service, the Fish and Wildlife Service, or a state fish and wildlife agency operating a conservation program pursuant to the terms of a Cooperative Agreement with the National Marine Fisheries Service or the Fish and Wildlife Service in accordance with section 6(c) of the Act, designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take any threatened species to carry out scientific research or conservation programs. All such takings shall be reported within 30 days of the taking to the Assistant Administrator who may request additional reports of the taking and research at the Assistant Administrator’s discretion.

(d) Exception for incidental taking. The prohibitions against taking in
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§ 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed towards such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(11) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

(1) Handling and resuscitation requirements. (i) Any specimen taken incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are actively moving or determined to be dead as described in paragraph (d)(1)(i)(C) of this section must be released over the stern of the boat. In addition, they must be released only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose, or inactive, as determined in paragraph (d)(1) of this section, by:

(1) Placing the turtle on its bottom shell (plastron) so that the turtle is right side up and elevating its hindquarters at least 6 inches (15.2 cm) for a period of 4 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Periodically, rock the turtle gently left to right and right to left by holding the outer edge of the shell (carapace) and lifting one side about 3 inches (7.6 cm) then alternate to the other side. Gently touch the eye and pinch the tail (reflex test) periodically to see if there is a response.

(2) Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance be placed into a container holding water. A water-soaked towel placed over the head, carapace, and flippers is the most effective method in keeping a turtle moist.

(C) A turtle is determined to be dead if the muscles are stiff (rigor mortis) and/or the flesh has begun to rot; otherwise the turtle is determined to be comatose or inactive and resuscitation attempts are necessary.

(ii) In addition to the provisions of paragraph (d)(1)(i) of this section, a person aboard a vessel in the Atlantic, including the Caribbean Sea and the Gulf of Mexico, that has pelagic or bottom longline gear on board and that has been issued, or is required to have, a limited access permit for highly migratory species under § 635.4 of this title, must comply with the handling and release requirements specified in § 635.21 of this title.

(iii) Any specimen taken incidentally during the course of fishing or scientific research activities must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(2) Gear requirements for trawlers—(i) TED requirement for shrimp trawlers. Any shrimp trawler that is in the Atlantic Area or Gulf Area must have an approved TED installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp trawler. Exceptions to the TED requirement for shrimp trawlers are provided in paragraph (d)(2)(ii) of this section.

(ii) Exemptions from the TED requirement—(A) Alternative tow-time restrictions. A shrimp trawler is exempt from the TED requirements of paragraph (d)(2)(i) of this section if it complies with the alternative tow-time restrictions in paragraph (d)(3)(i) of this section and if it:
(1) Has on board no power or mechanical-advantage trawl retrieval system (i.e., any device used to haul any part of the net aboard);

(2) Is a bait shrimper that retains all live shrimp on board with a circulating seawater system, if it does not possess more than 32 lb. (14.5 kg) of dead shrimp on board, if it has a valid original state bait-shrimp license, and if the state license allows the licensed vessel to participate in the bait shrimp fishery exclusively;

(3) Has only a pusher-head trawl, skimmer trawl, or wing net rigged for fishing;

(4) Is in an area during a period for which tow-time restrictions apply under paragraphs (d)(3)(ii) or (iii) of this section, if it complies with all applicable provisions imposed under those paragraphs; or

(5) Is using a single test net (try net) with a headrope length of 12 ft (3.6 m) or less and with a footrope length of 15 ft (4.6 m) or less, if it is pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net, in which case the exemption under this paragraph (d)(2)(ii)(A) applies to the test net.

(B) Exempted gear or activities. The following fishing gear or activities are exempted from the TED requirements of paragraph (d)(2)(i) of this section:

(1) A beam or roller trawl, if the frame is outfitted with rigid vertical bars, and if none of the spaces between the bars, or between the bars and the frame, exceeds 4 inches (10.2 cm); and

(2) A shrimp trawler fishing for, or possessing, royal red shrimp, if royal red shrimp constitutes at least 90 percent (by weight) of all shrimp either found on board, or offloaded from that shrimp trawler.

(iii) Gear requirement—summer flounder trawlers—(A) TED requirement. (1) Any summer flounder trawler in the summer flounder fishery-sea turtle protection area must have an approved TED installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the summer flounder trawler. Exceptions to the TED requirement for summer flounder trawlers are provided in paragraph (d)(2)(ii)(B) of this section.

(2) Any approved hard TED or special hard TED installed in a summer flounder trawl must be installed in a TED extension. The TED extension is a cylindrical piece of webbing distinct from the main trawl’s body, wings, codend, and any other net extension(s). The TED extension must be constructed of webbing no larger than 3.5 inch (8.9 cm) stretched mesh. The TED extension must extend at least 24 inches (61.0 cm) but not more than 36 inches (91.4 cm) forward of the leading edge of the TED and aft of the trailing edge of the grid.

(B) Exemptions from the TED requirement. Any summer flounder trawler north of 35°46.1′ N. lat. (Oregon Inlet, NC) from January 15 through March 15 annually is exempt from the TED requirement of paragraph (d)(2)(ii)(A) of this section, unless the Assistant Administrator determines that TED use is necessary to protect sea turtles or ensure compliance, pursuant to the procedures of paragraph (d)(4) of this section.

(C) Monitoring. Summer flounder trawlers must carry onboard a NMFS-approved observer if requested by the Southeast Regional Administrator or the Northeast Regional Administrator. A written notification will be sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or upon written notification otherwise served on the owner or operator of the vessel. Owners and operators must comply with the terms and conditions specified in such written notification. All NMFS-approved observers may report any violations of this section, or other applicable regulations and laws. Information collected by observers may be used for enforcement purposes.

(D) Additional sea turtle conservation measures. The Assistant Administrator may impose other such restrictions upon summer flounder trawlers as the Assistant Administrator deems necessary or appropriate to protect sea turtles.
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(3) Tow-time restrictions—(i) Duration of tows. If tow-time restrictions are utilized pursuant to paragraph (d)(2)(ii), (d)(3)(ii), or (d)(3)(iii) of this section, a shrimp trawler must limit tow times. The tow time is measured from the time that the trawl door enters the water until it is removed from the water. For a trawl that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water. Tow times may not exceed:

(A) 55 minutes from April 1 through October 31; and

(B) 75 minutes from November 1 through March 31.

(ii) Alternative—special environmental conditions. The Assistant Administrator may allow compliance with tow-time restrictions, as an alternative to the TED requirement of paragraph (d)(2)(i) of this section, if the Assistant Administrator determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable.

(iii) Substitute—ineffectiveness of TEDs. The Assistant Administrator may require compliance with tow-time restrictions, as a substitute for the TED requirement of paragraph (d)(2)(i) of this section, if the Assistant Administrator determines that TEDs are ineffective in protecting sea turtles.

(iv) Notice; applicability; conditions. The Assistant Administrator will publish notification concerning any tow-time restriction imposed under paragraph (d)(3)(ii) or (iii) of this section in the FEDERAL REGISTER and will announce it in summary form on channel 16 of the marine VHF radio. A notification of tow-time restrictions will include findings in support of these restrictions as an alternative to, or as substitute for, the TED requirements. The notification will specify the effective dates, the geographic area where tow-time restrictions apply, and any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance, including, but not limited to, a requirement to carry observers, to register vessels in accordance with procedures at paragraph (d)(5) of this section, or for all shrimp trawlers in the area to synchronize their tow times so that all trawl gear remains out of the water during certain times. A notification withdrawing tow-time restrictions will include findings in support of that action.

(v) Procedures. The Assistant Administrator will consult with the appropriate fishery officials (state or Federal) where the affected shrimp fishery is located in issuing a notification concerning tow-time restrictions. An emergency notification can be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each if the Assistant Administrator finds that the conditions necessitating the imposition of tow-time restrictions continue to exist. The Assistant Administrator may invite comments on such an action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent tow-time restriction through rulemaking.

(4) Limitations on incidental takings during fishing activities—(i) Limitations. The exemption for incidental takings of sea turtles in paragraph (d) of this section does not authorize incidental takings during fishing activities if the takings:

(A) Would violate the restrictions, terms, or conditions of an incidental take statement or biological opinion;

(B) Would violate the restrictions, terms, or conditions of an incidental take permit; or

(C) May be likely to jeopardize the continued existence of a species listed under the Act.

(ii) Determination; restrictions on fishing activities. The Assistant Administrator may issue a determination that incidental takings during fishing activities are unauthorized. Pursuant thereto, the Assistant Administrator
may restrict fishing activities in order to conserve a species listed under the Act, including, but not limited to, restrictions on the fishing activities of vessels subject to paragraph (d)(2) of this section. The Assistant Administrator will take such action if the Assistant Administrator determines that restrictions are necessary to avoid unauthorized takings that may be likely to jeopardize the continued existence of a listed species. The Assistant Administrator may withdraw or modify a determination concerning unauthorized takings or any restriction on fishing activities if the Assistant Administrator determines that such action is warranted.

(iii) **Notice; applicability; conditions.** The Assistant Administrator will publish a notification of a determination concerning unauthorized takings or a notification concerning the restriction of fishing activities in the **Federal Register**. The Assistant Administrator will provide as much advance notice as possible, consistent with the requirements of the Act, and will announce the notification in summary form on channel 16 of the marine VHF radio. Notification of a determination concerning unauthorized takings will include findings in support of that determination; specify the fishery, including the target species and gear used by the fishery, the area, and the times, for which incidental takings are not authorized; and include such other conditions and restrictions as the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Notification of restriction of fishing activities will include findings in support of the restriction, will specify the time and area where the restriction is applicable, and will specify any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Such conditions and restrictions may include, but are not limited to, limitations on the types of fishing gear that may be used, tow-time restrictions, alteration or extension of the periods of time during which particular tow-time requirements apply, requirements to use TEDs, registration of vessels in accordance with procedures at paragraph (d)(5) of this section, and requirements to provide observers. Notification of withdrawal or modification will include findings in support of that action.

(iv) **Procedures.** The Assistant Administrator will consult with the appropriate fisheries officials (state or Federal) where the fishing activities are located in issuing notification of a determination concerning unauthorized takings or notification concerning the restriction of fishing activities. An emergency notification will be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each, except that emergency placement of observers will be effective for a period of up to 180 days and may be renewed for an additional period of 60 days. The Assistant Administrator may invite comments on such action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent determination or restriction through rulemaking.

(5)–(6) [Reserved]

(7) **Restrictions applicable to gillnet fisheries in North Carolina.** No person may fish with gillnet fishing gear which has a stretched mesh size larger than 4 1/4 inches (10.8 cm), annually from September 1 through December 15, in the inshore waters of Pamlico Sound, North Carolina, and all contiguous tidal waters, bounded on the north by 35°46.3′ N. lat., on the south by 35°00′ N. lat., and on the west by 76°30′ W. long.

(8) **Restrictions applicable to large mesh gillnet fisheries in the mid-Atlantic region.** No person may fish with or possess on board a boat, any gillnet with a stretched mesh size 7-inches (17.8 cm) or larger, unless such gillnets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or the rail, and all buoys larger than 6-inches (15.2 cm) in diameter, high flyers, and anchors are disconnected. This restriction applies in the Atlantic Exclusive Economic Zone (as defined in 50 CFR 600.10) during the following time periods and in the following area:
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(1) Waters north of 33° 51.0′ N. (North Carolina/South Carolina border at the coast) and south of 35° 46.0′ N. (Oregon Inlet) at any time;

(ii) Waters north of 35° 46.0′ N. (Oregon Inlet) and south of 3° 22.5′ N. (Currituck Beach Light, NC) from March 16 through January 14;

(iii) Waters north of 36° 22.5′ N. (Currituck Beach Light, NC) and south of 37° 34.6′ N. (Wachapreague Inlet, VA) from April 1 through January 14; and

(iv) Waters north of 37° 34.6′ N. (Wachapreague Inlet, VA) and south of 37° 56.0′ N. (Chincoteague, VA) from April 16 through January 14.

(9) Restrictions applicable to Pacific pelagic longline vessels. In addition to the general prohibitions specified in §600.725 of chapter VI of this title, it is unlawful for any person who is not operating under a western Pacific longline permit under §665.801 of this title to do any of the following on the high seas of the Pacific Ocean east of 150° W. long. and north of the Equator (0° N. lat.):

(i) Direct fishing effort toward the harvest of swordfish (Xiphias gladius) using longline gear.

(ii) Possess a light stick on board a longline vessel. A light stick as used in this paragraph is any type of light emitting device, including any fluorescent glow bead, chemical, or electrically powered light that is affixed underwater to the longline gear.

(iii) An operator of a longline vessel subject to this section may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing east of 150° W. long. and north of the equator (0° N. lat.).

(iv) Fail to employ basket-style longline gear such that the mainline is deployed slack when fishing.

(v) When a conventional monofilament longline is deployed by a vessel, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats.

(vi) Longline gear must be deployed such that the deepest point of the main longline between any two floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

(10) Restrictions applicable to pound nets in Virginia—(i) Offshore pound net leaders in Pound Net Regulated Area I. During the time period of May 6 through July 15 each year, any offshore pound net leader in Pound Net Regulated Area I must meet the definition of a modified pound net leader. Any offshore pound net leader in Pound Net Regulated Area I that does not meet the definition of a modified pound net leader must be removed from the water prior to May 6 and may not be reset until July 16.

(ii) Nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II. During the time period of May 6 to July 15 each year, any nearshore pound net leader in Pound Net Regulated Area I and any pound net leader in Pound Net Regulated Area II must have only mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers. Any nearshore pound net leader in Pound Net Regulated Area I or any pound net leader in Pound Net Regulated Area II with stretched mesh measuring 12 inches (30.5 cm) or greater, or with stringers, must be removed from the water prior to May 6 and may not be reset until July 16. A pound net leader is exempt from these measures only if it meets the definition of a modified pound net leader.

(iii) Protocol for measuring mesh size. This protocol applies to measuring mesh size in leaders described in 50 CFR 223.206(d)(10)(i) and 223.206(d)(10)(ii). Mesh sizes are measured by a wedge-shaped gauge having a taper of 0.79 in. (2 cm) in 3.15 in. (8 cm) and a thickness of 0.09 in. (2.3 mm) inserted into the meshes under a pressure or pull of 11.02 lb. (5 kg). The mesh size is the average of the measurement of any series of 20 consecutive meshes. The mesh in the leader is measured at or near the horizontal and vertical center of a leader panel.

(iv) Reporting requirement. At any time during the year, if a sea turtle is taken live and uninjured in a pound net operation, the operator of the vessel must report the incident to the NMFS Northeast Regional Office, (978) 281-
9328 or fax (978) 281-9394, within 24 hours of returning from the trip in which the incidental take was discovered. The report shall include a description of the sea turtles condition at the time of release and the measures taken as required in paragraph (d)(1) of this section. At any time during the year, if a sea turtle is taken in a pound net operation, and is determined to be injured, or if a turtle is captured dead, the operator of the vessel shall immediately notify NMFS Northeast Regional Office and the appropriate rehabilitation or stranding network, as determined by NMFS Northeast Regional Office.

(v) Monitoring. Owners or operators of pound net fishing operations must allow access to the pound net gear so it may be observed by a NMFS-approved observer if requested by the Northeast Regional Administrator. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws. Information collected by observers may be used for law enforcement purposes.

(vi) Expedited modification of restrictions and effective dates. From May 6 to July 15 of each year, if NMFS receives information that one sea turtle is entangled alive or that one sea turtle is entangled dead, and NMFS determines that the entanglement contributed to its death, in pound net leaders that are in compliance with the restrictions described in paragraph (d)(10)(ii) of this section, NMFS may issue a final rule modifying the restrictions on pound net leaders as necessary to protect threatened sea turtles. Such modifications may include, but are not limited to, reducing the maximum allowable mesh size of pound net leaders and prohibiting the use of pound net leaders regardless of mesh size. In addition, if information indicates that a significant level of sea turtle entanglements, impingements or strandings will likely continue beyond July 15, NMFS may issue a final rule extending the effective date of the restrictions, including any additional restrictions imposed under this paragraph (d)(10)(vi), for an additional 15 days, but not beyond July 30, to protect threatened sea turtles.

(vii) Modified leader inspection program. Any fisherman planning to use a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15 must make his/her available for inspection and tagging by NMFS according to the following procedures. At least 72 hours prior to deploying a modified pound net leader, the fisherman or his/her representative must call NMFS at 757-414-0128 between 7:00 a.m. and 5:00 p.m. local time and arrange for a mutually agreeable meeting date, time, and place. The fisherman must meet NMFS at such location at the designated time and allow NMFS to examine his or her gear to help ensure the leader is in compliance with the definition of a modified pound net leader. NMFS will ascertain whether the leader meets the following four criteria taken from that definition: (1) the lower portion of the leader is mesh and the upper portion consists of only vertical lines; (2) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (3) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at least every 2 feet (61 cm); and (4) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line. NMFS will also measure the height of the mesh in relation to the height of the entire leader. During the inspection, the fisherman must provide accurate and specific latitude and longitude coordinates of the location at which the leader will be deployed, as well as information on the low water depth at each end of the modified leader at the site at which it will be set. If the leader meets the four criteria previously described, the measurement of the height of the mesh in relation to the total height of the leader is recorded, and the low water depth and latitude and longitude coordinates of the specific location at which the leader will be deployed are provided and recorded, the leader will pass inspection. If it passes inspection, NMFS will tag the leader with one or more
§ 223.207 Approved TEDs.

Any netting, webbing, or mesh that may be measured to determine compliance with this section is subject to measurement, regardless of whether it is wet or dry. Any such measurement will be of the stretched mesh size.

(a) Hard TEDs. Hard TEDs are TEDs with rigid deflector grids and are categorized as “hooped hard TEDs” and “single-grid hard TEDs” such as the Matagorda and Georgia TED (Figures 3 & 4 to this part). Hard TEDs complying with the following generic design criteria are approved TEDs:

(1) Construction materials—(i) Single-grid and inshore hooped hard TED. A single-grid hard TED or an inshore hooped hard TED must be constructed of one or a combination of the following materials, with minimum dimensions as follows:

(A) Solid steel rod with a minimum outside diameter of 1/4 inch (0.64 cm);
(B) Fiberglass or aluminum rod with a minimum outside diameter of 1/2 inch (1.27 cm); or
(C) Steel or aluminum tubing with a minimum outside diameter of 1/2 inch (1.27 cm) and a minimum wall thickness of 1/8 inch (0.32 cm) (also known as schedule 40 tubing).

(ii) Offshore hooped hard TED. An offshore hooped hard TED must be constructed of aluminum, with minimum dimensions as follows:

(A) Solid rod with a minimum outside diameter of 5/8 inch (1.59 cm); or
(B) Tubing with a minimum outside diameter of 1 inch (2.54 cm) and a minimum wall thickness of 1/8 inch (0.32 cm).

(2) Method of attachment. A hard TED must be sewn into the trawl around the entire circumference of the TED with heavy twine.

(3) Angle of deflector bars. (i) The angle of the deflector bars must be between 30° and 55° from the normal, horizontal flow through the interior of the trawl, except as provided in paragraph (a)(3)(ii) of this section.

(ii) For any shrimp trawler fishing in the Gulf SFSTCA or the Atlantic SFSTCA, a hard TED with the position of the escape opening at the bottom of the net when the net is in its deployed position, the angle of the deflector bars from the normal, horizontal flow through the interior of the trawl, at any point, must not exceed 55°, and the angle of the bottom-most 4 inches (10.2 cm) of each deflector bar, measured along the bars, must not exceed 45° (Figures 14a and 14b to this part).

(4) Space between bars. The space between deflector bars and the deflector bars and the TED frame must not exceed 4 inches (10.2 cm).

(5) Direction of bars. The deflector bars must run from top to bottom of the TED, as the TED is positioned in the net, except that up to four of the bottom bars and two of the top bars, including the frame, may run from side to side of the TED. The deflector bars must be permanently attached to the TED frame or to the horizontal bars, if used, at both ends.

(6) Position of the escape opening. The escape opening must be made by removing a rectangular section of webbing from the trawl, except for a TED with an escape opening size described at paragraph (a)(7)(ii)(A) for which the escape opening may alternatively be made by making a horizontal cut along the same plane as the TED. The escape opening must be centered on and immediately forward of the frame at either the top or bottom of the net when the net is in the deployed position. The escape opening must be at the top of the net when the slope of the deflector bars from forward to aft is upward, and must be at the bottom when such slope is downward. The passage from the mouth of the trawl through the escape opening must be completely clear of any obstruction or modification, other than those specified in paragraph (d) of this section.

(7) Size of escape opening—(i) Hooped hard TEDs—(A) Escape opening for inshore hooped hard TED. The inshore hooped hard TED escape opening must have a horizontal measurement of no less than 35 inches (89 cm) wide and a forward measurement of no less than 27 inches (69 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(i) of this section. The resultant opening with a webbing flap must be a minimum width of 35 inches (89 cm) and a minimum height of 20 inches (51 cm), with each measurement taken simultaneously. This opening may only be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina.

(B) Escape opening for offshore hooped hard TED. The offshore hooped hard TED escape opening must have a horizontal measurement of no less than 40 inches (102 cm) wide and a forward measurement of no less than 35 inches (89 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(i) of this section. The resultant escape opening with a webbing flap must have a stretched mesh circumference of no less than 142 inches (361 cm).

(ii) Single-grid hard TEDs. On a single-grid hard TED, the horizontal cut(s) for
the escape opening may not be narrower than the outside width of the TED frame minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. Fore-and-aft cuts to remove a rectangular piece of webbing must be made from the ends of the horizontal cuts along a single row of meshes along each side. The overall size of the escape opening must match one of the following specifications:

(A) 44-inch inshore opening. The escape opening must have a minimum width of 44 inches (112 cm) and a minimum height of 20 inches (51 cm) with each measurement taken separately. A webbing flap, as described in paragraph (d)(3)(i) of this section, may be used with this escape hole, so long as this minimum opening size is achieved. This opening may only be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina.

(B) The 71-inch offshore opening: The two forward cuts of the escape opening must not be less than 26 inches (66 cm) long from the points of the cut immediately forward of the TED frame. The resultant length of the leading edge of the escape opening cut must be no less than 71 inches (181 cm) with a resultant circumference of the opening being 142 inches (361 cm) (Figure 12 to this part). A webbing flap, as described in paragraph (d)(3)(ii) of this section, may be used with this escape hole, so long as this minimum opening size is achieved. Either this opening or the one described in paragraph (a)(7)(ii)(C) of this section must be used in all offshore waters and in all inshore waters in Georgia and South Carolina, but may also be used in other inshore waters.

(C) Double-cover offshore opening. The two forward cuts of the escape opening must not be less than 20 inches (51 cm) long from the points of the cut immediately forward of the TED frame. The resultant length of the leading edge of the escape opening cut must be no less than 56 inches (142 cm) (Figure 16 to this part illustrates the dimensions of these cuts). A webbing flap, as described in paragraph (d)(3)(iii) of this section, may be used with this escape hole. Either this opening or the one described in paragraph (a)(7)(ii)(B) of this section must be used in all offshore waters but also in all inshore waters in Georgia and South Carolina, and may be used in other inshore waters.

(8) Size of hoop or grid—(i) Hooped hard TED—(A) Inshore hooped hard TED. The front hoop on an inshore hooped hard TED must have an inside horizontal measurement of at least 35 inches (89 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 20 inches (51 cm).

(B) Offshore hooped hard TED. The front hoop on an offshore hooped hard TED must have an inside horizontal measurement of at least 40 inches (102 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 23 1/4 inches (59 cm).

(ii) Single-grid hard TED. A single-grid hard TED must have a minimum outside horizontal and vertical measurement of 32 inches (81 cm). The required outside measurements must be at the mid-point of the deflector grid.

(9) Flotation. Floats must be attached to the top one-half of all hard TEDs with bottom escape openings. The floats may be attached either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface of the TED. Floats must be attached with heavy twine or rope. Floats must be constructed of aluminum, hard plastic, expanded polyvinyl chloride, or expanded ethylene vinyl acetate unless otherwise specified. The requirements of this paragraph may be satisfied by compliance with either the dimension requirements of paragraph (a)(9)(i) of this section, or the buoyancy requirements of paragraph (a)(9)(ii) of this section, or the buoyancy-dimension requirements of paragraph (a)(9)(iii) of this section. If roller gear is used pursuant to paragraph (d)(5) of this section, the roller gear must be included in the circumference measurement of the TED or the total weight of the TED.

(i) Float dimension requirements. (A) For hard TEDs with a circumference of 120 inches (304.8 cm) or more, a minimum of either one round, aluminum
or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or two expanded polyvinyl chloride or expanded ethylene vinyl acetate floats, each no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(B) For hard TEDs with a circumference of less than 120 inches (304.8 cm), a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or one expanded polyvinyl chloride or expanded ethylene vinyl acetate float, no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(ii) Float buoyancy requirements. Floats of any size and in any combination must be attached such that the combined buoyancy of the floats, as marked on the floats, equals or exceeds the weight of the hard TED, as marked on the TED. The buoyancy of the floats and the weight of the TED must be clearly marked on the floats and the TED as follows:

(A) Float buoyancy markings. Markings on floats must be made in clearly legible raised or recessed lettering by the original manufacturer. The marking must identify the buoyancy of the float in water, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the buoyancy in English units. The marking must identify the nominal buoyancy for the manufactured float.

(B) TED weight markings. The marking must be made by the original TED manufacturer and must be permanent and clearly legible. The marking must identify the in-air, dry weight of the TED, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the weight in English units. The marked weight must represent the actual weight of the individual TED as manufactured. Previously manufactured TEDs may be marked upon return to the original manufacturer. Where a TED is comprised of multiple detachable components, the weight of each component must be separately marked.

(iii) Buoyancy-dimension requirements. Floats of any size and in any combination, provided that they are marked pursuant to paragraph (a)(9)(ii)(A) of this section, must be attached such that the combined buoyancy of the floats equals or exceeds the following values:

(A) For floats constructed of aluminum or hard plastic, regardless of the size of the TED grid, the combined buoyancy must equal or exceed 14 lb (6.4 kg);

(B) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is 120 inches (304.8 cm) or more, the combined buoyancy must equal or exceed 20 lb (9.1 kg); or

(C) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is less than 120 inches (304.8 cm), the combined buoyancy must equal or exceed 10 lb (4.5 kg).

(b) Special Hard TEDs. Special hard TEDs are hard TEDs which do not meet all of the design and construction criteria of the generic standards specified in paragraph (a) of this section. The following special hard TEDs are approved TEDs:

(1) Flounder TED. (Figure 10 to this part). The Flounder TED is approved for use only in the Atlantic summer flounder bottom trawl fishery. The Flounder TED is not an approved TED for use by shrimp trawlers. The Flounder TED must be constructed of at least 1 1/4 inch (3.2 cm) outside diameter aluminum or steel pipe with a wall thickness of at least 1/8 inch (0.3 cm). It must have a rectangular frame with outside dimensions which can be no less than 11 inches (29.5 cm) in length and 32 inches (81.3 cm) in width. It must have at least five vertical deflector bars, with bar spacings of no more than 4 inches (10.2 cm). The vertical bars must be connected to the top of the frame and to a single horizontal bar near the bottom. The horizontal bar must be connected at both ends to the sides of the frame and parallel to the bottom bar of the frame. There must be a space no larger than 10 inches (25.4 cm) between the horizontal bar and the bottom bar of the frame. One or more additional vertical bars
running from the bottom bar to the horizontal bar must divide the opening at the bottom into two or more rectangles, each with a maximum height of 10 inches (25.4 cm) and a maximum width of 14 1/2 inches (36.8 cm). This TED must comply with paragraph (a)(2) of this section. The angle of the deflector bars must be between 30 and 55 from the normal, horizontal flow through the interior of the trawl. The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at the top of the net when the net is in its deployed position. The escape opening must be at the top of the net and the slope of the deflector bars from forward to aft is upward. The escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction. The cut in the trawl webbing for the escape opening cannot be narrower than the outside width of the grid minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. The resulting escape opening in the net webbing must measure at least 35 inches (88.9 cm) in horizontal taut length and, simultaneously, 12 inches (30.5 cm) in vertical taut height. The vertical measurement must be taken at the midpoint of the horizontal measurement. This TED may not be configured with a bottom escape opening. Installation of an accelerator funnel is not permitted with this TED.

(2) Weedless TED. The weedless TED must meet all the requirements of paragraph (a) of this section for single-grid hard TEDs, with the exception of paragraphs (a)(1) and (a)(5) of this section. The weedless TED must be constructed of at least 1-1/4 inch (3.2 cm) outside diameter aluminum with a wall thickness of at least 1/8 inch (0.3 cm). The deflector bars must run from top to bottom of the TED, as the TED is positioned in the net. The ends of the deflector bars on the side of the frame opposite to the escape opening must be permanently attached to the frame. The ends of the deflector bars nearest the escape opening are not attached to the frame and must lie entirely forward of the leading edge of the outer frame. The ends of the unattached deflector bars must be no more than 4 inches (10.2 cm) from the frame and may not extend past the frame. A horizontal brace bar to reinforce the deflector bars, constructed of the same size or larger pipe as the deflector bars, must be permanently attached to the frame and the rear face of each of the deflector bars at a position anywhere between the vertical mid-point of the frame and the unattached ends of the deflector bars. The horizontal brace bar may be offset behind the deflector bars, using spacer bars, not to exceed 5 inches (12.7 cm) in length and constructed of the same size or larger pipe as the deflector bars. See Figure 15.

(c) Soft TEDs. Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. The following soft TEDs are approved TEDs:

(1) Parker TED. The Parker TED is a soft TED, consisting of a single triangular panel, composed of webbing of two different mesh sizes, that forms a complete barrier inside a trawl and that angles toward an escape opening in the top of the trawl.

(i) Excluder Panel. (Figure 5 to this part) The excluder panel of the Parker TED must be constructed of a single triangular piece of 8-inch (20.3 cm) stretched mesh webbing and two trapezoidal pieces of 4-inch (10.2-cm) stretched mesh webbing. The webbing must consist of number 48 (3-mm thick) or larger polypropylene or polyethylene webbing that is heat-set knotted or braided. The leading edge of the 8-inch (20.3-cm) mesh panel must be 36 meshes wide. The 8-inch (20.3-cm) mesh panel must be tapered on each side with all-bar cuts to converge on an apex, such that the length of each side is 36 bars. The leading edges of the 4-inch (10.2-cm) mesh panels must be 8 meshes wide. The edges of the 4-inch (10.2-cm) mesh panels must be cut with all-bar cuts running parallel to each other, such that the length of the inner edge is 72 bars and the length of the outer edge is 89 bars and the resulting fore-and-aft edge is 8 meshes deep. The two 4-inch (10.2-cm) mesh panels must be sewn to the 8-inch (20.3-cm) mesh panel to create a single triangular excluder panel. The 72-bar edge of each 4-inch (10.2-cm) mesh panel must be securely joined with twine to one of the...
36-bar edges of the 8-inch (20.3-cm) mesh panel, tied with knots at each knot of the 4-inch (10.2-cm) webbing and at least two wraps of twine around each bar of 4-inch (10.2-cm) mesh and the adjoining bar of the 8-inch (20.3-cm) mesh. The adjoining fore-and-aft edges of the two 4-inch (10.2-cm) mesh panels must be sewn together evenly.

(ii) Limitations on which trawls may have a Parker TED installed. The Parker TED must not be installed or used in a two-seam trawl with a tongue, nor in a triple-wing trawl (a trawl with a tongue along the headrope and a second tongue along the footrope). The Parker TED may be installed and used in any other trawl if the taper of the body panels of the trawl does not exceed 4b1p and if it can be properly installed in compliance with paragraph (c)(1)(iii) of this section.

(iii) Panel installation—(A) Leading edge attachment. The leading edge of the excluder panel must be attached to the inside of the bottom of the trawl across a straight row of meshes. For a two-seam trawl or a four-seam, tapered-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel, from seam to seam. For a four-seam, straight-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel and half the height of each wing panel of the trawl. Every mesh of the leading edge of the excluder panel must be evenly sewn to this row of meshes; meshes may not be laced to the trawl. The row of meshes for attachment to the trawl must contain the following number of meshes, depending on the stretched mesh size used in the trawl:

(1) For a mesh size of 2¼ inches (5.7 cm), 152–168 meshes;
(2) For a mesh size of 2½ inches (5.4 cm), 161–178 meshes;
(3) For a mesh size of 2 inches (5.1 cm), 171–189 meshes;
(4) For a mesh size of 1⅛ inches (4.8 cm), 182–202 meshes;
(5) For a mesh size of 1⅜ inches (4.4 cm), 196–216 meshes;
(6) For a mesh size of 1⅝ inches (4.1 cm), 211–233 meshes;
(7) For a mesh size of 1⅞ inches (3.8 cm), 228–252 meshes;
(8) For a mesh size of 1½ inches (3.5 cm), 249–275 meshes; and
(9) For a mesh size of 1¼ inches (3.2 cm), 274–302 meshes.

(B) Apex attachment. The apex of the triangular excluder panel must be attached to the inside of the top body panel of the trawl at the centerline of the trawl. The distance, measured aft along the centerline of the top body panel from the same row of meshes for attachment of the excluder panel to the bottom body panel of the trawl, to the apex attachment point must contain the following number of meshes, depending on the stretched mesh size used in the trawl:

(1) For a mesh size of 2¼ inches (5.7 cm), 78–83 meshes;
(2) For a mesh size of 2½ inches (5.4 cm), 83–88 meshes;
(3) For a mesh size of 2 inches (5.1 cm), 87–93 meshes;
(4) For a mesh size of 1⅛ inches (4.8 cm), 93–99 meshes;
(5) For a mesh size of 1⅜ inches (4.4 cm), 100–106 meshes;
(6) For a mesh size of 1⅝ inches (4.1 cm), 107–114 meshes;
(7) For a mesh size of 1⅞ inches (3.8 cm), 114–124 meshes;
(8) For a mesh size of 1½ inches (3.5 cm), 127–133 meshes; and
(9) For a mesh size of 1¼ inches (3.2 cm), 137–146 meshes.

(C) Side attachment. The sides of the excluder panel must be attached evenly to the inside of the trawl from the outside attachment points of the excluder panel’s leading edge to the apex of the excluder panel. Each side must be sewn with the same sewing sequence, and, if the sides of the excluder panel cross rows of bars in the trawl, the crossings must be distributed evenly over the length of the side attachment.

(iv) Escape opening. The escape opening for the Parker soft TED must match one of the following specifications:

(A) Inshore opening. This opening is the minimum size opening that may be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina, in which a larger minimum opening is required. A slit at least 56 inches (1.4 m) in taut length must be cut along the centerline of the top body panel of the trawl net.
immediately forward of the apex of the panel webbing. The slit must not be covered or closed in any manner. The edges and end points of the slit must not be reinforced in any way; for example, by attaching additional rope or webbing or by changing the orientation of the webbing.

(B) Offshore opening. A horizontal cut extending from the attachment of one side of the deflector panel to the trawl to the attachment of the other side of the deflector panel to the trawl must be made in a single row of meshes across the top of the trawl and measure at least 96 inches (244 cm) in taut width. All trawl webbing above the deflector panel between the 96-inch (244-cm) cut and edges of the deflector panel must be removed. A rectangular flap of nylon webbing not larger than 2-inch (5.1-cm) stretched mesh may be sewn to the forward edge of the escape opening. The width of the flap must not be larger than the width of the forward edge of the escape opening. The flap must not extend more than 12 inches (30.4 cm) beyond the rear point of the escape opening. The sides of the flap may be attached to the top of the to the rear point of the escape opening. One row of steel chain not larger than $\frac{3}{16}$ inch (4.76 mm) may be sewn evenly to the back edge of the flap. The stretched length of the chain must not exceed 96 inches (244 cm). A Parker TED using the escape opening described in this paragraph meets the requirements of §223.206(d)(2)(iv)(B). This opening or one that is larger must be used in all offshore waters and the inshore waters of Georgia and South Carolina. It also may be used in other inshore waters.

(2) [Reserved]

(d) Allowable modifications to hard TEDs and special hard TEDs. Unless otherwise prohibited in paragraph (b) of this section, only the following modifications may be made to an approved hard TED or an approved special hard TED:

(1) Floats. In addition to floats required pursuant to paragraph (a)(9) of this section, floats may be attached to the top one-half of the TED, either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface at the top of the TED.

(2) Accelerator funnel. An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size of not greater than 1-5/8 inches (4 cm), if it is inserted in the net immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The trailing edge of the accelerator funnel may be attached to the TED on the side opposite the escape opening if not more than one-third of the circumference of the funnel is attached, and if the inside horizontal opening as described above in maintained. In a bottom opening TED only the top one-third of the circumference of the funnel may be attached to the TED. In a top opening TED only the bottom one-third of the circumference of the funnel may be attached to the TED.

(i) In inshore waters, other than the inshore waters of Georgia and South Carolina in which a larger opening is required, the inside horizontal opening of the accelerator funnel must be at least 44 inches (112 cm).

(ii) In offshore waters and the inshore waters of Georgia and South Carolina, the inside horizontal opening of the accelerator funnel must be at least 71 inches (180 cm).

(3) Webbing flap. A webbing flap may be used to cover the escape opening under the following conditions: No device holds it closed or otherwise restricts the opening; it is constructed of webbing with a stretched mesh size no larger than 1-5/8 inches (4 cm); it lies on the outside of the trawl; it is attached along its entire forward edge forward of the escape opening; it is not attached on the sides beyond the row of meshes that lies 6 inches (15 cm) behind the posterior edge of the grid; the sides of the flap are sewn on the same row of meshes fore and aft; and the flap does not overlap the escape hole cut by more than 5 inches (13 cm) on either side.

(i) 44-inch inshore TED flap. This flap may not extend more than 24 inches (61 cm) beyond the posterior edge of the grid.

(ii) 71-inch offshore TED Flap. The flap must be a 133-inch (338-cm) by 52-
inch (132–cm) piece of webbing. The 133–inch (338–cm) edge of the flap is attached to the forward edge of the opening (71–inch (180–cm) edge). The flap may extend no more than 24 inches (61 cm) behind the posterior edge of the grid (Figure 12 to this part illustrates this flap).

(iii) Double cover flap offshore TED flap. This flap must be composed of two equal size rectangular panels of webbing. Each panel must be no less than 58 inches (147 cm) wide and may overlap each other no more than 15 inches (38 cm). The panels may only be sewn together along the leading edge of the cut. The trailing edge of each panel must not extend more than 24 inches (61 cm) past the posterior edge of the grid (Figure 16 to this part). Each panel may be sewn down the entire length of the outside edge of each panel. Chafing webbing described in paragraph (d)(4) of this section may not be used with this type of flap.

(A) Edge lines. Optional edge lines can be used in conjunction with this flap. The line must be made of polyethylene with a maximum diameter of 3/8 inches (.95 cm). A single length of line must be used for each flap panel. The line must be sewn evenly to the unattached, inside edges and trailing edges, of each flap panel. When edge lines are installed, the outside edge of each flap panel must be attached along the entire length of the flap panel.

(B) [Reserved]

(4) Chafing webbing. A single piece of nylon webbing, with a twine size no smaller than size 36 (2.46 mm in diameter), may be attached outside of the escape opening webbing flap to prevent chafing on bottom opening TEDs. This webbing may be attached along its leading edge only. This webbing may not extend beyond the trailing edge or sides of the existing escape opening webbing flap, and it must not interfere or otherwise restrict the turtle escape opening.

(5) Roller gear. Roller gear may be attached to the bottom of a TED to prevent chafing on the bottom of the TED and the trawl net. When a webbing flap is used in conjunction with roller gear, the webbing flap must be of a length such that no part of the webbing flap can touch or come in contact with any part of the roller gear assembly or the means of attachment of the roller gear assembly to the TED, when the trawl net is in its normal, horizontal position. Roller gear must be constructed according to one of the following design criteria:

(i) A single roller consisting of hard plastic shall be mounted on an axle rod, so that the roller can roll freely about the axle. The maximum diameter of the roller shall be 6 inches (15.24 cm), and the maximum width of the axle rod shall be 12 inches (30.4 cm). The axle rod must be attached to the TED by two support rods. The maximum clearance between the roller and the TED shall not exceed 1 inch (2.5 cm) at the center of the roller. The support rods and axle rod must be made from solid steel or solid aluminum rod no larger than ½ inch (1.28 cm) in diameter. The attachment of the support rods to the TED shall be such that there are no protrusions (lips, sharp edges, burrs, etc.) on the front face of the grid. The axle rod and support rods must lie entirely behind the plane of the face of the TED grid.

(ii) A single roller consisting of hard plastic tubing shall be tightly tied to the back face of the TED grid with rope or heavy twine passed through the center of the roller tubing. The roller shall lie flush against the TED. The maximum outside diameter of the roller shall be 3 1/2 inches (8.0 cm), the minimum outside diameter of the roller shall be 2 inches (5.1 cm), and the maximum length of the roller shall be 12 inches (30.4 cm). The roller must lie entirely behind the plane of the face of the grid.

(6) Water deflector fin for hooped hard TEDs. On a hooped hard TED, a water deflector fin may be welded to the forward edge of the escape opening. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to 4 inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus 1 inch (2.5 cm). The fin must project aft into the TED with an angle between 5° and 45° from the normal, horizontal plane of the trawl. On an inshore hooped hard TED, the clearance between the deflector bars and the posterior edge of the deflector fin must be at least 20 inches...
(51 cm). On an offshore hooped hard TED, the clearance between the deflector bars and the posterior edge of the deflector fin must be at least 23 1/4 inches (59 cm).

(7) **Hinged door frame for hooped hard TEDs.** A hinged door frame may be attached to the forward edge of the escape opening on a hooped hard TED. The door frame must be constructed of materials specified at paragraphs (a)(1)(i) or (a)(1)(ii) of this section for inshore and offshore hooped hard TEDs, respectively. The door frame may be covered with a single panel of mesh webbing that is taut and securely attached with twine to the perimeter of the door frame, with a mesh size not greater than that used for the TED extension webbing. The door frame must be at least as wide as the TED escape opening. The door frame may be a maximum of 24 inches (61 cm) long. The door frame must be connected to the forward edge of the escape opening by a hinge device that allows the door to open outwards freely. The posterior edge of the door frame, in the closed position, must lie at least 12 inches (30 cm) forward of the posterior edge of the escape opening. A water deflector fin may be welded to the posterior edge of the hinged door frame. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to four inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus one inch (2.5 cm). The fin must project aft into the TED with an angle between 5° and 45° from the normal, horizontal plane of the trawl, when the door is in the closed position. The clearance between the posterior edge of the escape opening and the posterior edge of the water deflector fin, if installed, must be no less than 12 inches (30 cm), when the door is in the closed position. Two stopper ropes or a hinge limiter may be used to limit the maximum opening height of the hinged door frame, as long as they do not obstruct the escape opening in any way or restrict the free movement of the door to its fully open position. When the door is in its fully open position, the minimum clearance between any part of the deflector bars and any part of the door, including a water deflector fin if installed, must be at least 20 inches (51 cm) for an inshore hooped hard TED and at least 23 1/4 inches (59 cm) for an offshore hooped hard TED. The hinged door frame may not be used in combination with a webbing flap specified at paragraph (d)(3) of this section or with a water deflection fin specified at paragraph (d)(6) of this section.

(e) **Revision of generic design criteria, and approval of TEDs, of allowable modifications of hard TEDs, and of special hard TEDs.**

(1) The Assistant Administrator may revise the generic design criteria for hard TEDs set forth in paragraph (a) of this section, may approve special hard TEDs in addition to those listed in paragraph (b) of this section, may approve allowable modifications to hard TEDs in addition to those authorized in paragraph (d) of this section, or may approve other TEDs, by regulatory amendment, if, according to a NMFS-approved scientific protocol, the TED demonstrates a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Two such protocols have been published by NMFS (52 FR 24262, June 29, 1987; and 55 FR 41092, October 9, 1990) and will be used only for testing relating to hard TED designs. Testing under any protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Dr., Miami, FL 33149–1903.

(2) Upon application, the Assistant Administrator may issue permits, subject to such conditions and restrictions as the Assistant Administrator deems appropriate, authorizing public or private experimentation aimed at improving shrimp retention efficiency of existing approved TEDs and at developing additional TEDs, or conducting fishery research, that would otherwise be subject to §223.206(d)(2). Applications should be made to the Southeast Regional Administrator (see §222.102
§ 223.208 Corals.

(a) Prohibitions. (1) The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to elkhorn (Acropora palmata) and staghorn (A. cervicornis) corals listed as threatened in §223.102(d), except as provided in §223.208(c).

(2) It is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(i) Fail to comply immediately, in the manner specified at §600.730 (b) through (d) of this title, with instructions and signals specified therein issued by an authorized officer, including instructions and signals to haul back a net for inspection;

(ii) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(iii) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;

(iv) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(v) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;

(vi) Resist a lawful arrest for an act prohibited by this section;

(vii) Make a false statement, oral or written, to an authorized officer or to the agency concerning applicability of the exceptions enumerated in paragraph (c) of this section relating to elkhorn and staghorn corals;

(viii) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 223;

(ix) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

(b) Affirmative defense. In connection with any action alleging a violation of this section, any person claiming the benefit of any exception, exemption, or permit under this section has the burden of proving that the exception, exemption, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation, and that the person fully complied with the exception, exemption, or permit.

(c) Exceptions. Exceptions to the prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) applied in paragraph (a) of this section relating to elkhorn and staghorn corals are described in the following paragraphs (1) through (6):

(1) Permitted scientific research and enhancement. Any export or take of elkhorn or staghorn corals resulting from conducting scientific research or enhancement directed at elkhorn and staghorn corals is excepted from the prohibitions in ESA sections 9(a)(1)(A), (B) and (C) provided a valid research or enhancement permit has been obtained from one of the following Federal or state agencies: NOAA National Ocean Service National Marine Sanctuary Program, National Park Service, U.S. Fish and Wildlife Service, Florida Fish and Wildlife Conservation Commission, Puerto Rico Department of Natural Resources.
and Environmental Resources, or the U.S. Virgin Islands Department of Planning and Natural Resources. The exportation or take must be in compliance with the applicable terms and conditions of the applicable research or enhancement permit, and the permit must be in the possession of the permittee while conducting the activity. Export of elkhorn or staghorn corals from the United States to conduct excepted research or enhancement activities requires a CITES export permit from the U.S. Fish and Wildlife Service in addition to the research permit for collection. Import of elkhorn or staghorn corals into the United States to conduct excepted research or enhancement activities must be in compliance with the provisions of section 9(c) of the ESA.

(2) Restoration activities. Any agent or employee of governmental agencies listed in Table 1 may take listed elkhorn or staghorn corals without a permit, when acting in the course of conducting a restoration activity directed at elkhorn or staghorn coral which is authorized by an existing authority (see Table 1 to this section). Take of elkhorn or staghorn corals during such restoration activity is excepted from the prohibitions in ESA sections 9(a)(1)(B) and (C). An excepted restoration activity is defined as the methods and processes used to provide aid to injured individual elkhorn or staghorn coral.

(3) Section 10 scientific and enhancement permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under §223.208(a) for scientific purposes or to enhance the propagation or survival of elkhorn or staghorn corals, in accordance with and subject to the conditions of part 222, subpart C—General Permit Procedures.

(4) Section 10 incidental take permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under §223.208(a) in accordance with section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to the conditions of part 222 of this chapter. Such permits may be issued for the incidental taking of elkhorn and staghorn corals.

(5) Section 7 Interagency consultation. Any incidental taking that is in compliance with the terms and conditions specified in a written statement provided under section 7(b)(4)(C) of the ESA (16 U.S.C. 1536(b)(4)(C)) shall not be considered a prohibited taking of elkhorn and staghorn corals pursuant to paragraph (o)(2) of section 7 of the ESA (16 U.S.C. 1536(o)(2)).

(6) Importation under the Convention on International Trade of Endangered Species. Any importation of elkhorn or staghorn corals in compliance with the provisions of section 9(c) of the ESA (16 U.S.C. 1538(c)) shall not be considered a violation of any provision of the ESA or any regulation issued pursuant to the ESA.

Table 1 to §223.208—Agencies and Authorizing Statutes Whose Coral Restoration Activities Are Excepted from Certain Prohibitions in Paragraph (a) of This Section

<table>
<thead>
<tr>
<th>Agency/Person</th>
<th>Statute and Specific Provision(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOAA, NOS</td>
<td>Coral Reef Conservation Act 16 U.S.C. 6406</td>
</tr>
<tr>
<td>Commandant, U.S. Coast Guard (USCG), Authorized representatives of States or Indian Tribes.</td>
<td>&quot;Oil Pollution Act&quot; 33 U.S.C. 2702</td>
</tr>
<tr>
<td>Designated Federal, State or Indian tribal natural resources trustees, including NOAA, Department of Interior (DOI), Florida Department of Environmental Protection (FDEP), Puerto Rico Department of Natural and Environmental Resources (DNREC), and U.S. Virgin Islands Department of Planning and Natural Resources (DPNR)</td>
<td>33 U.S.C. 2706</td>
</tr>
</tbody>
</table>
### TABLE 1 TO § 223.208—AGENCIES AND AUTHORIZING STATUTES WHOSE CORAL RESTORATION ACTIVITIES ARE EXCEPTED FROM CERTAIN PROHIBITIONS IN PARAGRAPH (a) OF THIS SECTION—Continued

<table>
<thead>
<tr>
<th>Agency/Person</th>
<th>Statute and Specific Provision(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrator, Environmental Protection Agency (EPA) or Commandant, USCG; Authorized representatives of States.</td>
<td>“Clean Water Act” 33 U.S.C. 1321</td>
</tr>
<tr>
<td>Designated Federal, State or Indian tribal natural resources trustees, including NOAA, DOI, FDEP, DNER, and DPNR.</td>
<td>“Superfund Act” (CERCLA) 42 U.S.C. 9604</td>
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<tr>
<td>Administrator of the EPA</td>
<td>42 U.S.C. 9606</td>
</tr>
<tr>
<td>Designated Federal, State or Indian tribal natural resources trustees, including NOAA, DOI, FDEP, DNER, and DPNR</td>
<td>42 U.S.C. 9607</td>
</tr>
<tr>
<td>DOI</td>
<td>National Wildlife Refuge System Administration Act, 16 U.S.C. 668</td>
</tr>
<tr>
<td><strong>FLORIDA:</strong></td>
<td></td>
</tr>
<tr>
<td>The Board of Trustees of the Internal Improvement Trust Fund</td>
<td>State Lands; Board of Trustees to Administer; Duty of Board to Protect, etc. FL Statute § 253.03; FL Statute § 253.04 FDEP</td>
</tr>
<tr>
<td>Governor and Cabinet; FDEP</td>
<td>Land Acquisition for Conservation or Recreation; Conservation and Recreation Lands Trust Fund FL Statute § 259.032</td>
</tr>
<tr>
<td>FDEP</td>
<td>Pollutant Discharge Prevention and Removal; Liability for Damage to Natural Resources FL Statute § 376.121</td>
</tr>
<tr>
<td>FDEP</td>
<td>Land and Water Management; Coral Reef Restoration FL Statute § 390.0558</td>
</tr>
<tr>
<td>Florida Fish and Wildlife Conservation Commission</td>
<td>Fish and Wildlife Conservation Commission FL Statute § 20.331</td>
</tr>
<tr>
<td><strong>U.S. VIRGIN ISLANDS:</strong></td>
<td></td>
</tr>
<tr>
<td>DPNR</td>
<td>DPNR; Powers and Duties of Department 3 V.I.C. § 401</td>
</tr>
<tr>
<td>DPNR</td>
<td>Conservation; Croix East End Marine Park Established; 12 V.I.C. § 98</td>
</tr>
<tr>
<td><strong>PUERTO RICO:</strong></td>
<td></td>
</tr>
<tr>
<td>DNER</td>
<td>Conservation; Protection, Conservation and Management of Coral Reefs 12 L.P.R.A. §§ 241-241g et seq.</td>
</tr>
<tr>
<td>DNER</td>
<td>Conservation; Natural Patrimony Program 12 L.P.R.A. § 1225 et seq.</td>
</tr>
<tr>
<td>DNER</td>
<td>Conservation; Natural Resources; Declarations of Marine Reserves (and other protected areas) containing elkhorn and staghorn corals 12 L.P.R.A.; Subtitle 6A; Chapter 252; §§ 5011 et seq.</td>
</tr>
</tbody>
</table>
§ 223.209

[Reserved]

§ 223.210 North American green sturgeon.


(b) Exceptions. Exceptions to the take prohibitions described in section 9(a)(1)(B) and (C) of the ESA (16 U.S.C. 1538(a)(1)(B) and (C)) applied in paragraph (a) of this section to the threatened Southern DPS listed in section 223.102(c) are described in the following paragraphs (b)(1) through (b)(3).

(1) Scientific Research and Monitoring Exceptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to ongoing or future Federal, state, or private-sponsored scientific research or monitoring activities if:

(i) The scientific research or monitoring activity complies with required state reviews or permits;

(ii) The research or monitoring activity is directed at the Southern DPS and is not incidental to research or monitoring of another species;

(iii) Take of live mature adults in the lower Feather River from the confluence with the Sacramento River to the Oroville Dam (rkm 116), the lower Yuba River from the confluence with the Feather River to the Daguerre Dam (rkm 19), or Suisun, San Pablo, and San Francisco Bays or the Sacramento-San Joaquin Delta from the Golden Gate Bridge up into the Sacramento River to Keswick Dam (rkm 483) occurs from July 1 through March 1 so as to substantially increase the likelihood that uninterrupted upstream spawning migrations of adults will occur;

(iv) Take is non-lethal;

(v) Take involving the removal of any life stage of the Southern DPS from the wild does not exceed 60 minutes;

(vi) Take does not involve artificial spawning or enhancement activities;

(vii) A description of the study objectives and justification, a summary of the study design and methodology, estimates of the total non-lethal take of Southern DPS fish anticipated, estimates of incidental take of other ESA listed species anticipated and proof that those takes have been authorized by NMFS or the USFWS, identification of funding sources, and a point of contact is reported to the NMFS Southwest Regional Office in Long Beach at least 60 days prior to the start of the study, or by August 31, 2010 for ongoing studies;

(viii) Reports that include the total number of Southern DPS and any other ESA listed species taken, information that supports that take was non-lethal, and a summary of the project results is submitted to the NMFS Southwest Regional Office in Long Beach on a schedule to be determined by NMFS; and

(ix) Research or monitoring that involves action, permitting, or funding by a Federal agency still complies with the requirements of ESA section 7(a)(2) in order to ensure that the action will not jeopardize the continued existence of the threatened Southern DPS.

(2) Enforcement Exception. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to any employee of NMFS, when the employee, acting in the course of his or her official duties, takes the Southern DPS listed in § 223.102(c)(1) without a permit, if such action is necessary for purposes of enforcing the ESA or its implementing regulations.

(3) Emergency Fish Rescue and Salvage Exceptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to emergency fish rescue and salvage activities that include aiding sick, injured, or stranded fish, disposing of dead fish, or salvaging dead fish for use in scientific studies, if:

(i) The activity complies with required state or other Federal reviews or permits;

(ii) The activity is conducted by an employee or designee of NMFS or the U.S. Fish and Wildlife Service (USFWS), any Federal land management agency, or California Department
of Fish and Game, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, or Alaska Department of Fish and Game;

(iii) The activity benefits the Southern DPS; and

(iv) Those carrying out the activity submit a report to the NMFS Southwest Regional Office in Long Beach that includes, at a minimum, the number and status of fish handled, the location of rescue and/or salvage operations, and the potential causes(s) of the emergency situation within 10 days after conducting the emergency rescue.

(4) Habitat Restoration Exceptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to habitat restoration activities including barrier removal or modification to restore water flows, riverine or estuarine bed restoration, natural bank stabilization, restoration of native vegetation, removal of non-native species, or removal of contaminated sediments, that reestablish self-sustaining habitats for the Southern DPS, if:

(i) The activity complies with required state and Federal reviews and permits;

(ii) Those carrying out the activity submit a detailed description of the restoration activity to the NMFS Southwest Regional Office in Long Beach at least 60 days prior to the start of the restoration project, or, for ongoing studies, by August 31, 2010, which includes: the geographic area affected; when activities will occur; how they will be conducted; and the severity of direct, indirect, and cumulative impacts of activities on the Southern DPS; identification of funding sources; demonstration that all state and Federal regulatory requirements have been met; a description of methods used to ensure that the likelihood of survival or recovery of the listed species is not reduced; a plan for minimizing and mitigating any adverse impacts to Southern DPS spawning or rearing habitat; an estimate of the amount of incidental take of the listed species that may occur and a description of how that estimate was made; a plan for effective monitoring and adaptive management; a pledge to use best available science and technology when conducting restoration activities; and a point of contact;

(iii) Those carrying out the activity submit progress reports that include the total number of Southern DPS fish taken, information regarding whether the take was lethal or non-lethal, a summary of the status of the project, and any changes in the methods being used, to the NMFS Southwest Regional Office in Long Beach on a schedule to be determined by NMFS; and

(iv) An activity that involves action, permitting, or funding by a Federal agency complies with the requirements of ESA section 7(a)(2) in order to ensure that the action will not jeopardize the continued existence of the threatened Southern DPS.

(5) Exemptions via ESA 4(d) Program Approval. Exemptions from the take prohibitions described in section 9(a)(1)(B) and (C) of the ESA (16 U.S.C. 1538(a)(1)(B) and (C)) applied in paragraph (a) of this section to the threatened Southern DPS listed in §223.102(c) are described in paragraphs (c)(1) through (c)(3) of this section.

(1) Scientific Research and Monitoring Exemptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to ongoing or future state-sponsored scientific research or monitoring activities that are part of a NMFS-approved, ESA-compliant state 4(d) research program conducted by, or in coordination with, state fishery management agencies (California Department of Fish and Game, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, or Alaska Department of Fish and Game), or as part of a monitoring and research program overseen by, or coordinated by, one of these agencies. State 4(d) research programs must meet the following criteria:

(i) Descriptions of the ongoing and future 4(d) research or monitoring activity, as described in paragraph (c)(1)(ii) of this section, must be received by the NMFS Southwest Regional Office in Long Beach during the mid-September through mid-October 2010 application period. This exception
to the section 9 take prohibitions expiries if the proposal is rejected as insufficient or is denied. If the state 4(d) research program package is received during the mid-September to mid-October application period, ongoing state-supported scientific research activities may continue until NMFS issues a written decision of approval or denial. If approved, the state 4(d) program authorization will cover one calendar year and state-supported researchers would have to renew authorizations annually during subsequent application periods.

(ii) Descriptions of ongoing and future state-supported research activities must include the following information and should be submitted to NMFS by the State: an estimate of total direct or incidental take; a description of the study design and methodology; a justification for take and the techniques employed; and a point of contact.

(iii) NMFS will provide written approval of a state 4(d) research program.

(iv) The State agency will provide an annual report to NMFS that, at a minimum, summarizes the number of Southern DPS green sturgeon taken directly or incidentally, and summarizes the results of the project.

(2) Fisheries Exemptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to fisheries activities that are conducted in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP). If NMFS finds that an FMEP meets the criteria listed below, a letter of concurrence which sets forth the terms of the FMEP’s implementation and the duties of the parties pursuant to the FMEP, will be issued to the applicant.

(i) An FMEP must prohibit retention of green sturgeon (i.e., zero bag limit); set maximum incidental take levels, include restrictions to minimize incidental take of the green sturgeon (e.g., temporal/spatial restrictions, size of fish, gear used); provide a biologically based rationale demonstrating that the incidental take management strategy will not significantly reduce the likelihood of survival or recovery of the Southern DPS; include effective monitoring and evaluation plans; provide for evaluating monitoring data and making revisions to the FMEP; provide for effective enforcement and education; provide a timeframe for FMEP implementation; and report the amount of incidental take and summarize the effectiveness of the FMEP to NMFS on a biannual basis.

(ii) The ESA section 9(a)(1)(B) and (a)(1)(C) take prohibitions will not apply to ongoing commercial and recreational fisheries activities until September 30, 2010 if a letter of intent to develop an FMEP that is protective of green sturgeon has been received by NMFS by July 2, 2010. The exemption will expire if the letter of intent is rejected without further review of a FMEP. If the letter of intent is received by August 31, 2010, a draft FMEP must be received by NMFS within 6 months from the date of receipt of the letter of intent. A final FMEP must be received by NMFS within 3 months from the date of receipt of NMFS’ comments on the draft FMEP. Ongoing commercial and recreational fisheries activities may continue until NMFS issues a letter of concurrence or denial for final FMEPs.

(iii) NMFS will provide a public comment period (≥30 days) before approval of new or amended FMEPs; provide a letter of concurrence for approved FMEPs that specifies the implementation and reporting requirements; evaluate FMEPs every 5 years and identify changes that would improve their effectiveness; and provide a public comment period (≥30 days) before withdrawing approval of an FMEP.

(3) Tribal Exemptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to fishery harvest or other activities undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in Willapa Bay, WA, Grays Harbor, WA, Coos Bay, OR, Winchester Bay, OR, Humboldt Bay, CA, and any other area where tribal treaty fishing occurs, if those activities are compliant with a tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the Southern
DPS. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan’s impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary’s trust responsibilities to tribes.

(i) A Tribal Plan may include, but is not limited to, plans that address fisheries harvest, artificial production, research, or water or land management, and may be developed by one tribe or jointly with other tribes. The Secretary will consult on a government-to-government basis with any tribe that so requests and will provide, to the maximum extent practicable, technical assistance in examining impacts on the Southern DPS as tribes develop Tribal Plans. A Tribal Plan must specify the procedures by which the tribe will enforce its provisions.

(ii) Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and implemented within the ongoing Federal Court proceeding. In such circumstances, compliance with the Tribal Plan’s terms shall be determined within that Federal Court proceeding.

(iii) The Secretary shall seek comment from the public on the Secretary’s pending determination whether implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed Southern DPS.

(iv) The Secretary shall publish notification in the FEDERAL REGISTER of any determination regarding a Tribal Plan and the basis for that determination.

(d) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the ESA relating to endangered species, including regulations in part 222 of this chapter II implementing such exceptions, also apply to the threatened Southern DPS of North American green sturgeon listed in §223.102(c)(1). Federal, state, and private-sponsored research activities for scientific research or enhancement purposes that are not covered under Scientific Research and Monitoring Exceptions as described in paragraph (b)(1) of this section or Scientific Research and Monitoring Exemptions as described in paragraph (c)(1) of this section, may take Southern DPS fish pursuant to the specifications of an ESA section 10 permit. Section 9(a)(1)(B) and (a)(1)(C) take prohibitions would not apply to ongoing research activities if an application for an ESA section 10(a)(1)(A) permit is received by NMFS, preferably through the NMFS online application Web site https://apps.nmfs.noaa.gov, no later than November 29, 2010. The take prohibitions would take effect if the permit application is rejected as insufficient or a permit is denied. If the permit application is received by November 29, 2010, ongoing research activities may continue without take prohibitions until NMFS issues or denies a permit.

(e) Affirmative Defense. In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened Southern DPS of North American green sturgeon listed in §223.102(c)(1), any person claiming that his or her take is authorized via methods listed in paragraph (b) of this section shall have a defense where the person can demonstrate that the take authorization is applicable and was in force, and that the person fully complied with the take authorization requirements at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

[75 FR 30728, June 2, 2010]

Figures 1–2 to Part 223 [Reserved]
Figure 3 to Part 223—Matagorda TED

Figure 4 to Part 223—Georgia TED

The side panels are composed from 4-inch stretched mesh polyethylene or polypropylene webbing with No.48 twine size (3mm). The main panel is composed of 8-inch stretched mesh polyethylene or polypropylene webbing with No.48 twine size (3mm).

[63 FR 17958, Apr. 13, 1998]
Figure 6 to Part 223—TED Extension in Summer Flounder Trawl

TED flap webbing no larger than 1-5/8" stretched mesh.

TED extension webbing no larger than 3.5" stretched mesh.

[64 FR 55864, Oct. 15, 1999]

Figures 7–9b to Part 223 [Reserved]
National Marine Fisheries Service/NOAA, Commerce

Figure 10 to Part 223—Flounder TED

Flounder TED

Outer frame &
grid bars

Minimum size:
1-1/4 inch
Aluminum pipe
with 1/8 inch
Wall Thickness

Frame height:
Minimum 51
inches

Maximum
16-1/2 inches

Maximum
10 inches

Frame width:
Minimum 32 inches

[58 FR 54069, Oct. 20, 1993]

Figure 11 to Part 223 [reserved]
Figure 12 to Part 223—Escape Opening & Cover Dimensions for 71-inch TED

**Escape Opening & Cover Dimensions for 71-inch TED**

The exit hole cover is made by cutting a 133-inch (338-cm) by 52-inch (132-cm) piece of webbing no smaller than 1-7/8-inch (4.6-cm) stretched mesh and no larger than 1-5/8 inch (4.2-cm) stretched mesh.

The 133-inch (338-cm) edge of the cover is attached to the forward edge of the opening (71-inch (180-cm) edge). The cover should overlap the exit hole on each side by no more than 5-inches (13-cm).

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**Figure 12 to Part 223**

[68 FR 8469, Feb. 21, 2003]
Figure 13 to Part 223—Single Grid Hard TED Escape Opening

Min. Escape Opening Width = Max. Frame Width Minus 8°
Figures 14a and 14b to Part 223—Maximum angle of deflector bars with straight bars attached to the bottom of the frame and maximum angle of deflector bars with bent bars attached to the bottom of the frame.
Figure 15 to Part 223—Weedless TED Brace Bar Description

The horizontal brace bar must be attached to each deflector bar within an area defined by the mid point of the outer frame and the unattached ends of the deflector bars.

Mid point of outer frame

Area of brace bar installation

The horizontal brace bar may be offset from the deflector bars using spacers. Spacers may not exceed 5-inches in length.

Brace bar must be installed on the back side of TED frame, (trailing edge).

Spacer

Figure 15 to Part 223

(68 FR 8469, Feb. 21, 2003)
FIGURE 16 TO PART 223—ESCAPE OPENING AND FLAP DIMENSIONS FOR THE DOUBLE COVER FLAP TED

[69 FR 31037, June 2, 2004]
§ 224.101 Enumeration of endangered marine and anadromous species.

The marine and anadromous species determined by the Secretary of Commerce to be endangered pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are the following:

(a) Marine and anadromous fish. The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.

<table>
<thead>
<tr>
<th>Species 1</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Where listed</th>
<th>Citation(s) for listing determination(s)</th>
<th>Citation for critical habitat designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shortnose sturgeon</td>
<td>Acipenser brevirostrum</td>
<td></td>
<td>Everywhere</td>
<td>32 FR 4001, Mar. 11, 1967</td>
<td>NA</td>
</tr>
<tr>
<td>Smalltooth sawfish</td>
<td>Pristis pectinata</td>
<td></td>
<td>U.S.A.</td>
<td>68 FR 15674, Apr. 1, 2003</td>
<td>NA</td>
</tr>
<tr>
<td>Totoaba</td>
<td>Cynoscion macdonaldi</td>
<td></td>
<td>Everywhere</td>
<td>44 FR 29480, May 21, 1979</td>
<td>NA</td>
</tr>
<tr>
<td>Species</td>
<td>Common name</td>
<td>Scientific name</td>
<td>Where listed</td>
<td>Citation(s) for listing determination(s)</td>
<td>Citation for critical habitat designation</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>-----------------</td>
<td>--------------</td>
<td>-----------------------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Sacramento River winter-run Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A., CA, including all naturally spawned populations of winter-run Chinook salmon in the Sacramento River and its tributaries in California, as well as two artificial propagation programs: winter-run Chinook from the Livingston Stone National Fish Hatchery (NFH), and winter run Chinook in a captive broodstock program maintained at Livingston Stone NFH and the University of California Bodega Marine Laboratory.</td>
<td>52 FR 6041; Feb. 27, 1987, 55 FR 49623; Nov. 30, 1990. 59 FR 440; Jan. 1, 1994.</td>
<td>58 FR 33212, June 16, 1993.</td>
<td></td>
</tr>
<tr>
<td>Upper Columbia spring-run Chinook</td>
<td>Oncorhynchus tshawytscha</td>
<td>U.S.A., WA, including all naturally spawned populations of Chinook salmon in all river reaches accessible to Chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, as well as six artificial propagation programs: the Twisp River, Chewuch River, Methow Composite, Winthrop NFH, Chiwawa River, and White River spring-run Chinook hatchery programs.</td>
<td>64 FR 14306, June 28, 2005.</td>
<td>NA. [Vacated 9/29/03: 68 FR 55900].</td>
<td></td>
</tr>
<tr>
<td>Central California Coast coho</td>
<td>Oncorhynchus kisutch</td>
<td>U.S.A., CA, including all naturally spawned populations of coho salmon from Punta Gorda in northern California south to and including the San Lorenzo River in central California, as well as populations in Tributaries to San Francisco Bay, excluding the Sacramento-San Joaquin River system, as well as four artificial propagation programs: the Don Clausen Fish Hatchery Captive Broodstock Program, Scott Creek/King Fisher Flats Conservation Program, Scott Creek Captive Broodstock Program, and the Noyo River Fish Station egg-take Program coho hatchery programs.</td>
<td>61 FR 56138, Oct. 31, 1996.</td>
<td>64 FR 24049, May 5, 1999.</td>
<td></td>
</tr>
</tbody>
</table>

(a) Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

(b) Marine mammals. Beluga whale (*Delphinapterus leucas*), Cook Inlet distinct population segment; Blue whale (*Balaenoptera musculus*); Bowhead whale (*Balaena mysticetus*); Chinese river dolphin (*Lipotes vexillifer*); Cochito (*Phocoena sinus*); Fin or finback whale (*Balaenoptera physalus*); Hawaiian monk seal (*Monachus schauinslandi*); Humpback whale (*Megaptera novaeangliae*); Indus River dolphin (*Platanista minor*); Mediterranean monk seal (*Monachus monachus*); North Atlantic right whale (*Eubalaena glacialis*); North Pacific right whale (*Eubalaena japonica*); Southern right whale (*Eubalaena australis*); Saimaa seal (*Phoca hispida saimensis*); Sei whale (*Balaenoptera borealis*); and Sperm whale (*Physeter macrocephalus*).
§ 224.103 Special prohibitions for endangered marine mammals.

(a) Approaching humpback whales in Hawaii. Except as provided in part 222, subpart C, of this chapter (General Permit Procedures), it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts with respect to humpback whales (Megaptera novaeangliae): (1) Operate any aircraft within 1,000 feet (300 m) of any humpback whale; (2) Approach, by any means, within 100 yard (90 m) of any humpback whale; (3) Cause a vessel or other object to approach within 100 yd (90 m) of a humpback whale; or (4) Disrupt the normal behavior of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities, attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area.

(c) Sea turtles. Green turtle (Chelonia mydas) breeding colony populations in Florida and on the Pacific coast of Mexico; Hawksbill turtle (Eretmochelys imbricata); Kemp’s ridley turtle (Lepidochelys kempii); Leatherback turtle (Dermochelys coriacea); Olive ridley turtle (Lepidochelys olivacea) breeding colony population on the Pacific coast of Mexico.

Note to §224.101(c): Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

(d) Marine invertebrates. The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.

<table>
<thead>
<tr>
<th>Species</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Where Listed</th>
<th>Citation(s) for Listing Determinations</th>
<th>Citation(s) for Critical Habitat Designations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black abalone</td>
<td><em>Haliotis cracherodii</em></td>
<td>USA, CA. From Crescent City, California, USA to Cape San Lucas, Baja California, Mexico, including all offshore islands.</td>
<td>74 FR 1937, January 14, 2009</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>

VerDate Mar<15>2010 11:01 Jan 05, 2011 Jkt 220227 PO 00000 Frm 00349 Fmt 8010 Sfmt 8010 Q:\50\220227.XXX ofr150 PsN: PC150
(b) Approaching humpback whales in Alaska—(1) Prohibitions. Except as provided under paragraph (b)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of Alaska, or within inland waters of the state, any of the acts in paragraphs (b)(1)(i) through (b)(1)(iii) of this section with respect to humpback whales (*Megaptera novaeangliae*):

(i) Approach, by any means, including by interception (i.e., placing a vessel in the path of an oncoming humpback whale so that the whale surfaces within 100 yards (91.4 m) of the vessel), within 100 yards (91.4 m) of any humpback whale;

(ii) Cause a vessel or other object to approach within 100 yards (91.4 m) of a humpback whale; or

(iii) Disrupt the normal behavior or prior activity of a whale by any other act or omission, as described in paragraph (a)(4) of this section.

(2) Exceptions. The following exceptions apply to this paragraph (b), but any person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraph (b)(1) of this section does not apply if an approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraph (b)(1) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction, cannot comply with paragraph (b)(1) of this section.

(iii) Paragraph (b)(1) of this section does not apply to commercial fishing vessels lawfully engaged in actively setting, retrieving or closely tending commercial fishing gear. For purposes of this paragraph (b), commercial fishing means taking or harvesting fish or fishery resources to sell, barter, or trade. Commercial fishing does not include commercial passenger fishing operations (i.e., charter operations or sport fishing activities).

(iv) Paragraph (b)(1) of this section does not apply to state, local, or Federal government vessels operating in the course of official duty.

(v) Paragraph (b)(1) of this section does not affect the rights of Alaska Natives under 16 U.S.C. 1538(e).

(vi) These regulations shall not take precedence over any more restrictive conflicting Federal regulations pertaining to humpback whales, including the regulations at 36 CFR 13.65 that pertain specifically to the waters of Glacier Bay National Park and Preserve.

(3) General measures. Notwithstanding the prohibitions and exceptions in paragraphs (b)(1) and (2) of this section, to avoid collisions with humpback whales, vessels must operate at a slow, safe speed when near a humpback whale. “Safe speed” has the same meaning as the term is defined in 33 U.S.C. 2006 and the International Regulations for Preventing Collisions at Sea 1972 (see 33 U.S.C. 1602), with respect to avoiding collisions with humpback whales.

(c) Approaching right whales—(1) Prohibitions. Except as provided under paragraph (c)(3) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or cause to be committed any of the following acts:

(i) Approach (including by interception) within 500 yards (460 m) of a right whale by vessel, aircraft, or any other means;

(ii) Fail to undertake required right whale avoidance measures specified under paragraph (c)(2) of this section.

(2) Right whale avoidance measures. Except as provided under paragraph (c)(3) of this section, the following avoidance measures must be taken if within 500 yards (460 m) of a right whale:

(i) If underway, a vessel must steer a course away from the right whale and immediately leave the area at a slow safe speed.

(ii) An aircraft must take a course away from the right whale and immediately leave the area at a constant airspeed.

(3) Exceptions. The following exceptions apply to this section, but any
person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraphs (c)(1) and (c)(2) of this section do not apply if a right whale approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraphs (c)(1) and (c)(2) of this section do not apply where compliance would create an imminent and serious threat to a person, vessel, or aircraft.

(iii) Paragraphs (c)(1) and (c)(2) of this section do not apply when approaching to investigate a right whale entanglement or injury, or to assist in the disentanglement or rescue of a right whale, provided that permission is received from the National Marine Fisheries Service or designee prior to the approach.

(iv) Paragraphs (c)(1) and (c)(2) of this section do not apply to an aircraft unless the aircraft is conducting whale watch activities.

(v) Paragraph (c)(2) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction, cannot comply with paragraph (c)(2) of this section.

(d) Special prohibitions relating to endangered Steller sea lion protection. The regulatory provisions set forth in part 223 of this chapter, which govern threatened Steller sea lions, shall also apply to the western population of Steller sea lions, which consists of all Steller sea lions from breeding colonies located west of 144° W. long.

(b) Summer flounder fishermen in the Summer flounder fishery-sea turtle protection area who comply with rules for threatened sea turtles specified in §223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by summer flounder gear.

(c) Special prohibitions relating to sea turtles are provided at §223.206(d).

§ 224.105 Speed restrictions to protect North Atlantic Right Whales.

(a) The following restrictions apply to: All vessels greater than or equal to 65 ft (19.8 m) in overall length and subject to the jurisdiction of the United States, and all other vessels greater than or equal to 65 ft (19.8 m) in overall length entering or departing a port or place subject to the jurisdiction of the United States. These restrictions shall not apply to U.S. vessels owned or operated by, or under contract to, the Federal Government. This exemption extends to foreign sovereign vessels when they are engaging in joint exercises with the U.S. Department of the Navy. In addition, these restrictions do not apply to law enforcement vessels of a State, or political subdivision thereof, when engaged in law enforcement or search and rescue duties.

(1) Southeast U.S. (south of St. Augustine, FL to north of Brunswick, GA): Vessels shall travel at a speed of 10 knots or less over ground during the period of November 15 to April 15 each year in the area bounded by the following: Beginning at 31°27′00.0″ N–080°51′36.0″ W; thence west to charted mean high water line then south along charted mean high water line and inshore limits of COLREGS limit to a latitude of 29°45′00.0″ N thence east to 29°45′00.0″ N–080°51′36.0″ W; thence back to starting point. (Fig. 1).

(2) Mid-Atlantic U.S. (from north of Brunswick, Georgia to Rhode Island): Vessels shall travel 10 knots or less over ground in the period November 1 to April 30 each year:

(i) In the area bounded by the following: 33°56′42.0″ N–077°31′30.0″ W; thence along a NW bearing of 313.26°

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True to charted mean high water line then south along mean high water line and inshore limits of COLREGS limit to a latitude of 31°27'00.0" N; thence east to 31°27'00.0" N–080°51'36.0" W; thence to 31°50'00.0" N–080°33'12.0" W; thence to 32°50'06.0" N–078°50'18.0" W; thence to 33°28'24.0" N–078°32'30.0" W; thence to 33°36'30.0" N–077°47'06.0" W; thence back to starting point.

(ii) Within a 20-nm (37 km) radius (as measured seaward from COLREGS delineated coast lines and the center point of the port entrance) (Fig. 2) at the

(A) Ports of New York/New Jersey: 40°29'42.2" N–073°55'57.6" W; and

(B) Delaware Bay (Ports of Philadelphia and Wilmington): 38°52'27.4" N–075°01'32.1" W;

(C) Entrance to the Chesapeake Bay (Ports of Hampton Roads and Baltimore): 37°09'36.9" N–076°57'50.5" W; and

(D) Ports of Morehead City and Beaufort, NC: 34°11'32.0" N–076°40'08.3" W; and

(iii) In Block Island Sound, in the area bounded by the following coordinates: Beginning at 40°51'53.7" N–70°36'44.9" W; thence to 41°20'14.1" N–70°49'44.1" W; thence to 41°04'16.7" N–71°51'21.0" W; thence to 40°35'56.5" N–71°38'25.1" W; thence back to starting point. (Fig. 2).

(3) Northeast U.S. (north of Rhode Island):

(i) In Cape Cod Bay, MA: Vessels shall travel at a speed of 10 knots or less over ground during the period of January 1 to May 15 in Cape Cod Bay, in an area beginning at 42°04'36.5" N–067°12'00.0" W; thence due west to charted mean high water line; thence along charted mean high water within Cape Cod Bay back to beginning point. (Fig. 3).

(ii) Off Race Point: Vessels shall travel at a speed of 10 knots or less over ground during the period of March 1 to April 30 each year in waters bounded by straight lines connecting the following points in the order stated (Fig. 3): 42°30'00.0" N–069°45'00.0" W; thence to 42°30'00.0" N–070°30'00.0" W; thence to 42°12'00.0" N–070°30'00.0" W; thence to 42°04'36.5" N–070°12'00.0" W; thence along charted mean high water line and inshore limits of COLREGS limit to a latitude of 41°40'00.0" N; thence due east to 41°41'00.0" N–069°45'00.0" W; thence back to starting point.

(iii) Great South Channel: Vessels shall travel at a speed of 10 knots or less over ground during the period of April 1 to July 31 each year in all waters bounded by straight lines connecting the following points in the order stated (Fig. 3):

42°30'00.0" N–069°45'00.0" W
41°40'00.0" N–069°45'00.0" W
41°00'00.0" N–069°06'00.0" W
42°09'00.0" N–067°06'24.0" W
42°30'00.0" N–067°27'00.0" W
42°30'00.0" N–069°45'00.0" W

(b) Except as noted in paragraph (c) of this section, it is unlawful under this section:

(1) For any vessel subject to the jurisdiction of the United States to violate any speed restriction established in paragraph (a) of this section; or

(2) For any vessel entering or departing a port or place under the jurisdiction of the United States to violate any speed restriction established in paragraph (a) of this section.

(c) A vessel may operate at a speed necessary to maintain safe maneuvering speed instead of the required ten knots only if justified because the vessel is in an area where oceanographic, hydrographic and/or meteorological conditions severely restrict the maneuverability of the vessel and the need to operate at such speed is confirmed by the pilot on board or, when a vessel is not carrying a pilot, the master of the vessel. If a deviation from the ten-knot speed limit is necessary, the reasons for the deviation, the speed at which the vessel is operated, the latitude and longitude of the area, and the time and duration of such deviation shall be entered into the logbook of the vessel. The master of the vessel shall attest to the accuracy of the logbook entry by signing and dating it.

(d) This final rule expires on December 9, 2013.
Figure 1. Southeast United States.
Figure 2. Mid-Atlantic United States.
Figure 3. Northeast United States.
§ 226.101 Purpose and scope.

The regulations contained in this part identify those habitats designated by the Secretary of Commerce as critical under section 4 of the Act, for endangered and threatened species under the jurisdiction of the Secretary of Commerce. Those species are enumerated at §223.102 of this chapter, if threatened and at §224.101 of this chapter, if endangered. For regulations pertaining to the designation of critical habitat, see part 424 of this title, and for regulations pertaining to prohibitions against the adverse modification or destruction of critical habitat, see part 402 of this title. Maps and charts identifying designated critical habitat that are not provided in this section may be obtained upon request to the Office of Protected Resources (see §222.102, definition of “Office of Protected Resources”).

HAWAIIAN MONK SEAL

(Monachus schauinslandi)

All beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms around the following:

Kure Atoll (28°24′ N, 178°26′ W)
Midway Islands, except Sand Island and its harbor (28°14′ N, 177°22′ W)
Pearl and Hermes Reef (27°55′ N, 175° W)
Lisianski Island (26°46′ N, 173°58′ W)
Laysan Island (25°46′ N, 171°44′ W)
Maro Reef (25°25′ N, 170°35′ W)
Gardner Pinnacles (25°00′ N, 168°00′ W)
French Frigate Shoals (23°45′ N, 166°00′ W)
Necker Island (23°34′ N, 164°32′ W)
Nihoa Island (23°03.5′ N, 161°55.5′ W).


§ 226.218 Critical habitat for the U.S. DPS of smalltooth sawfish (Pristis pectinata).


TABLE 1 TO PART 226—MAJOR STELLER SEA LION ROOKERY SITES

TABLE 2 TO PART 226—MAJOR STELLER SEA LION HAULOUT SITES IN ALASKA

TABLE 3 TO PART 226—HYDROLOGIC UNITS CONTAINING CRITICAL HABITAT FOR SNAKE RIVER SOCKEYE SALMON AND SNOW RIVER SPRING/SUMMER AND FALL CHINOOK SALMON

TABLE 4 TO PART 226 [RESERVED]

TABLE 5 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL CALIFORNIA COAST COHO SALMON, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

TABLE 6 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR SOUTHERN OREGON/NORTHERN CALIFORNIA COASTS COHO SALMON, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

KURE ATOLL

(from NOS chart 19480)
FRENCH FRIGATE SHOALS
§ 226.201

NIHOA ISLAND

(from NOS chart 19016)


**Steller Sea Lion (Eumetopias jubatus)**

(a) Alaska rookeries, haulouts, and associated areas. In Alaska, all major Steller sea lion rookeries identified in Table 1 and major haulouts identified in Table 2 and associated terrestrial, air, and aquatic zones. Critical habitat includes a terrestrial zone that extends 3,000 feet (0.9 km) landward from the baseline or basepoint of each major rookery and major haulout in Alaska. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) above the terrestrial zone of each major rookery and major haulout in Alaska, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 20 nm (37 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery and major haulout in Alaska that is east of 144° W. longitude. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery and major haulout in Alaska that is west of 144° W. longitude.

(b) California and Oregon rookeries and associated areas. In California and Oregon, all major Steller sea lion rookeries identified in Table 1 and associated air and aquatic zones. Critical habitat includes an air zone that extends 3,000 feet (0.9 km) above areas historically occupied by sea lions at each major rookery in California and Oregon, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery in California and Oregon.

(c) Three special aquatic foraging areas in Alaska. Three special aquatic foraging areas in Alaska, including the Shellikof Strait area, the Bogoslof area, and the Seguam Pass area.

(1) Critical habitat includes the Shellikof Strait area in the Gulf of Alaska and consists of the area between the Alaska Peninsula and Sitkalidak, Shishmaref, Alaktlik, Kodiak, Raspberry, Afognak and Shuyak Islands (connected by the shortest lines); bounded on the west by a line connecting Cape Kumlik (56°38′157°27′W) and the southwestern tip of Tugidak Island (56°24′N/154°41′W) and bounded in the east by a line connecting Cape Douglas (58°51′N/153°15′W) and the northernmost tip of Shuyak Island (58°37′N/152°22′W).

(2) Critical habitat includes the Bogoslof area in the Bering Sea shelf and consists of the area between 170°00′W and 164°00′W, south of straight lines connecting 55°00′N/170°00′W and 55°00′N/168°00′W; 55°30′N/168°00′W and 55°30′N/166°00′W; 56°00′N/166°00′W and 56°00′N/164°00′W and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed:

- 52°49.2′N/169°40.4′W
- 52°49.8′N/169°06.3′W
- 53°23.8′N/167°59.1′W
- 53°18.7′N/167°51.4′W
- 53°59.0′N/166°17.2′W
- 54°02.9′N/166°03.0′W
- 54°07.7′N/165°40.6′W
- 54°06.9′N/165°38.8′W
- 54°11.9′N/165°23.3′W
- 54°22.9′N/164°44.0′W

- 52°49.7′N/167°51.4′W
- 52°49.8′N/169°06.3′W
- 53°23.8′N/167°59.1′W
- 53°18.7′N/167°51.4′W
- 53°59.0′N/166°17.2′W
- 54°02.9′N/166°03.0′W
- 54°07.7′N/165°40.6′W
- 54°06.9′N/165°38.8′W
- 54°11.9′N/165°23.3′W
- 54°22.9′N/164°44.0′W

(3) Critical habitat includes the Seguam Pass area and consists of the area between 52°00′N and 53°00′N and between 173°30′W and 172°30′W.

§ 226.203 Critical habitat for northern right whales.

(a) Great South Channel. The area bounded by 41°40′ N/69°45′ W; 41°00′ N/69°05′ W; 41°38′ N/68°13′ W; and 42°10′ N/68°31′ W.

(b) Cape Cod Bay, Massachusetts. The area bounded by 42°04′8″ N/70°10′ W; 42°12′ N/70°15′ W; 42°12′ N/70°30′ W; 41°46′8″ N/70°30′ W and on the south and east by the interior shore line of Cape Cod, Massachusetts.

(c) Southeastern United States. The coastal waters between 31°15′ N and 30°15′ N from the coast out 15 nautical miles; and the coastal waters between 30°15′ N and 28°00′ N from the coast out 5 nautical miles (Figure 8 to part 226).
§ 226.204 Critical habitat for Sacramento winter-run chinook salmon.

The following waterways, bottom and water of the waterways and adjacent riparian zones: The Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipp’s Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta, all waters from Chipp’s Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward to the Carquinez Bridge, and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge.


§ 226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon, and Snake River spring/summer chinook salmon.

The following areas consisting of the water, waterway bottom, and adjacent riparian zone of specified lakes and river reaches in hydrologic units presently or historically accessible to listed Snake River salmon (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams). Adjacent riparian zones are defined as those areas within a horizontal distance of 300 feet (91.4 m) from the normal line of high water of a stream channel (600 feet or 182.8 m, when both sides of the stream channel are included) or from the shoreline of a standing body of water. The complete text delineating critical habitat for each species follows. Hydrologic units (table 3) are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, “Hydrologic Unit Maps, United States Geological Survey Water Supply Paper 2294, 1987,” and the following DOI, USGS, 1,500,000 scale hydrologic unit map: State of Oregon, 1974; State of Washington, 1974; State of Idaho, 1974, which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Endangered Species Branch, Environmental and Technical Services Division, 911 NE, 11th Avenue, room 620, Portland, OR 97232, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, or at the 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.

(a) Snake River Sockeye Salmon (Oncorhynchus nerka). The Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to the confluence of the Salmon River; all Salmon River reaches from the confluence of the Snake River upstream to Alturas Lake Creek; Stanley, Redfish, Yellow Belly, Pettit, and Alturas Lakes (including their inlet and outlet creeks); Alturas Lake Creek, and that portion of Valley Creek between Stanley Lake Creek and the Salmon River. Critical habitat is comprised of all river lakes and reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River sockeye salmon in the following hydrologic units: Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, and Upper Salmon. Critical habitat borders on or passes through the following counties in Oregon: Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Sherman, Umatilla, Wallowa, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Blaine,
Critical habitat is designated for the Southern Resident killer whale as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview map is provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) Critical Habitat Boundaries. Critical habitat includes three specific marine areas of Puget Sound, Washington, within the following counties: Clallam, Jefferson, King, Kitsap, Island, Mason, Pierce, San Juan, Skagit, Snohomish,
§ 226.206

Thurston, and Whatcom. Critical habitat includes all waters relative to a contiguous shoreline delimited by the line at a depth of 20 feet (6.1 m) relative to extreme high water in each of the following areas:

(1) Summer Core Area: All U.S. marine waters in Whatcom and San Juan counties; and all marine waters in Skagit County west and north of the Deception Pass Bridge (Highway 20) (48°24′25″ N./122°38′35″ W.).

(2) Puget Sound Area: All marine waters in Island County east and south of the Deception Pass Bridge (Highway 20) (48°24′25″ N./122°38′35″ W.), and east of a line connecting the Point Wilson Lighthouse (48°3′39″ N./122°45′12″ W.) and a point on Whidbey Island located at 48°12′30″ N./122°44′26″ W.; all marine waters in Skagit County east of the Deception Pass Bridge (Highway 20) (48°24′25″ N./122°38′35″ W.); all marine waters of Jefferson County east of a line connecting the Point Wilson Lighthouse (48°3′39″ N./122°45′12″ W.) and a point on Whidbey Island located at latitude 48°12′30″ N./122°44′26″ W., and north of the Hood Canal Bridge (Highway 104) (47°51′36″ N./122°37′23″ W.); all marine waters in eastern Kitsap County east of the Hood Canal Bridge (Highway 104) (47°51′36″ N./122°37′23″ W.); all marine waters (excluding Hood Canal) in Mason County; and all marine waters in King, Pierce, Snohomish, and Thurston counties.

(3) Strait of Juan de Fuca Area: All U.S. marine waters in Clallam County east of a line connecting Cape Flattery, Washington (48°23′10″ N./124°43′32″ W.), Tatoosh Island, Washington (48°23′30″ N./124°44′12″ W.), and Bonilla Point, British Columbia (48°35′30″ N./124°43′00″ W.); all marine waters in Jefferson and Island counties west of the Deception Pass Bridge (Highway 20) (48°24′25″ N./122°38′35″ W.), and west of a line connecting the Point Wilson Lighthouse (48°3′39″ N./122°45′12″ W.) and a point on Whidbey Island located at 48°12′30″ N./122°44′26″ W. (b) An overview map of final critical habitat for the Southern Resident killer whale follows.
(c) Primary Constituent Elements. The primary constituent elements essential for conservation of the Southern Resident killer whale are:

(1) Water quality to support growth and development;

(2) Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and
§ 226.207 Critical habitat for leatherback turtle.

LEATHERBACK SEA TURTLE (dermochelys coriacea)

The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17°42′12″ North and 64°50′00″ West.


§ 226.208 Critical habitat for green turtle.

(a) Culebra Island, Puerto Rico—Waters surrounding the island of Culebra from the mean high water line seaward to 3 nautical miles (5.6 km). These waters include Culebra’s outlying Keys including Cayo Norte, Cayo Ballena, Cayos Geniqui, Isla Culebrita, Cayo de Luis Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarrazas, Los Gemelos, and Piedra Steven.

(b) [Reserved]


§ 226.209 Critical habitat for hawksbill turtle.

(a) Mona and Monito Islands, Puerto Rico—Waters surrounding the islands of Mona and Monito, from the mean high water line seaward to 3 nautical miles (5.6 km).

(b) [Reserved]


§ 226.210 Central California Coast Coho Salmon (Oncorhynchus kisutch), Southern Oregon/Northern California Coasts Coho Salmon (Oncorhynchus kisutch).

Critical habitat is designated to include all river reaches accessible to listed coho within the range of the ESUs listed, except for reaches on Indian lands defined in Tables 5 and 6 to this part. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Tables 5 and 6 to this part for all of the coho ESUs listed in this section. Accessible reaches are those within the historical range of the ESUs that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years) and specific dams within the historical range of each ESU identified in Tables 5 and 6 to this part. Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, “Hydrologic Unit Maps,” Water Supply Paper 2294, 1987,
National Marine Fisheries Service/NOAA, Commerce  § 226.211

and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of Oregon, 1974 and State of California, 1978 which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the 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.

(a) Central California Coast Coho Salmon (Oncorhynchus kisutch). Critical habitat is designated to include all river reaches accessible to listed coho salmon from Punta Gorda in northern California south to the San Lorenzo River in central California, including Arroyo Corte Madera Del Presidio and Corte Madera Creek, tributaries to San Francisco Bay. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 5 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 6 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) Southern Oregon/Northern California Coasts Coho Salmon (Oncorhynchus kisutch). Critical habitat is designated to include all river reaches accessible to listed coho salmon between Cape Blanco, Oregon, and Punta Gorda, California. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 6 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 6 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

[64 FR 24061, May 5, 1999, as amended at 69 FR 18803, Apr. 9, 2004]

§ 226.211 Critical habitat for Seven Evolutionarily Significant Units (ESUs) of Salmon (Oncorhynchus spp.) in California.

Critical habitat is designated in the following California counties for the following ESUs as described in paragraph (a) of this section, and as further described in paragraphs (b) through (e) of this section. The textual descriptions of critical habitat for each ESU are included in paragraphs (f) through (l) of this section, and these descriptions are the definitive source for determining the critical habitat boundaries. General location maps are provided at the end of each ESU description (paragraphs (f) through (l) of this section) and are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) Critical habitat is designated for the following ESUs in the following California counties:

<table>
<thead>
<tr>
<th>ESU</th>
<th>State—counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) California Coastal Chinook</td>
<td>CA—Humboldt, Trinity, Mendocino, Sonoma, Lake, Napa, Glenn, Colusa, and Tehama.</td>
</tr>
<tr>
<td>(2) Northern California Steelhead</td>
<td>CA—Humboldt, Trinity, Mendocino, Sonoma, Lake, Glenn, Colusa, and Tehama.</td>
</tr>
<tr>
<td>(3) Central California Coast Steelhead</td>
<td>CA—Lake, Mendocino, Sonoma, Napa, Marin, San Francisco, San Mateo, Santa Clara, Santa Cruz, Alameda, Contra Costa, and San Joaquin.</td>
</tr>
<tr>
<td>(4) South-Central Coast Steelhead</td>
<td>CA—Monterey, San Benito, Santa Clara, Santa Cruz, San Luis Obispo.</td>
</tr>
</tbody>
</table>
§226.211  

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<table>
<thead>
<tr>
<th>ESU</th>
<th>State—counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>(5) Southern California Steelhead</td>
<td>CA—San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange and San Diego.</td>
</tr>
<tr>
<td>(6) Central Valley spring-run Chinook</td>
<td>CA—Tehama, Butte, Glenn, Shasta, Yolo, Sacramento, Solano, Colusa, Yuba, Sutter, Trinity, Alameda, San Joaquin, and Contra Costa.</td>
</tr>
<tr>
<td>(7) Central Valley Steelhead</td>
<td>CA—Tehama, Butte, Glenn, Shasta, Yolo, Sacramento, Solano, Yuba, Sutter, Placer, Calaveras, San Joaquin, Stanislaus, Tuolumne, Merced, Alameda, Contra Costa.</td>
</tr>
</tbody>
</table>

(b) Critical habitat boundaries. Critical habitat includes the stream channels within the designated stream reaches, and includes a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas where the ordinary high-water line has not been defined, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. Critical habitat in estuaries (e.g. San Francisco–San Pablo–Suisun Bay, Humboldt Bay, and Morro Bay) is defined by the perimeter of the water body as displayed on standard 1:24,000 scale topographic maps or the elevation of extreme high water, whichever is greater.

(c) Primary constituent elements. Within these areas, the primary constituent elements essential for the conservation of these ESUs are those sites and habitat components that support one or more life stages, including:

(1) Freshwater spawning sites with water quantity and quality conditions and substrate supporting spawning, incubation and larval development;

(2) Freshwater rearing sites with:
   (i) Water quantity and floodplain connectivity to form and maintain physical habitat conditions and support juvenile growth and mobility;
   (ii) Water quality and forage supporting juvenile development; and
   (iii) Natural cover such as shade, submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels, and undercut banks.

(3) Freshwater migration corridors free of obstruction and excessive predation with water quantity and quality conditions and natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels, and undercut banks supporting juvenile and adult mobility and survival.

(4) Estuarine areas free of obstruction and excessive predation with:
   (i) Water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater;
   (ii) Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels; and
   (iii) Juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation.

(d) Exclusion of Indian lands. Critical habitat does not include occupied habitat areas on Indian lands. The Indian lands specifically excluded from critical habitat are those defined in the Secretarial Order, including:

(1) Lands held in trust by the United States for the benefit of any Indian tribe;

(2) Land held in trust by the United States for any individual subject to restrictions by the United States against alienation;

(3) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(4) Fee lands within the reservation boundaries owned by individual Indians.

(e) Land owned or controlled by the Department of Defense. Additionally, critical habitat does not include the following areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a):

(1) Camp Pendleton Marine Corps Base;

(2) Vandenberg Air Force Base;
(3) Camp San Luis Obispo;
(4) Camp Roberts; and
(5) Mare Island Army Reserve Center.
(f) California Coastal Chinook Salmon (Oncorhynchus tshawytscha). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic units:

(1) Redwood Creek Hydrologic Unit 1107—(i) Orick Hydrologic Sub-area 110710. Outlet(s) = Redwood Creek (Lat –41.2923, Long –124.0917) upstream to endpoint(s) in: Boyes Creek (41.3639, –124.137), Brown Creek (41.3986, –124.0012), Emerald (Harry Weir) (41.2142, –124.3812), Godwood Creek (41.3899, –124.0312), Larry Dam Creek (41.355, –124.0312), Little Lost Man Creek (41.2944, –124.0014), Lost Man Creek (41.3133, –123.9854), May Creek (41.3547, –123.999), McArthur Creek (41.2705, –124.0413), North Fork Lost Man Creek (41.3374, –123.9935), Prairie Creek (41.4239, –124.0367), Tom McDonald Creek (41.1628, –124.0419).
(ii) Beaver Hydrologic Sub-area 110720. Outlet(s) = Redwood Creek (Lat 41.1367, Long –124.0312) upstream to endpoint(s) in: Boyes Creek (41.3639, –124.137), Brown Creek (41.3986, –124.0012), Emerald (Harry Weir) (41.2142, –124.3812), Godwood Creek (41.3899, –124.0312), Larry Dam Creek (41.355, –124.0312), Little Lost Man Creek (41.2944, –124.0014), Lost Man Creek (41.3133, –123.9854), May Creek (41.3547, –123.999), McArthur Creek (41.2705, –124.0413), North Fork Lost Man Creek (41.3374, –123.9935), Prairie Creek (41.4239, –124.0367), Tom McDonald Creek (41.1628, –124.0419).
(iii) Lake Prairie Hydrologic Sub-area 110730. Outlet(s) = Redwood Creek (Lat 41.1334, –124.3812), Minor Creek (40.9706, –123.7899).
(2) Trinidad Hydrologic Unit 1108—(i) Big Lagoon Hydrologic Sub-area 110810. Outlet(s) = Maple Creek (Lat 41.1555, Long –124.1380) upstream to endpoint(s) in: North Fork Maple Creek (41.1317, –124.0824), Maple Creek (41.1239, –124.1014).
(ii) Little River Hydrologic Sub-area 110820. Outlet(s) = Little River (41.0277, –124.1112) upstream to endpoint(s) in: South Fork Little River (40.9908, –124.0412), Little River (41.0529, –123.9727), Railroad Creek (41.0461, –123.991), Lower South Fork Little River (41.0077, –124.0078), Upper South Fork Little River (41.0131, –123.9835).
(3) Mad River Hydrologic Unit 1109—(i) Blue Lake Hydrologic Sub-area 110910. Outlet(s) = Mad River (Lat 40.9139, Long –124.0642) upstream to endpoint(s) in: Lindsay Creek (40.9908, –124.0362), Mill Creek (40.9008, –124.0086), North Fork Mad River (40.8687, –123.9649), Squaw Creek (40.9426, –124.0202), Warren Creek (40.8901, –124.0402).
(ii) North Fork Mad River 110920. Outlet(s) = North Fork Mad River (Lat 40.8687, Long –123.9649) upstream to endpoint(s) in: Sullivan Gulch (40.8646, –123.9553), North Fork Mad River (40.8637, –123.9436).
(iii) Butler Valley 110930. Outlet(s) = Mad River (Lat 40.8449, Long –123.9807) upstream to endpoint(s) in: Black Creek (40.7547, –123.9016), Black Dog Creek (40.8334, –123.9805), Canon Creek (40.8302, –123.9028), Dry Creek (40.8218, –123.9751), Mad River (40.7007, –123.8642), Maple Creek (40.7928, –123.8742), Unnamed (40.8186, –123.9769).
(4) Eureka Plain Hydrologic Unit 1110—(i) Eureka Plain Hydrologic Sub-area 111000. Outlet(s) = Mad River (Lat 40.8560, Long –124.1278), Jacoby Creek (40.8436, –123.9804), Freshwater Creek (40.8088, –124.1442), Elk River (40.7568, –124.1948), Salmon Creek (40.6868, –124.2194) upstream to endpoint(s) in: Bridge Creek (40.6968, –124.0795), Dunlap Gulch (40.7101, –124.1155), Freshwater Creek (40.7389, –123.9944), Gannon Slough (40.8628, –124.0818), Jacoby Creek (40.7944, –124.0093), Little Freshwater Creek (40.7485, –124.0652), North Branch of the North Fork Elk River (40.6878, –124.0131), North Fork Elk River (40.6756, –124.0153), Ryan Creek (40.7835, –124.1138), Salmon Creek (40.6438, –124.1319), South Branch of the North Fork Elk River (40.6691, –124.0244), South Fork Elk River (40.6626, –124.0611), South Fork Freshwater Creek (40.7097, –124.0277).
(ii) [Reserved]
(5) Eel River Hydrologic Unit 1111—(i) Ferndale Hydrologic Sub-area 111111. Outlet(s) = Eel River (Lat 40.6282, Long –124.2838) upstream to endpoint(s) in: Atwell Creek (40.472, –124.1449), Howe Creek (40.4748, –124.1827), Price Creek (40.5028, –124.2035), Strongs Creek (40.5966, –124.1222), Van Duzen River (40.5337, –124.1262).
(ii) Scotia Hydrologic Sub-area 111112. Outlet(s) = Eel River (Lat 40.4918, Long –124.0998) upstream to endpoint(s) in: Bear Creek (40.391, –124.0156), Chadd Creek (40.3921, –123.9542), Jordan Creek (40.4324, –124.0438), Monument Creek (40.4676, –124.1133).
(iii) Larabee Creek Hydrologic Sub-area

Outlet(s) = Larabee Creek (40.4090, Long –123.9334) upstream to endpoint(s) in: Carson Creek (40.4189, –123.8881); Larabee Creek (40.3950, –123.8138).

(iv) Hydesville Hydrologic Sub-area

Outlet(s) = Van Duzen River (Lat 40.5337, Long –124.1262) upstream to endpoint(s) in: Cummings Creek (40.5258, –123.9896); Fielder Creek (40.5289, –124.0201); Hely Creek (40.5424, –123.9703); Yager Creek (40.5583, –123.9577).

(v) Yager Creek Hydrologic Sub-area

Outlet(s) = Yager Creek (Lat 40.5635, Long –124.0577) upstream to endpoint(s) in: Corner Creek (40.6189, –123.9994); Fish Creek (40.6392, –124.0032); Lawrence Creek (40.6394, –123.9935); Middle Fork Yager Creek (40.5799, –123.9015); North Fork Yager Creek (40.6044, –123.9084); Owl Creek (40.5557, –123.9362); Shaw Creek (40.6245, –123.9518); Yager Creek (40.5673, –123.9403).

(vi) Weott Hydrologic Sub-area

Outlet(s) = South Fork Eel River (Lat 40.3500, Long –123.9305) upstream to endpoint(s) in: Bridge Creek (40.2929, –123.8569); Bull Creek (40.3148, –123.8043); Canoe Creek (40.2999, –123.9229); Cow Creek (40.3035, –123.9626); Cuneo Creek (40.3377, –123.8035); Elk Creek (40.2837, –123.8365); Fish Creek (40.2316, –123.7915); Harper Creek (40.3541, –123.9895); Mill Creek (40.3509, –124.0236); Salmon Creek (40.2214, –123.9059); South Fork Salmon River (40.1769, –123.9529); Squaw Creek (40.3401, –123.9997); Tostin Creek (40.1722, –123.8796).

(vii) Benbow Hydrologic Sub-area

Outlet(s) = South Fork Eel River (Lat 40.1932, Long –123.7692) upstream to endpoint(s) in: Anderson Creek (39.9337, –123.8933); Bear Pen Creek (39.9125, –123.8108); Bear Wallow Creek (39.7296, –123.7172); Bond Creek (39.7856, –123.6973); Butler Creek (39.7439, –123.6922); China Creek (40.1035, –123.7459); Connnick Creek (40.0911, –123.8187); Cox Creek (40.0238, –123.8542); Cummings Creek (39.8431, –123.5752); Dean Creek (40.1383, –123.7625); Dinner Creek (40.0915, –123.937); East Branch South Fork Eel River (39.9433, –123.6278); Elk Creek (39.7886, –123.5961); Fish Creek (40.0956, –123.7768); Foster Creek (39.8455, –123.6185); Grapewine Creek (39.7991, –123.5186); Hartsook Creek (40.012, –123.7888); Hoke Tree Creek (39.7316, –123.6918); Huckleberry Creek (39.7315, –123.7253); Indian Creek (39.9464, –123.8993); Jones Creek (39.9977, –123.8378); Leggett Creek (40.1374, –123.8312); Little Sproul Creek (40.0897, –123.8586); Low Gap Creek (39.999, –123.767); McCoy Creek (39.9598, –123.7542); Michael’s Creek (39.7642, –123.7175); Miller Creek (40.1215, –123.916); Moody Creek (39.9531, –123.8819); Mud Creek (39.8232, –123.6107); Piercy Creek (39.9706, –123.8118); Pollock Creek (40.0822, –123.9184); Rattlesnake Creek (39.7974, –123.5426); Redwood Creek (39.7721, –123.7651); Redwood Creek (40.0974, –123.9104); Seely Creek (40.1494, –123.8825); Somerville Creek (40.0896, –123.8913); South Fork Redwood Creek (39.7663, –123.7579); Spool Creek (40.0125, –123.8585); Standley Creek (39.9479, –123.8083); Tom Long Creek (40.0315, –123.6891); Twin Rocks Creek (39.8209, –123.5543); Warden Creek (40.065, –123.8546); West Fork Sproul Creek (40.0386, –123.9015); Wildcat Creek (39.9049, –123.7739); Wilson Creek (39.841, –123.6452); Unnamed Tributary (40.1136, –123.9359).

(ix) Laytonville Hydrologic Sub-area

Outlet(s) = South Fork Eel River (Lat 39.7665, Long –123.8484) upstream to endpoint(s) in: Bear Creek (39.6413, –123.5797); Cahto Creek (39.6624, –123.5453); Dutch Charlie Creek (39.6982, –123.6818); Grub Creek (39.7777, –123.5809); Jack of Hearts Creek (39.7244, –123.6802); Keny Creek (39.6733, –123.6082); Mud Creek (39.6651, –123.592); Redwood Creek (39.6738, –123.6631); Rock Creek (39.6931, –123.6204); South Fork Eel River (39.6271, –123.5389); Streeter Creek (39.7328, –123.5542); Ten Mile Creek (39.6651, –123.451).

(ix) Sequoia Hydrologic Sub-area

Outlet(s) = Eel River (Lat 40.3557, Long –123.9191); South Fork Eel River (40.3558, –123.9194) upstream to endpoint(s) in: Brock Creek (40.2411, –123.7248); Dobbyn Creek (40.2564, –123.6029); Hoover Creek (40.2312, –123.5792); Line Gulch (40.1655, –123.4831); North Fork Dobbyn Creek (40.2669, –123.5467); South Fork Dobbyn Creek (40.1723, –123.5112); South Fork Eel River (40.35, –123.905); Unnamed Tributary (40.3137, –123.8355); Unnamed Tributary (40.2715, –123.549).
Spy Rock Hydrologic Sub-area 111142. Outlet(s) = Eel River (Lat 40.1736, Long –123.6043) upstream to endpoint(s) in: Bell Springs Creek (39.9399, –123.5144); Burger Creek (39.6943, –123.143); Chamise Creek (40.0563, –123.5479); Jewett Creek (40.1195, –123.6927); Kokawaka Creek (40.0686, –123.4087); Woodman Creek (39.7639, –123.4338).

North Fork Eel River Hydrologic Sub-area 111150. Outlet(s) = North Fork Eel River (Lat 39.9567, Long –123.4375) upstream to endpoint(s) in: North Fork Eel River (39.9370, –123.3758).

Outlet Creek Hydrologic Sub-area 111161. Outlet(s) = Outlet Creek (Lat 39.6263, Long –123.3453) upstream to endpoint(s) in: Baechtel Creek (39.3688, –123.4028); Berry Creek (39.4272, –123.2951); Bloody Run (39.5864, –123.3545); Broadus Creek (39.3907, –123.4163); Davis Creek (39.3701, –123.3007); Dutch Henry Creek (39.5788, –123.5477); Haehl Creek (39.3795, –123.3595); Long Valley Creek (39.6901, –123.4577); Ryan Creek (39.4803, –123.3642); Upp Creek (39.4276, –123.3578); Willits Creek (39.4315, –123.3794).

Tomki Creek Hydrologic Sub-area 111162. Outlet(s) = Eel River (Lat 39.7138, Long –123.3531) upstream to endpoint(s) in: Cave Creek (39.3925, –123.2318); Long Branch Creek (39.4074, –123.1897); Rocktree Creek (39.4533, –123.3079); Salmon Creek (39.461, –123.2104); Scott Creek (39.456, –123.2297); String Creek (39.485, –123.2891); Tomki Creek (39.549, –123.3613); Wheelbarrow Creek (39.5029, –123.3287).

Lake Pillsbury Hydrologic Sub-area 111163. Outlet(s) = Eel River (Lat 39.3660, Long –123.1163) upstream to endpoint(s) in: Eel River (39.4078, –122.958).

Eden Valley Hydrologic Sub-area 111171. Outlet(s) = Middle Fork Eel River (Lat 39.8146, Long –123.1332) upstream to endpoint(s) in: Middle Fork Eel River (39.8145, –123.1339).

Round Valley Hydrologic Sub-area 111172. Outlet(s) = Mill Creek (Lat 39.7396, Long –123.1420); Williams Creek (39.8145, –123.1333) upstream to endpoint(s) in: Mill Creek (39.8456, –123.2622); Murphy Creek (39.8804, –123.2622); Poor Mans Creek (39.8179, –123.1833); Short Creek (39.8645, –123.2242); Turner Creek (39.7238, –123.2191); Williams Creek (39.8596, –123.1341).

(6) Cape Mendocino Hydrologic Unit 1112. (i) Capetown Hydrologic Sub-area 111220. Outlet(s) = Bear River (Lat 40.4744, Long –124.3881) upstream to endpoint(s) in: Bear River (40.3951, –124.5031); South Fork Bear River (40.4751, –124.2873).

(ii) Mattole River Hydrologic Sub-area 111230. Outlet(s) = Mattole River (Lat 40.2942, Long –124.3536) upstream to endpoint(s) in: Bear Creek (40.1262, –124.0631); Blue Slide Creek (40.1286, –123.9579); Bridge Creek (40.0503, –123.9885); Conklin Creek (40.3169, –124.229); Dry Creek (40.2389, –124.0621); East Fork Honeydew Creek (40.1633, –124.0916); East Fork of the North Fork Mattole River (40.3489, –124.2244); Eubanks Creek (40.0893, –123.9743); Gilham Creek (40.2162, –124.0399); Grindstone Creek (40.1875, –124.0041); Honeydew Creek (40.1942, –124.1363); Mattole Canyon (40.1833, –123.9666); Mattole River (39.9735, –123.9548); McGinnis Creek (40.3013, –124.2146); McKeek Creek (40.0674, –123.9608); Mill Creek (40.0169, –123.9656); North Fork Mattole River (40.3729, –124.2461); North Fork Bear Creek (40.1422, –124.0945); Oil Creek (40.3008, –124.1253); Rattlesnake Creek (40.2919, –124.1051); South Fork Bear Creek (40.6334, –124.0232); Squaw Creek (40.219, –124.1921); Thompson Creek (39.9969, –123.9638); Unnamed (40.1522, –124.0989); Upper North Fork Mattole River (40.2907, –124.1115); Westlund Creek (40.2333, –124.0336); Woods creek (40.2235, –124.1574); Yew Creek (40.0019, –123.9743).

(7) Mendocino Coast Hydrologic Unit 1113. (i) Wages Creek Hydrologic Sub-area 111312. Outlet(s) = Wages Creek (Lat 39.6513, Long –123.7851) upstream to endpoint(s) in: Wages Creek (39.6393, –123.7146).

(iii) Noyo River Hydrologic Sub-area 111320. Outlet(s) = Noyo River (Lat 39.4274, Long –123.8096) upstream to endpoint(s) in: North Fork Noyo River (39.4541, –123.5331); Noyo River (39.431, 123.494); South Fork Noyo River (39.3649, –123.6136).

(iv) Big River Hydrologic Sub-area 111330. Outlet(s) = Big River (Lat 39.3030, Long –123.7957) upstream to endpoint(s) in: Big River (39.3095, –123.4544).

(v) Albion River Hydrologic Sub-area 111340. Outlet(s) = Albion River (Lat 39.2253, Long –123.7679) upstream to endpoint(s) in: Albion River (39.2644, –123.4504).

(vi) Garcia River Hydrologic Sub-area 111370. Outlet(s) = Garcia River (Lat 38.9455, Long –123.7257) upstream to endpoint(s) in: Garcia River (38.9160, –123.9000).

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(8) Russian River Hydrologic Unit 1114—(i) Guerneville Hydrologic Sub-area 111411. Outlet(s) = Russian River (Lat 38.4507, Long –123.1289) upstream to endpoint(s) in: Austin Creek (38.5099, –123.0681); Mark West Creek (38.4961, –122.8489).

(ii) Austin Creek Hydrologic Sub-area 111412. Outlet(s) = Austin Creek (Lat 38.5099, Long –123.0681) upstream to endpoint(s) in: Austin Creek (38.5326, –123.0844).

(iii) Warm Springs Hydrologic Sub-area 111424. Outlet(s) = Dry Creek (Lat 38.5681, Long –122.8573) upstream to endpoint(s) in: Dry Creek (38.7179, –123.0075).

(iv) Geyserville Hydrologic Sub-area 111425. Outlet(s) = Russian River (Lat 38.6132, Long –122.8321) upstream.

(v) Ukiah Hydrologic Sub-area 111431. Outlet(s) = Austin Creek (Lat 38.4961, Long –122.8489) upstream to endpoint(s) in: Feliz Creek (38.9941, –123.1779).

(vi) Forsythe Creek Hydrologic Sub-area 111433. Outlet(s) = Russian River (Lat 39.2257, Long –123.2012) upstream to endpoint(s) in: Forsythe Creek (39.2780, –123.2608); Russian River (39.3599, –123.3326).

(9) Maps of critical habitat for the California Coast chinook salmon ESU follow:
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Critical Habitat for the California Coastal Chinook Salmon

Trinidad Hydrologic Unit
1108

Cities/Towns

Critical Habitat

Calwater Hydrologic Unit Boundary

Fifth Field Calwater Hydrologic Sub-Area Boundary

110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail
Critical Habitat for the California Coastal Chinook Salmon

Eureka Plain Hydrologic Unit
1110

- Cities/Towns
- Critical Habitat
- Calwater Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail
(g) Northern California Steelhead (O. mykiss). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic units:

1. Redwood Creek Hydrologic Unit 1107—(1) Orick Hydrologic Sub-area

Outlet(s) = Boat Creek (Lat 41.4059, Long -124.0675); Home Creek (41.4027, -124.0683); Redwood Creek (41.2923, -124.0917); Squashan Creek (41.3889, -124.0703) upstream to endpoint(s) in: Boat Creek (41.4110,
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–124.0583; Bond Creek (41.2326, –124.0262); Boyes Creek (41.3701, –124.9981); Bridge Creek (41.1694, –123.9964); Brown Creek (41.3986, –124.0012); Cloquet Creek (41.2466, –123.9884); Cole Creek (41.1969, –123.9667); Elam Creek (41.2613, –124.0321); Emerald Creek (41.2164, –124.0195); Forty Four Creek (41.2187, –124.0195); Gans South Creek (41.2678, –124.0071); Godwood Creek (41.3787, –124.0354); Hayes Creek (41.2890, –124.0164); Home Creek (41.3951, –124.0386); Larry Dam Creek (41.3441, –123.9966); Little Lost Man Creek (41.3078, –124.0084); Lost Man Creek (41.3187, –123.9892); May Creek (41.1516, –124.0012); McArthur Creek (41.2702, –124.0427); Miller Creek (41.2305, –124.0046); North Fork Lost Man Creek (41.3405, –123.9859); Oscar Larson Creek (41.2559, –124.0411); Skunk Cabbage Creek (41.3211, –124.0802); Slide Creek (41.1736, –123.9450); Squashan Creek (41.3739, –124.0440); Streelow Creek (41.3622, –124.0472); Tom McDonald Creek (41.0933, –124.0164); Unnamed Tributary (41.3619, –123.9967); Unnamed Tributary (41.3424, –124.0572).

(ii) Beaver Hydrologic Sub-area 110720. Outlet(s) = Redwood Creek (Lat 41.1367, Long –123.9309) upstream to endpoint(s) in: Beaver Creek (41.0208, –123.8608); Beach Creek (41.0716, –124.0239); Clear Creek (41.1031, –124.0030); Diamond Creek (41.1571, –124.0926); Maple Creek (41.0836, –123.9790); McDonald Creek (41.1850, –124.0773); M-Line Creek (41.0752, –124.0787); North Fork Maple Creek (41.1254, –124.0539); North Fork McDonald Creek (41.2107, –124.0664); Pitcher Creek (41.1518, –124.0874); South Fork Maple Creek (41.1003, –124.1119); Tom Creek (41.1773, –124.0966); Unnamed Tributary (41.1004, –124.0155); Unnamed Tributary (41.0780, –124.0675); Unnamed Tributary (41.1168, –124.0886); Unnamed Tributary (41.0804, –124.0899); Unnamed Tributary (41.1392, –124.0827); Unnamed Tributary (41.0749, –124.0889); Unnamed Tributary (41.1052, –124.0675); Unnamed Tributary (41.0714, –124.0611); Unnamed Tributary (41.0948, –124.0016).

(iii) Little River Hydrologic Sub-area 110820. Outlet(s) = Little River (Lat 41.0277, Long –124.1112) upstream to endpoint(s) in: Freeman Creek (41.0242, –124.0582); Little River (40.9999, –123.9232); Lower South Fork Little River (41.0077, –124.0079); Railroad Creek (41.0469, –124.0466); South Fork Little River (40.9899, –124.0394); Unnamed Tributary (41.0356, –123.9958); Unnamed Tributary (41.0407, –123.9986); Unnamed Tributary (41.0068, –123.9830);
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Unnamed Tributary (41.0402, –124.0111);  
Unnamed Tributary (41.0402, –124.0189);  
Unnamed Tributary (41.0303, –124.0366);  
Unnamed Tributary (41.0575, –123.9710);  
Unnamed Tributary (41.0068, –123.9830);  
Upper South Fork Little River (41.0146, –123.9826).  

(3) Mad River Hydrologic Unit 1109—  
(i) Blue Lake Hydrologic Sub-area 110910.  
Outlet(s) = Mad River (Lat 40.9139, Long –124.0642); Strawberry Creek (40.9964, –124.1155); Widow White Creek (40.9635, –124.1253) upstream to endpoint(s) in: Boundary Creek (40.8935, –123.9920); Grassly Creek (40.9514, –124.0188); Hall Creek (40.9162, –124.0141); Kelly Creek (40.8656, –124.0260); Leggit Creek (40.8808, –124.0269); Lindsay Creek (40.9838, –124.0283); Mather Creek (40.9796, –124.0526); Mill Creek (40.9296, –124.1037); Mill Creek (40.9162, –124.0141); Mill Creek (40.8521, –123.9617); North Fork Mad River (40.8687, –123.9649); Norton Creek (40.9572, –124.1003); Palmer Creek (40.8633, –124.0193); Puter Creek (40.8474, –123.9966); Quarry Creek (40.8526, –124.0098); Squaw Creek (40.9426, –124.0202); Strawberry Creek (40.9761, –124.0630); Unnamed Tributary (40.9549, –124.0554); Unnamed Tributary (40.9672, –124.0218); Warren Creek (40.8860, –124.0351); Widow White Creek (40.9022, –124.0784).  

(ii) North Fork Mad River Hydrologic Sub-area 110920.  
Outlet(s) = North Fork Mad River (Lat 40.9139, Long –124.0642); Strawberry Creek (40.9964, –124.1155); Widow White Creek (40.9635, –124.1253) upstream to endpoint(s) in: Boundary Creek (40.8935, –123.9920); Grassly Creek (40.9514, –124.0188); Hall Creek (40.9162, –124.0141); Kelly Creek (40.8656, –124.0260); Leggit Creek (40.8808, –124.0269); Lindsay Creek (40.9838, –124.0283); Mather Creek (40.9796, –124.0526); Mill Creek (40.9296, –124.1037); Mill Creek (40.9162, –124.0141); Mill Creek (40.8521, –123.9617); North Fork Mad River (40.8687, –123.9649); Norton Creek (40.9572, –124.1003); Palmer Creek (40.8633, –124.0193); Puter Creek (40.8474, –123.9966); Quarry Creek (40.8526, –124.0098); Squaw Creek (40.9426, –124.0202); Strawberry Creek (40.9761, –124.0630); Unnamed Tributary (40.9549, –124.0554); Unnamed Tributary (40.9672, –124.0218); Warren Creek (40.8860, –124.0351); Widow White Creek (40.9022, –124.0784).  

(iii) Butler Valley Hydrologic Sub-area 110930.  
Outlet(s) = Mad River (Lat 40.9139, Long –124.0642) upstream to endpoint(s) in: Bear Creek (40.5468, –123.6728); Black Creek (40.7521, –123.9805); Blue Slide Creek (40.7333, –123.9225); Boulder Creek (40.7634, –123.8667); Bug Creek (40.6587, –123.7356); Cannon Creek (40.8535, –123.8850); Coyote Creek (40.6147, –123.6488); Devil Creek (40.8032, –123.9175); Dry Creek (40.6218, –123.9751); East Creek (40.5403, –123.5579); Maple Creek (40.7933, –123.8353); Pilot Creek (40.5950, –123.5888); Simpson Creek (40.8138, –123.9156); Unnamed Tributary (40.7306, –123.9019); Unnamed Tributary (40.7739, –123.9255); Unnamed Tributary (40.7744, –123.9137); Unnamed Tributary (40.9029, –123.8716); Unnamed Tributary (40.8038, –123.8691); Unnamed Tributary (40.8363, –123.9025).  

(4) Eureka Plain Hydrologic Unit 1110—  
(i) Eureka Plain Hydrologic Sub-area 111000.  
Outlet(s) = Elk River (Lat 40.7568, Long –124.1948); Freshwater Creek (40.8088, –124.1442); Jacoby Creek (40.8436, –124.0834); Mad River (40.9560, –124.1278); Rocky Gulch (40.8309, –124.0813); Salmon Creek (40.6868, –124.2194); Washington Gulch (40.6317, –124.0805) upstream to endpoint(s) in: Bridge Creek (40.6958, –124.0805); Browns Gulch (40.7038, –124.1074); Clapp Gulch (40.6967, –124.1098); Cloney Gulch (40.7626, –124.0947); Doe Creek (40.6964, –124.0201); Dunlap Gulch (40.7076, –124.1182); Falls Gulch (40.7055, –124.0261); Fay Slough (40.8033, –124.0574); Freshwater Creek (40.7385, –124.0035); Golf Course Creek (40.8406, –124.0402); Graham Gulch (40.7540, –124.0228); Guptil Gulch (40.7530, –124.1202); Henderson Gulch (40.7357, –124.1394); Jacoby Creek (40.7949, –124.0096); Lake Creek (40.6848, –124.0831); Line Creek (40.6578, –124.0460); Little Freshwater Creek (40.7371, –124.0649); Little North Fork Elk River (40.6972, –124.0100); Little South Fork Elk River (40.6555, –124.0877); Martin Slough (40.7679, –124.1578); McCreary Gulch (40.7824, –124.0411); McWinney Creek (40.6968, –124.0616); Morrison Gulch (40.8169, –124.0430); North Branch of the North Fork Elk River (40.6879, –124.0130); North Fork Elk River (40.6794–123.9834); Railroad Gulch (40.6794–123.9834).
(40.6955, –124.1545); Rocky Gulch (40.8170, –124.0613); Ryan Creek (40.7352, –124.0996); South Branch of the North Fork Elk River (40.6700, –124.0251); South Fork Elk River (40.6437, –124.0388); South Fork Freshwater Creek (40.7126, –124.0267); Swain Slough (40.7524, –124.1825); Tom Gulch (40.6794, –124.1452); Unnamed Tributary (40.7850, –124.0561); Unnamed Tributary (40.7552, –124.1081); Unnamed Tributary (40.7667, –124.1054); Unnamed Tributary (40.7559, –124.0870); Unnamed Tributary (40.7952, –124.0568); Unnamed Tributary (40.7408, –124.1118); Unnamed Tributary (40.7186, –124.1385); Unnamed Tributary (40.7224, –124.1038); Unnamed Tributary (40.8210, –124.0111); Unnamed Tributary (40.7554, –124.1379); Unnamed Tributary (40.7457, –124.1138); Washington Gulch (40.8025, –124.0549).

(ii) [Reserved]

(5) Eel River Hydrologic Unit 1111—

Ferndale Hydrologic Sub-area 111111. Outlet(s) = Eel River (Lat 40.6275, Long –124.2520) upstream to endpoint(s) in: Atwell Creek (40.4824, –124.1498); Dean Creek (40.4847, –124.1217); Horse Creek (40.5198, –124.1702); Howe Creek (40.4654, –124.1916); Nanning Creek (40.4914, –124.0652); North Fork Strongs Creek (40.6077, –124.1047); Price Creek (40.5101, –124.2751); Rohner Creek (40.6151, –124.1408); Strongs Creek (40.5999, –124.0985); Sweet Creek (40.4900, –124.2007); Van Duzen River (40.5337, –124.1262).

(iii) Larabee Creek Hydrologic Sub-area 111113. Outlet(s) = Larabee Creek (Lat 40.4090, Long –123.9334) upstream to endpoint(s) in: Arnold Creek (40.4006, –123.8583); Balcom Creek (40.4030, –123.8866); Bosworth Creek (40.3584, –123.7089); Boulder Flat Creek (40.3530, –123.6381); Burr Creek (40.4125, –123.7767); Carson Creek (40.4181, –123.8879); Chris Creek (40.4146, –123.9235); Cooper Creek (40.3123, –123.6463); Dauphiny Creek (40.4049, –123.8893); Frost Creek (40.3765, –123.7357); Hayfield Creek (40.3570, –123.6535); Knack Creek (40.3788, –123.7385); Larabee Creek (40.2807, –123.6445); Martin Creek (40.3730, –123.7060); Maxwell Creek (40.3959, –123.8049); McMahon Creek (40.3269, –123.6363); Mill Creek (40.3849, –123.7440); Mountain Creek (40.2955, –123.6378); Scott Creek (40.4020, –123.8738); Smith Creek (40.4194, –123.8568); Thurman Creek (40.3506, –123.6669); Unnamed Tributary (40.3842, –123.8062); Unnamed Tributary (40.3902, –123.7862); Unnamed Tributary (40.3806, –123.7564); Unnamed Tributary (40.3661, –123.7398); Unnamed Tributary (40.3524, –123.7330).

(iv) Hydesville Hydrologic Sub-area 111121. Outlet(s) = Van Duzen River (Lat 40.5337, Long –123.1282) upstream to endpoint(s) in: Cuddeback Creek (40.5421, –124.0263); Cummings Creek (40.5282, –123.9770); Fiedler Creek (40.5351, –124.0106); Hely Creek (40.5165, –123.9531); Yager Creek (40.5583, –124.0577); Unnamed Tributary (40.5718, –124.0846).

(v) Bridgeville Hydrologic Sub-area 111122. Outlet(s) = Van Duzen River (Lat 40.4942, Long –123.9720) upstream to endpoint(s) in: Bear Creek (40.3455, –123.5763); Blanket Creek (40.3635, –123.5710); Browns Creek (40.4958, –123.8103); Butte Creek (40.4119, –123.7047); Dalry Creek (40.4174, –123.5981); Fish Creek (40.4525, –123.8434); Grizzly Creek (40.5193, –123.8470); Little Larabee Creek (40.4708, –123.7395); Little Van Duzen Hayfield (40.3021, –123.5550); North Fork Van Duzen (40.4881, –123.6411); Panther Creek (40.3921, –123.5866); Root Creek (40.4490, –123.9018); Stevens Creek (40.5062, –123.9073); Thompson Creek (40.4222, –123.6084); Van Duzen River (40.4820, –123.6629); Unnamed Tributary (40.3074, –123.5834).
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(vi)  Yager Creek Hydrologic Sub-area 111123. Outlet(s) = Yager Creek (Lat 40.5583, Long –124.0577) upstream to endpoint(s) in: Bell Creek (40.6809, –123.9685); Blanten Creek (40.5839, –124.0165); Booths Run (40.6584, –123.9428); Corner Creek (40.6179, –124.0010); Fish Creek (40.6390, –124.0024); Lawrence Creek (40.6986, –123.9314); Middle Fork Yager Creek (40.5782, –123.9243); North Fork Yager Creek (40.6056, –123.9080); Shaw Creek (40.6331, –123.9509); South Fork Yager Creek (40.5451, –123.9409); Unnamed Tributary (40.5892, –123.9663); Yager Creek (40.5673, –123.9403).

(vii)  Weott Hydrologic Sub-area 111131. Outlet(s) = South Fork Eel River (Lat 40.3500, Long –123.9305) upstream to endpoint(s) in: Albee Creek (40.3592, –124.0088); Bull Creek (40.3587, –123.9624); Burns Creek (40.3194, –124.0420); Butte Creek (40.1982, –123.9243); Canoe Creek (40.2664, –123.9838); Coon Creek (40.2702, –123.9013); Cow Creek (40.2664, –123.9838); Cuneo Creek (40.3401, –124.0494); Decker Creek (40.3312, –123.9501); Elk Creek (40.2609, –123.7957); Fish Creek (40.2459, –123.7729); Harper Creek (40.3591, –123.9930); Mill Creek (40.3568, –124.0334); Mowry Creek (40.3568, –123.8895); North Fork Cuneo Creek (40.3449, –124.0494); Ohman Creek (40.1924, –123.7648); Panther Creek (40.2775, –124.0897); Preacher Gulch (40.2894, –124.0047); Salmon Creek (40.2145, –123.8926); Slide Creek (40.3011, –124.0390); South Fork Salmon Creek (40.1769, –123.8929); Squaw Creek (40.3167, –123.9688); Unnamed Tributary (40.3065, –124.0074); Unnamed Tributary (40.2831, –124.0339).

(viii)  Benbow Hydrologic Sub-area 111132. Outlet(s) = South Fork Eel River (Lat 40.1929, Long –123.7692) upstream to endpoint(s) in: Anderson Creek (39.9325, –123.8928); Bear Creek (39.7885, –123.7620); Bear Pen Creek (39.9201, –123.7986); Bear Wallow Creek (39.7270, –123.7140); Big Dan Creek (39.8410, –123.6692); Bond Creek (39.7776, –123.7142); Bridges Creek (39.9087, –123.7142); Buck Mountain Creek (40.0944, –123.7423); Butler Creek (39.7423, –123.6987); Cedar Creek (39.8834, –123.6216); China Creek (40.1035, –123.9493); Connick Creek (40.0912, –123.8145); Cox Creek (40.0930, –123.8338); Cruzio Cabin Creek (39.9281, –123.5842); Durphy Creek (40.6205, –123.8271); East Branch South Fork Eel River (39.9359, –123.6204); Elkhorn Creek (39.9272, –123.6279); Fish Creek (40.0390, –123.7630); Hartsook Creek (40.0081, –123.8113); Hollow Tree Creek (39.7250, –123.6924); Huckleberry Creek (39.7292, –123.7275); Indian Creek (39.9556, –123.9172); Islam John Creek (39.8062, –123.7363); Jones Creek (39.9568, –123.8374); Leggett Creek (40.1470, –123.8375); Little Sproul Creek (40.0890, –123.8577); Lost Man Creek (39.7983, –123.7267); Low Gap Creek (39.8029, –123.6800); Low Gap Creek (39.9933, –123.7601); McCoy Creek (40.5892, –123.9663); Yager Creek (40.5673, –123.9403).

(ix)  Laytonville Hydrologic Sub-area 111133. Outlet(s) = South Fork Eel River (Lat 39.7665, Long –123.6484) upstream to endpoint(s) in: Bear Creek (39.6418, –123.5833); Big Rick Creek (39.7117, –123.5512); Calho Creek (39.6527, –123.5579); Dark Canyon Creek (40.0226, –123.8249); Squaw Creek (40.0760, –123.7257); Standby Creek (39.9327, –123.8309); Tom Long Creek (40.0175, –123.6551); Waldron Creek (39.7469, –123.7465); Walker's Creek (39.9721, –123.7250); Warden Creek (40.0629, –123.8551); West Fork Sproul Creek (40.0587, –123.9170); Wildcat Creek (39.8596, –123.7620); Unnamed Tributary (39.9927, –123.8607).
–123.5741); Mud Springs Creek (39.6290, –123.6569); Redwood Creek (39.6515, –123.6758); Rock Creek (39.6922, –123.6090); Section Four Creek (39.6137, –123.5297); South Fork Eel River (39.6242, –123.5468); Streeter Creek (39.7404, –123.5606); Ten Mile Creek (39.6652, –123.4486); Unnamed Tributary (39.7004, –123.5678).

(x) Sequoia Hydrologic Sub-area 111141. Outlet(s) = Eel River (Lat 40.3557, Long –123.9191) upstream to endpoint(s) in: Beatty Creek (40.3198, –123.7500); Brock Creek (40.2410, –123.7246); Cameron Creek (40.3313, –123.7707); Dobbyn Creek (40.2216, –123.6029); Kapple Creek (40.3531, –123.8585); Line Gulch Creek (40.1640, –123.4783); Mud Creek (40.2078, –123.5143); North Fork Dobbyn Creek (40.2669, –123.5467); Sonoma Creek (40.2974, –123.7953); South Fork Dobbyn Creek (40.1723, –123.5112); South Fork Eel River (40.3500, –123.9305); South Fork Thompson Creek (40.3447, –123.3834); Thompson Creek (40.3552, –123.9147); Unnamed Tributary (40.2745, –123.5487).

(xii) Spy Rock Hydrologic Sub-area 111142. Outlet(s) = Eel River (Lat 40.1736, Long –123.6043) upstream to endpoint(s) in: Bear Pen Canyon (39.6943, –123.4359); Bell Springs Creek (39.9457, –123.5313); Blue Rock Creek (39.8937, –123.5018); Burger Creek (39.6693, –123.3041); Chamise Creek (40.0035, –123.5945); Gill Creek (39.7879, –123.4865); Iron Creek (39.7993, –123.4747); Jewett Creek (40.1122, –123.6171); Keckawaka Creek (40.0686, –123.4867); Rock Creek (39.9347, –123.5187); Shell Rock Creek (39.8414, –123.4614); Unnamed Tributary (39.7579, –123.4709); White Rock Creek (39.7646, –123.6841); Woodman Creek (39.7612, –123.4364).

(xiii) Outlet Creek Hydrologic Sub-area 111161. Outlet(s) = Outlet Creek (Lat 39.6265, Long –123.3449) upstream to endpoint(s) in: Baechtel Creek (39.3623, –123.4134); Berry Creek (39.4271, –123.2777); Bloody Run Creek (39.3864, –123.5150); Badass Creek (39.8690, –123.4283); Cherry Creek (39.6043, –123.4073); Conklin Creek (39.3756, –123.2570); Davis Creek (39.3354, –123.2945); Haehl Creek (39.3735, –123.3172); Long Valley Creek (39.6246, –123.4651); Mill Creek (39.4196, –123.3919); Outlet Creek (39.4552, –123.3398); Ryan Creek (39.4804, –123.3641); Unnamed Tributary (39.4956, –123.3591); Unnamed Tributary (39.4322, –123.3848); Unnamed Tributary (39.5793, –123.4546); Unnamed Tributary (39.3703, –123.3149); Upp Creek (39.4479, –123.3825); Willits Creek (39.4686, –123.4299).

(xiv) Eden Valley Hydrologic Sub-area 111171. Outlet(s) = Middle Fork Eel River (Lat 39.7138, Long –123.3532) upstream to endpoint(s) in: Crocker Creek (39.5559, –123.0409); Eden Creek (39.5992, –123.1746); Elk Creek (39.5371, –123.0101); Hayshed Creek (39.7062, –123.0867); Salt Creek (39.6765, –123.2749); Sportsmans Creek (39.5373, –123.0247); Sulper Springs (39.5536, –123.0365); Thatcher Creek (39.6866, –123.0639).

(xv) Round Valley Hydrologic Sub-area 111172. Outlet(s) = Mill Creek (Lat 39.7596, Long –123.1420); Williams Creek (39.8145, –123.1333) upstream to endpoint(s) in: Cold Creek (39.8714, –123.2991); Grist Creek (39.7640, –123.2883); Mill Creek (39.8481, –123.2896); Murphy Creek (39.8865, –123.1612); Short Creek (39.8730, –123.2352); Town Creek (39.7991, –123.2889); Turner Creek (39.7218, –123.2175); Williams Creek (39.8903, –123.1212); Unnamed Tributary (39.7428, –123.2757); Unnamed Tributary (39.7493, –123.2584).

(xvi) Black Butte River Hydrologic Sub-area 111173. Outlet(s) = Black Butte River (Lat 39.8239, Long –123.0880) upstream to endpoint(s) in: Black Butte River (39.5946, –122.8579); Buckhorn Creek (39.6563, –122.9225); Cold Creek (39.6960, –122.9063); Estell Creek (39.5966, –122.8224); Spanish Creek (39.6287, –122.8331).
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(xvii) Wilderness Hydrologic Sub-area

111174. Outlet(s) = Middle Fork Eel River (Lat 39.8240, Long –123.0877) up-stream to endpoint(s) in: Beaver Creek (39.9522, –122.9943); Fossil Creek (39.9477, –123.0403); Middle Fork Eel River (40.0780, –123.0442); North Fork Middle Fork Eel River (40.0727, –123.0398); Palm of Gileade Creek (40.0229, –123.0647); Pothole Creek (39.9347, –123.0440).  

(6) Cape Mendocino Hydrologic Unit

11112—(i) Oil Creek Hydrologic Sub-area

111210. Outlet(s) = Guthrie Creek (Lat 40.5407, Long –124.3626); Oil Creek (40.5195, –124.3767) upstream to endpoint(s) in: Guthrie Creek (40.5320, –124.3128); Oil Creek (40.5601, –124.2875); Unnamed Tributary (40.4946, –124.3091); Unnamed Tributary (40.492, –124.3573); Unnamed Tributary (40.4992, –124.3070).

(ii) Capetown Hydrologic Sub-area

111220. Outlet(s) = Bear River (Lat 40.4744, Long –124.3881); Davis Creek (40.3850, –124.3691); Singley Creek (40.4311, –124.4034) upstream to endpoint(s) in: Antone Creek (40.4281, –124.2114); Bear River (40.3591, –124.0536); Bear Bottle Gulch (40.3949, –124.1410); Bonanza Gulch (40.4777, –124.2966); Brushy Creek (40.4102, –124.1650); Davis Creek (40.3945, –124.2912); Harmonica Creek (40.3775, –124.0735); Hollar Creek (40.410, –124.2891); Nelson Creek (40.3363, –124.1154); Peak Creek (40.4123, –124.1897); Pullen Creek (40.4057, –124.0814); Singley Creek (40.4177, –124.3365); South Fork Bear River (40.4047, –124.2631); Unnamed Tributary (40.4271, –124.3107); Unnamed Tributary (40.4814, –124.2741); Unnamed Tributary (40.3633, –124.0651); Unnamed Tributary (40.3785, –124.0599); Unnamed Tributary (40.4179, –124.2391); Unnamed Tributary (40.4140, –124.0923); Unnamed Tributary (40.3996, –124.3175); Unnamed Tributary (40.4045, –124.0745); Unnamed Tributary (40.4688, –124.2364); Unnamed Tributary (40.4389, –124.2350); Unnamed Tributary (40.4516, –124.2238); Unnamed Tributary (40.4396, –124.1594); Unnamed Tributary (40.4550, –124.1504); Unnamed Tributary (40.4394, –124.3745); West Side Creek (40.4751, –124.2432).

(iii) Mattole River Hydrologic Sub-area

111230. Outlet(s) = Big Creek (Lat 40.1567, Long –124.2114); Big Flat Creek (40.1297, –124.1764); Buck Creek (40.1086, –124.1218); Cooskie Creek (40.2192, –124.3105); Fourmile Creek (40.2561, –124.3578); Gitchell Creek (40.0538, –124.1023); Horse Mountain Creek (40.0685, –124.0822); Kinsey Creek (40.1717, –124.2310); Mattole River (40.2842, –124.3356); McNutt Gulch (40.3541, –124.3519); Oat Creek (40.1785, –124.2445); Randall Creek (40.2094, –124.2831); Shipman Creek (40.1175, –124.1449); Spanish Creek (40.1835, –124.2569); Telegraph Creek (40.0473, –124.0798); Whale Gulch (39.9623, –123.9785) upstream to endpoint(s) in: Anderson Creek (40.0134, –123.9048); Baker Creek (40.1262, –124.0631); Bear Creek (40.2819, –124.3336); Bear Trap Creek (40.2157, –124.1422); Big Creek (40.1742, –124.1924); Big Finley Creek (40.0910, –124.0179); Big Flat Creek (40.1444, –124.1636); Blue Slide Creek (40.1562, –123.9283); Box Canyon Creek (40.1078, –123.9854); Bridge Creek (40.0447, –124.0118); Buck Creek (40.1166, –124.1142); Conklin Creek (40.3197, –124.2055); Cooskie Creek (40.2286, –124.2986); Devils Creek (40.3432, –123.1365); Dry Creek (40.2646, –124.0660); East Branch North Fork Mattole River (40.3333, –124.1490); East Fork Honeydew Creek (40.1625, –124.0929); Eubank Creek (40.0997, –123.9612); Fire Creek (40.1533, –123.9529); Fourmile Creek (40.2694, –124.3079); Fourmile Creek (40.1767, –124.0759); French Creek (40.1384, –124.0072); Gibson Creek (40.0304, –123.9297); Gilham Creek (40.2078, –124.0805); Gitchell Creek (40.1086, –123.9297); Green Ridge Creek (40.3254, –124.1258); Grindstone Creek (40.2019, –123.9890); Harris Creek (40.0381, –123.9304); Harrow Creek (40.1612, –124.0292); Helen Barnum Creek (40.0036, –123.9101); Honeydew Creek (40.1747, –124.1410); Horse Mountain Creek (40.0769, –124.0729); Indian Creek (40.2772, –124.2759); Jewett Creek (40.1465, –124.0414); Kinsey Creek (40.1765, –124.2220); Lost Man Creek (39.9754, –123.9179); Mattole Canyon (40.2021, –123.9674); Mattole Creek (40.0158, –123.9693); Mill Creek (40.3305, –124.2598); Mill Creek (40.2839, –124.1444); Nooning Creek (40.0616, –124.0050); North Fork...
Mattole River (40.3866, -124.1867); North Fork Bear Creek (40.1494, -124.1060); North Fork Fourmile Creek (40.2019, -124.0722); Oat Creek (40.1884, -124.2296); Oil Creek (40.3214, -124.1601); Painter Creek (40.0844, -123.9639); Prichett Creek (40.2892, -124.1704); Randall Creek (40.2092, -124.2668); Ratljesnake Creek (40.3250, -123.0981); Shipman Creek (40.1250, -124.1284); Sholes Creek (40.1603, -123.0619); South Branch West Fork Bridge Creek (40.0326, -123.9853); South Fork Bear Creek (40.0176, -124.0016); Spanish Creek (40.1965, -124.2429); Squaw Creek (40.1934, -124.2073); Sulphur Creek (40.1884, -124.2296); Telegraph Creek (40.0934, -124.0610); Thompson Creek (39.9913, -123.9707); Upper East Fork Honeydew Creek (40.1759, -124.1182); Upper North Fork Mattole River (40.2907, -124.1115); Usal Creek (40.0674, -123.0922); West Fork Bridge Creek (40.0934, -123.0990); West Fork Honeydew Creek (40.1870, -124.1614); Westlund Creek (40.2440, -124.0036); Whalen Gulch (39.9747, -123.9812); Woods Creek (40.2119, -124.1611); Yew Creek (40.0018, -123.9762).

(ii) Mendocino Coast Hydrologic Unit 1113. Outlet(s) = Abalobadiah Creek (Lat 39.5654, Long -123.7068); Abalobadiah Creek (39.5878, -123.7503); Bald Hill Creek (39.6278, -123.6461); Barlow Creek (39.6046, -123.7384); Bear Pen Creek (39.5824, -123.6402); Booth Gulch (39.5567, -123.5918); Buckhorn Creek (39.6093, -123.6980); Campbell Creek (39.5053, -123.6610); Cavanough Gulch (39.6097, -123.6776); Chadbourne Gulch (39.6097, -123.6190); Clark Fork (39.3528, -123.5134); Curchman Creek (39.4789, -123.6398); Gulch 11 (39.4687, -123.5816); Gulch 19 (39.5939, -123.5781); Little Bear Haven Creek (39.5565, -123.6147); Little Bear Haven Creek (39.5876, -123.5480); O’Conner Gulch (39.6042, -123.6622); Patsy Creek (39.5714, -123.5669); Redwood Creek (39.5142, -123.6360); Seaside Creek (39.5612, -123.7501); Smith Creek (39.5251, -123.6499); South Fork Bear Haven Creek (39.5668, -123.6527); South Fork Ten Mile River (39.5683, -123.5395); Ten Mile River (39.5721, -123.7098); Unnamed Tributary (39.5936, -123.6034).

VerDate Mar<15>2010 11:01 Jan 05, 2011 Jkt 220227 PO 00000 Frm 00391 Fmt 8010 Sfmt 8010 Q:\50\220227.XXX ofr150 PsN: PC150
(iv) Noyo River Hydrologic Sub-area

Outlet(s) = Digger Creek (Lat 39.417, Long –123.8128); Jug Handle Creek (39.3767, –123.8176); Mill Creek (39.4894, –123.7967); Mitchell Creek (39.3923, –123.8165); Noyo River (39.4274, –123.8066); Pudding Creek (39.4568, –123.8089); Virgin Creek (39.4714, –123.8045) upstream to endpoint(s) in: Bear Gulch (39.3881, –123.6614); Brandon Gulch (39.4191, –123.6645); Bunker Gulch (39.3969, –123.7153); Burbeck Creek (39.4354, –123.4235); Covington Gulch (39.4099, –123.7546); Dewarren Creek (39.4974, –123.5555); Digger Creek (39.3932, –123.7820); Duffy Gulch (39.4469, –123.6023); Gulch Creek (39.4441, –123.4684); Gulch Seven (39.4323, –123.5183); Hare Creek (39.5781, –123.6922); Hayworth Creek (39.4857, –123.7476); Hayshed Creek (39.4200, –123.7391); Jug Handle Creek (39.3647, –123.7523); Kass Creek (39.4262, –123.6807); Little North Fork (39.5026, –123.7277); Marble Gulch (39.4423, –123.5479); McMullen Creek (39.4383, –123.4488); Middle Fork North Fork (39.4924, –123.5231); Mill Creek (39.4813, –123.7600); Mitchell Creek (39.3813, –123.7794); North Fork Hayworth Creek (39.4091, –123.5626); North Fork Noyo River (39.4765, –123.5555); North Fork South Fork Noyo River (39.3971, –123.6108); Noyo River (39.4242, –123.3580); Oids Creek (39.3964, –123.4448); Parlin Creek (39.3700, –123.6111); Pudding Creek (39.4591, –123.6616); Redwood Creek (39.4660, –123.4571); South Fork Hare Creek (39.3785, –123.7384); South Fork Noyo River (39.3620, –123.6188); Unnamed Tributary (39.4113, –123.5621); Unnamed Tributary (39.3918, –123.6425); Unnamed Tributary (39.4168, –123.4578); Unnamed Tributary (39.4656, –123.7467); Unnamed Tributary (39.4931, –123.7371); Unnamed Tributary (39.4922, –123.7381); Unnamed Tributary (39.4939, –123.7184); Unnamed Tributary (39.4038, –123.6436); Unnamed Tributary (39.4002, –123.7347); Unnamed Tributary (39.3831, –123.6177); Unnamed Tributary (39.4926, –123.4764); Virgin Creek (39.4621, –123.7855); Unnamed Tributary (39.4650, –123.7463).

(v) Big River Hydrologic Sub-area

Outlet(s) = Big River (Lat 39.3030, Long –123.7957); Casper Creek (39.3617, –123.8169); Doyle Creek (39.3603, –123.8187); Jack Peters Creek (39.3193, –123.8006); Russian Gulch (39.3288, –123.8050) upstream to endpoint(s) in: Berry Gulch (39.3585, –123.6930); Big River (39.3166, –123.3733); Casper Creek (39.3462, –123.7556); Chamberlain Creek (39.4007, –123.5317); Daugherty Creek (39.1700, –123.3099); Doyle Creek (39.3517, –123.8007); East Branch Little North Fork Big River (39.3372, –123.6410); East Branch North Fork Big River (39.3354, –123.4652); Gates Creek (39.2083, –123.3844); Jack Peters Gulch (39.3225, –123.7850); James Creek (39.3922, –123.4747); Johnson Creek (39.1963, –123.3927); Johnson Creek (39.2556, –123.4485); Laguna Creek (39.2910, –123.6334); Little North Fork Big River (39.3497, –123.6242); Marten Creek (39.3290, –123.4279); Mettick Creek (39.2591, –123.5193); Middle Fork North Fork Big River (39.3357, –123.7170); North Fork Big River (39.3762, –123.4591); North Fork Casper Creek (39.3610, –123.7356); North Fork James Creek (39.3898, –123.4939); North Fork Ramone Creek (39.2760, –123.4846); Pig Pen Gulch (39.3226, –123.4609); Pruitt Creek (39.2592, –123.3812); Ramone Creek (39.2714, –123.4415); Rice Creek (39.2809, –123.3963); Russian Gulch (39.2237, –123.4661); Russell Brook (39.2863, –123.4461); Russian Gulch (39.3237, –123.7650); Snuffins Creek (39.1836, –123.3854); Soda Creek (39.2230, –123.4239); South Fork Big River (39.2317, –123.3867); South Fork Casper Creek (39.3483, –123.7216); Two Log Creek (39.3484, –123.5781); Unnamed Tributary (39.3807, –123.5556); Unnamed Tributary (39.3637, –123.5464); Unnamed Tributary (39.3776, –123.5274); Unnamed Tributary (39.4029, –123.3771); Valentine Creek (39.2894, –123.3957); Water Gulch (39.3607, –123.5891).

(vi) Albion River Hydrologic Sub-area

Outlet(s) = Albion River (Lat 39.2253, Long –123.5766); Big Salmon Creek (39.2150, –123.7660); Buckhorn Creek (39.2593, –123.7839); Dark Gulch (39.2397, –123.7740); Little Salmon Creek (39.2150, –123.7660); Little River (39.2734, –123.7914) upstream to endpoint(s) in: Albion River (39.2613, –123.5766); Big Salmon Creek (39.2070, –123.6514); Buckhorn Creek (39.2513, –123.7595); Dark Gulch (39.2379, –123.7592); Duck Pond Gulch (39.2456, –123.6960); East Railroad Gulch (39.2604, –123.6381);
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Hazel Gulch (39.2141, –123.6418); Kaison Gulch (39.2733, –123.8083); Little North Fork South Fork Albion River (39.2350, –123.6431); Little River (39.2683, –123.7190); Little Salmon Creek (39.2168, –123.7515); Nordon Gulch (39.2489, –123.6503); North Fork Albion River (39.2864, –123.5752); Pleasant Valley Gulch (39.2379, –123.6965); Railroad Gulch (39.2182, –123.6932); Soda Springs Creek (39.2943, –123.5944); South Fork Albion River (39.2474, –123.6107); Tom Bell Creek (39.2805, –123.6519); Unnamed Tributary (39.2279, –123.6972); Unnamed Tributary (39.2194, –123.7100); Unnamed Tributary (39.2744, –123.5889); Unnamed Tributary (39.2254, –123.6733).

(vii) Navarro River Hydrologic Sub-area 111350. Outlet(s) = Navarro River (Lat 39.1921, Long –123.7611) upstream to endpoint(s) in: Alder Creek (38.9830, –123.3946); Anderson Creek (39.1733, –123.4804); Barton Gulch (39.1804, –123.6783); Bear Creek (39.1425, –123.4326); Bear Wallow Creek (39.0532, –123.4036); Bottom Creek (39.2117, –123.4607); Camp 16 Gulch (39.1937, –123.6095); Camp Creek (38.8310, –123.5297); Cold Spring Creek (39.0776, –123.5027); Con Creek (39.0734, –123.3916); Cook Creek (39.1879, –123.5109); Cune Creek (39.1622, –123.6014); Dago Creek (39.0731, –123.5068); Dead Horse Gulch (39.1576, –123.6124); Dutch Henry Creek (39.2112, –123.5794); Floodgate Creek (39.1291, –123.5365); Flume Gulch (39.1615, –123.6695); Flynn Creek (39.0990, –123.6032); German Creek (39.9452, –123.4269); Gut Creek (39.0803, –123.3312); Ham Canyon (39.0146, –123.4265); Horse Creek (39.0144, –123.4600); Hungry Hollow Creek (39.1527, –123.4488); Indian Creek (39.0708, –123.3301); Jimmy Creek (39.0117, –123.2888); John Smith Creek (39.2275, –123.5366); Little North Fork Navarro River (39.1941, –123.4553); Low Gap Creek (39.1590, –123.3783); Navarro River (39.0973, –123.1409); Marsh Gulch (39.1692, –123.7049); McCarvey Creek (39.1589, –123.4048); Mill Creek (39.1270, –123.4315); Minnie Creek (39.9751, –123.4529); Murray Gulch (39.1755, –123.6966); Mustard Gulch (39.1673, –123.6395); North Branch (39.2069, –123.5863); North Fork Indian Creek (39.1213, –123.3345); North Fork Navarro River (39.1708, –123.5606); Parkinson Gulch (39.0768, –123.4070); Perry Gulch (39.1342, –123.5707); Rancheria Creek (38.8626, –123.2417); Ray Gulch (39.1792, –123.6494); Robinson Creek (39.9845, –123.3513); Rose Creek (39.1358, –123.3672); Shingle Mill Creek (39.1671, –123.4223); Soda Creek (39.0236, –123.3149); Soda Creek (39.1531, –123.3734); South Branch (39.1409, –123.3196); Spooner Creek (39.2221, –123.4811); Tramway Gulch (39.1481, –123.5858); Yale Creek (38.8882, –123.2765).

(viii) Greenwood Creek Hydrologic Sub-area 111361. Outlet(s) = Greenwood Creek (Lat 39.1262, Long –123.7181) upstream to endpoint(s) in: Greenwood Creek (39.0894, –123.5924).

(ix) Elk Creek Hydrologic Sub-area 111362. Outlet(s) = Elk Creek (Lat 39.0944, Long –123.6969); Mallo Pass Creek (39.0941, –123.6896) upstream to endpoint(s) in: Alder Creek (39.9961, –123.6471); Mallo Pass Creek (39.0287, –123.6373).

(x) Alder Creek Hydrologic Sub-area 111363. Outlet(s) = Elk Creek (Lat 39.0944, Long –123.6969); Mallo Pass Creek (39.0941, –123.6896) upstream to endpoint(s) in: Alder Creek (39.9961, –123.6471); Mallo Pass Creek (39.0287, –123.6373).

(xi) Garcia River Hydrologic Sub-area 111370. Outlet(s) = Garcia River (Lat 38.9760, Long –123.7120) upstream to endpoint(s) in: Blue Water Hole Creek (38.9378, –123.5023); Fleming Creek (38.8384, –123.5361); Garcia River (38.8965, –123.3681); Hathaway Creek (39.0297, –123.7011); Inman Creek (38.8804, –123.4370); Larmour Creek (39.9419, –123.4469); Mill Creek (38.9078, –123.3143); North Fork Garcia River (38.9233, –123.5339); North Fork Schooner Gulch (39.0978, –123.6291); Pardaloe Creek (38.8895, –123.4232); Point Arena Creek (39.0909, –123.6838); Redwood Creek (39.9241, –123.3343); Rolling Brook (38.8865, –123.5716); Schooner Gulch (38.9241, –123.3343); South Fork Garcia River (38.8450, –123.5420); Stansbury Creek (38.9422, –123.4720); Signal Creek (38.8639, –123.4414); Unnamed Tributary (38.9145, –123.5339).
(38.8758, −123.5692); Unnamed Tributary (38.8818, −123.5723); Whitlow Creek (38.9141, −123.4624).

(xiii) North Fork Gualala River Hydrologic Sub-area 111381. Outlet(s) = North Fork Gualala River (Lat 38.7784, Long −123.4992) upstream to endpoint(s) in: Bear Creek (38.8347, −123.3842); Billings Creek (38.8652, −123.3496); Doty Creek (38.8495, −123.5131); Dry Creek (38.8416, −123.4555); Little North Fork Gualala River (38.8296, −123.5570); McGann Gulch (38.8026, −123.4456); North Fork Gualala River (38.8479, −123.4119); Robinson Creek (38.8416, −123.3725); Robinson Creek (38.8386, −123.4991); Stewart Creek (38.8109, −123.4157); Unnamed Tributary (38.8497, −123.3820).

(xiv) Rockpile Creek Hydrologic Sub-area 111382. Outlet(s) = Rockpile Creek (Lat 38.7597, Long −123.4706) upstream to endpoint(s) in: Rockpile Creek (38.7966, −123.3872).

(xv) Buckeye Creek Hydrologic Sub-area 111383. Outlet(s) = Buckeye Creek (Lat 38.7400, Long −123.2697); Flat Ridge Creek (38.7616, −123.2400); Franchini Creek (38.7500, −123.3708); North Fork Buckeye (38.7991, −123.3166).

(xvi) Wheatfield Fork Hydrologic Sub-area 111384. Outlet(s) = Wheatfield Fork Gualala River (Lat 38.7018, Long −123.4168) upstream to endpoint(s) in: Daunder Creek (38.6389, −123.1431); Fuller Creek (38.7109, −123.2566); Haupt Creek (38.6220, −123.2551); House Creek (38.6545, −123.1184); North Fork Fuller Creek (38.7252, −123.2969); Pepperwood Creek (38.6295, −123.1655); South Fork Fuller Creek (38.6973, −123.2860); Tombs Creek (38.6989, −123.1616); Unnamed Tributary (38.7175, −123.2744); Wheatfield Fork Gualala River (38.7497, −123.2215).

(xvii) Gualala Hydrologic Sub-area 111385. Outlet(s) = Fort Ross Creek (Lat 38.5119, Long −123.2436); Gualala River (38.7687, −123.5334); Kolmer Gulch (38.5238, −123.2646) upstream to endpoint(s) in: Big Pepperwood Creek (38.7951, −123.4638); Carson Creek (38.5653, −123.1906); Fort Ross Creek (38.5174, −123.2363); Groseshong Gulch (38.7814, −123.4904); Gualala River (38.7780, −123.4991); Kolmer Gulch (38.5309, −123.2247); Little Pepperwood (38.7738, −123.4427); Marshall Creek (38.5647, −123.2058); McKenzie Creek (38.5395, −123.1730); Palmer Canyon Creek (38.6002, −123.2167); South Fork Gualala River (38.5646, −123.1689); Sproule Creek (38.6122, −123.2739); Turner Canyon (38.5294, −123.1672); Unknown Tributary (38.5634, −123.2003).

(xviii) Russian Gulch Hydrologic Sub-area 111390. Outlet(s) = Russian Gulch Creek (Lat 38.4669, Long −123.1569) upstream to endpoint(s) in: Russian Gulch Creek (38.4956, −123.1535); West Branch Russian Gulch Creek (38.4968, −123.1631).

(8) Maps of critical habitat for the Northern California Steelhead ESU follow:
Critical Habitat for the Northern California Steelhead

Mad River Hydrologic Unit 1109

- Cities/Towns
- Critical Habitat
- Occupied but excluded streams / areas
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail

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(h) **Central California Coast Steelhead** (*O. mykiss*). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) **Russian River Hydrologic Unit 1114**—(i) **Guerneville Hydrologic Sub-area 111411**. Outlet(s) = Russian River (Lat 38.4507, Long -123.1289) upstream to endpoint(s) in: Atascadero Creek (38.3473, -122.8626); Austin Creek
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(iii) Mark West Hydrologic Sub-area

111423. Outlet(s) = Mark West Creek (Lat 38.4962, Long –122.8492) upstream to endpoint(s) in: Humbug Creek (38.5412, –122.6249); Laguna de Santa Rosa (38.4526, –122.8347); Mark West Creek (38.5187, –122.5995); Pool Creek (38.5486, –122.7641); Fruit Creek (38.5313, –122.7615); Windsor Creek (38.5384, –122.8101).

(iv) Warm Springs Hydrologic Sub-area

111424. Outlet(s) = Dry Creek (Lat 38.5862, Long –122.8577) upstream to endpoint(s) in: Angel Creek (38.6101, –122.9833); Crane Creek (38.6434, –122.9451); Dry Creek (38.7181, –123.0091); Dutcher Creek (38.7223, –122.9770); Felta Creek (38.5679, –122.9797); Fossil Creek (38.6244, –122.8754); Gage Creek (38.6593, –122.9707); Mill Creek (38.5976, –122.9914); North Slough Creek (38.6392, –122.8886); Palmer Creek (38.5770, –122.9904); Pena Creek (38.6384, –123.0743); Redwood Log Creek (38.6705, –123.0725); Salt Creek (38.5543, –122.9133); Wallace Creek (38.6260, –122.9651); Wine Creek (38.6662, –122.9682); Woods Creek (38.6069, –123.0272).

(v) Geyserville Hydrologic Sub-area

111425. Outlet(s) = Russian River (Lat 38.6132, Long –122.8321) upstream to endpoint(s) in: Ash Creek (38.8556, –123.0062); Bear Creek (38.7253, –123.0758); Cottage Creek (38.6433, –122.6797); Russian River (38.7329, –122.8601); Mexican Gulch (38.6666, –122.6308).

(vi) Sulphur Creek Hydrologic Sub-area

111426. Outlet(s) = Big Sulphur Creek (Lat 38.8279, Long –122.9914) upstream to endpoint(s) in: Alder Creek (38.8503, –122.8953); Anna Belcher Creek (38.7537, –122.7586); Big Sulphur Creek (38.8243, –122.8774); Frasier Creek (38.8439, –122.7537); Humming Bird Creek (38.8439, –122.8774); Little Sulphur Creek (38.7469, –122.7425); Little Sulphur Creek (38.7469, –122.8768); Unnamed Tributary (38.7329, –122.8601); Yellowjacket Creek (38.6666, –122.6308).
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(vii) Ukiah Hydrologic Sub-area 111431. Outlet(s) = Russian River (Lat 38.8828, Long –123.0557) upstream to endpoint(s) in: Pieta Creek (38.8622, –122.9329).

(viii) Forsythe Creek Hydrologic Sub-area 111433. Outlet(s) = West Branch Russian River (Lat 39.2257, Long –123.2012) upstream to endpoint(s) in: Bakers Creek (39.2585, –123.3309); Forsythe Creek (39.2976, –123.2963); Jack Smith Creek (39.2754, –123.3421); Mariposa Creek (39.3472, –123.3306); Mill Creek (39.2969, –123.3360); Salt Hollow Creek (39.2585, –123.1881); Seward Creek (39.2606, –123.2646); West Branch Russian River (39.3642, –123.2334).

(2) Bodega Hydrologic Unit 1115—(i) Salmon Creek Hydrologic Sub-area 111510. Outlet(s) = Salmon Creek (Lat 38.3554, Long –123.0675) upstream to endpoint(s) in: Coleman Valley Creek (38.3956, –123.0097); Faye Creek (38.3749, –123.0000); Finley Creek (38.3707, –123.0258); Salmon Creek (38.3877, –122.9318); Tannery Creek (38.3660, –122.9318).

(ii) Estero Americano Hydrologic Sub-area 111530. Outlet(s) = Estero Americano (Lat 38.2939, Long –123.0011) upstream to endpoint(s) in: Estero Americano (38.3117, –122.9748); Ebabias Creek (38.3345, –122.9759).

(iii) Point Reyes Hydrologic Sub-area 220120. Outlet(s) = Creamery Bay Creek (Lat 38.0779, Long –122.9572); East Schooner Creek (38.0693, –122.9293); Home Ranch (38.0705, –122.9119); Laguna Creek (38.0335, –122.6732); Muddy Hollow Creek (38.0329, –122.6842) upstream to endpoint(s) in: Creamery Bay Creek (38.0809, –122.9561); East Schooner Creek (38.0928, –122.9159); Home Ranch Creek (38.0784, –122.9038); Laguna Creek (38.0436, –122.8559); Muddy Hollow Creek (38.0549, –122.8669).

(iv) Bolinas Hydrologic Sub-area 220130. Outlet(s) = Easkoot Creek (Lat 37.9026, Long –122.6474); McKinnon Gulch (37.9126, –122.6639); Morse Gulch (37.9189, –122.6710); Pine Gulch Creek (37.9218, –122.6882); Redwood Creek (37.8955, –122.5877); Stinson Gulch (37.9068, –122.6517); Wilkins Creek (37.9343, –122.6967) upstream to endpoint(s) in: Easkoot Creek (37.8997, –122.6370); Kent Canyon (37.8866, –122.5800); McKinnon Gulch (37.9197, –122.6564); Morse Gulch (37.9240, –122.6618); Pine Gulch Creek (37.9557, –122.7197); Redwood Creek (37.9006, –122.5787); Stinson Gulch (37.9141, –122.6426); Wilkins Creek (37.9450, –122.6910).

(4) San Mateo Hydrologic Unit 2202—(i) San Mateo Coastal Hydrologic Sub-area 220221. Outlet(s) = Denniston Creek (Lat 37.4931, Long –122.4869); Frenchmans Creek (37.4048, –122.4518); San Pedro Creek (37.5964, –122.5057) upstream to endpoint(s) in: Denniston Creek (37.5184, –122.4896); Frenchmans Creek (37.5170, –122.4332); Middle Fork San Pedro Creek (37.5758, –122.4591); North Fork San Pedro Creek (37.5996, –122.4635).

(ii) Half Moon Bay Hydrologic Sub-area 220222. Outlet(s) = Pilarcitos Creek (Lat 37.4758, Long –122.4493) upstream to endpoint(s) in: Apanolio Creek (37.3438, –122.4158); Arroyo Leon Creek (37.4560, –122.3442); Mills Creek (37.4629, –122.3721); Pilarcitos Creek (37.5259, –122.3980); Unnamed Tributary (37.4705, –122.3616).
(iv) San Gregorio Creek Hydrologic Sub-area 220230. Outlet(s) = San Gregorio Creek (Lat 37.3215, Long -122.4030) upstream to endpoint(s) in: Alpine Creek (37.3062, -122.2003); Bogess Creek (37.3740, -122.3010); El Corte Madera Creek (37.3650, -122.3307); Harrington Creek (37.3811, -122.2936); La Honda Creek (37.3680, -122.2655); Langley Creek (37.3302, -122.2420); Mindego Creek (37.3204, -122.2239); San Gregorio Creek (37.3099, -122.2779); Woodruff Creek (37.3415, -122.2495).

(v) Pescadero Creek Hydrologic Sub-area 220240. Outlet(s) = Pescadero Creek (Lat 37.2669, Long –122.4122); Pomponio Creek (37.2979, –122.1553) upstream to endpoint(s) in: Bradley Creek (37.2819, –122.1553); Butano Creek (37.2979, –122.1553); Evans Creek (37.2659, –122.2163); Butano Creek (37.2979, –122.1553); Pomponio Creek (37.2979, –122.1553); Slate Creek (37.2530, –122.1935); Tarwater Creek (37.2731, –122.1935); Waterman Creek (37.2455, –122.1568).

(5) Bay Bridge Hydrologic Unit 2203—(i) San Rafael Hydrologic Sub-area 220320. Outlet(s) = Arroyo Corte Madera del Presidio (Lat 37.8917, Long –122.5254); Corte Madera Creek (37.9425, –122.5059) upstream to endpoint(s) in: Arroyo Corte Madera del Presidio (37.9298, –122.5723); Cascade Creek (37.9867, –122.6287); Larkspur Creek (37.9157, –122.5655); Larkspur Creek (37.9055, –122.5514); Old Mill Creek (37.9176, –122.5746); Ross Creek (37.9558, –122.3752); San Anselmo Creek (37.9220, –122.4202); Sleepy Hollow Creek (37.9674, –122.5794); Tamalpais Creek (37.9481, –122.5674).

(ii) [Reserved]

(6) Santa Clara Hydrologic Unit 2205—(i) Coyote Creek Hydrologic Sub-area 220520. Outlet(s) = Coyote Creek (Lat 37.2778, Long -121.8033) upstream to endpoint(s) in: Coyote Creek (37.2275, -121.7514). (iii) Palo Alto Hydrologic Sub-area 220530. Outlet(s) = Guadalupe River (Lat 37.4614, Long -122.0240); San Francisquito Creek (37.4658, -122.1152); Stevens Creek (37.4456, -122.0641) upstream to endpoint(s) in: Bear Creek (37.4164, -122.2890); Corte Madera Creek (37.4073, -122.2378); Guadalupe River (37.3499, -121.9094); Los Trancos (37.3293, -122.1760); McGarvey Gulch (37.4335, -122.2680); Stevens Creek (37.2900, -122.0778); West Union Creek (37.4528, -122.3020).

(7) San Pablo Hydrologic Unit 2206—(i) Petaluma River Hydrologic Sub-area 220630. Outlet(s) = Petaluma River (Lat 38.1111, Long –122.4944) upstream to endpoint(s) in: Adobe Creek (38.2940, –122.5834); Lichau Creek (38.2848, –122.6654); Lynch Creek (38.2748, –122.6194); Petaluma River (38.3010, –122.7149); Schultz Slough (38.1892, –122.2680); Stevens Creek (38.2900, –122.7408);Unnamed Tributary (38.3105, –122.6146); Willow Brook (38.3165, –122.6113).

(ii) Sonoma Creek Hydrologic Sub-area 220640. Outlet(s) = Sonoma Creek (Lat 38.1525, Long –122.4050) upstream to endpoint(s) in: Agua Caliente Creek (38.3368, –122.4518); Asbury Creek (38.3401, –122.5590); Bear Creek (38.4656, –122.5253); Calabaza Creek (38.4033, –122.4803); Carriger Creek (38.3031, –122.5336); Graham Creek (38.3474, –122.5607); Hooker Creek (38.3809, –122.4562); Mill Creek (38.3395, –122.5454); Nathanson Creek (38.3350, –122.4290); Rodgers Creek (38.2924, –122.5543); Schell Creek (38.2554, –122.4510); Sonoma Creek (38.4567, –122.3819); Stuart Creek (38.3936, –122.4708); Yulupa Creek (38.3986, –122.5954).

(iii) Napa River Hydrologic Sub-area 220650. Outlet(s) = Napa River (Lat 38.0786, Long –122.2468) upstream to endpoint(s) in: Bale Slough (38.4985, –122.4578); Bear Canyon Creek (38.5122, –122.4415); Bell Canyon Creek (38.5551, –122.4827); Brown's Valley Creek (38.3251, –122.3686); Canon Creek (38.5368, –122.4854); Carneros Creek (38.3108, –122.3914); Conn Creek (38.4843, –122.3824); Cyrus Creek (38.0776, –122.6032); Diamond Mountain Creek
(38.5645, –122.5903); Dry Creek (38.4334, –122.4791); Garnett Creek (38.6236, –122.5860); Huichica Creek (38.2811, –122.3936); Jericho Canyon Creek (38.6219, –122.3314); Napa Creek (38.5299, –122.5513); Miliken Creek (38.3773, –122.2280); Mill Creek (38.3847, –122.3134); Murphy Creek (38.3155, –122.2111); Napa River (38.6638, –122.0670); Pickle Canyon Creek (38.3672, –122.4071); Rector Creek (38.4410, –122.3451); Redwood Creek (38.3765, –122.4466); Ritchie Creek (38.5369, –122.5652); Sarco Creek (38.3567, –122.2071); Soda Creek (38.4156, –122.2953); Spencer Creek (38.3729, –122.1909); Sulphur Creek (38.4895, –122.0670); Suscol Creek (38.4839, –122.4071); Tangent Creek (38.3567, –122.2111); Tulucay Creek (38.5128, –122.5023). (8) Big Basin Hydrologic Unit 3304—

(ii) San Lorenzo Hydrologic Sub-area 330412. Outlet(s) = Arana Gulch Creek (Lat 36.9676, Long –122.0028); San Lorenzo River (36.9641, –122.0125) upstream to endpoint(s) in: Arana Gulch Creek (37.0270, –122.9759); Bear Creek (37.0756, –122.0222); Bear Creek (37.1711, –122.0750); Boulder Creek (37.1952, –122.1892); Bracken Brae Creek (37.1441, –122.1459); Branciforte Creek (37.0701, –121.9749); Crystal Creek (37.0333, –121.9825); Carbonera Creek (37.0286, –122.0202); Central Branch Arana Gulch Creek (37.0170, –121.9874); Deer Creek (37.2215, –122.0799); Fall Creek (37.0705, –122.1063); Gold Gulch Creek (37.0427, –122.0979); Granite Creek (37.0490, –122.1904); Hare Creek (37.1544, –122.1690); Jameson Creek (37.1485, –122.1690); Kings Creek (37.2252, –122.1059); Lompico Creek (37.1250, –122.0496); Mackenzie Creek (37.0866, –122.0176); Mountain Charlie Creek (37.1385, –121.9914); Newell Creek (37.1019, –122.0724); San Lorenzo River (37.2276, –122.1384); Two Bar Creek (37.1833, –122.0099); Unnamed Tributary (37.2106, –122.0652); Unnamed Tributary (37.2032, –122.0669); Zayante Creek (37.1062, –122.2024). (iii) Aptos-Soquel Hydrologic Sub-area 330413. Outlet(s) = Aptos Creek (Lat 36.9692, Long –121.9065); Soquel Creek (36.9720, –121.9526) upstream to endpoint(s) in: Amaya Creek (37.0930, –121.9297); Aptos Creek (37.0545, –121.8568); Bates Creek (37.0099, –121.9353); Bridge Creek (37.0464, –121.9069); East Branch Soquel Creek (37.1095, –121.8297); East Fork Liddell Creek (37.0103, –122.0701); Wilder Creek (37.0107, –122.0770). (iv) Ano Nuevo Hydrologic Sub-area 330420. Outlet(s) = Ano Nuevo Creek (Lat 37.1163, Long –122.3060); Gazos Creek (37.1646, –122.3625); Whitehouse Creek (37.1457, –122.3469) upstream to endpoint(s) in: Ano Nuevo Creek (37.1269, –122.3039); Bear Gulch (37.1965, –122.2773); Gazos Creek (37.2088, –122.2688); Old Womans Creek (37.1629, –122.3033); Whitehouse Creek (37.1775, –122.2900).
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(9) Maps of critical habitat for the Central California Coast Steelhead ESU follow:
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Critical Habitat for the California Central Coast Steelhead

San Pablo Hydrologic Unit

2206

Cities/Towns

Critical Habitat

Occupied but excluded streams / areas

Hydrologic Unit Boundary

Fifth Field Calwater Hydrologic Sub-Area Boundary

110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail

402
(i) South-Central California Coast Steelhead (O. mykiss). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Pajaro River Hydrologic Unit 3305—(i) Watsonville Hydrologic Sub-area 330510. Outlet(s) = Pajaro River (Lat 36.8506, Long –121.8101) upstream to endpoint(s) in: Banks Canyon Creek (36.9958, –121.7264); Browns Creek (36.9958, –121.7264); Scotts Valley Creek (36.8385, –121.8857); and South Fork Scotts Valley Creek (36.8385, –121.8857).
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(37.0255, –121.7754); Casserly Creek
(36.9902, –121.7359); Corralitos Creek
(36.0666, –121.8339); Gaffey Creek
(36.9905, –121.7132); Gamecock Canyon
(37.0362, –121.7587); Green Valley Creek
(37.0073, –121.7256); Ramsey Gulch
(37.0447, –121.7755); Redwood Canyon
(36.9342, –121.7975); Salsipuedes Creek
(36.9550, –121.7426); Shingle Mill Gulch
(37.0446, –121.7971).

(ii) Santa Cruz Mountains Hydrologic Sub-area 330520.
Outlet(s) = Pajaro River (Lat 36.9010, Long –121.5861); Bodfish Creek (37.0041, –121.6667); Pescadero Creek (36.9125, –121.5882); Tar Creek (36.9304, –121.5520); Uvas Creek (37.0146, –121.6912).

(iii) South Santa Clara Valley Hydrologic Sub-area 330530.
Outlet(s) = San Benito River (Lat 36.8961, Long –121.5365); Pajaro River (36.9222, –121.3386); upsteam to endpoint(s) in: Arroyo Dos Picachos (36.8866, –121.3194); Bodfish Creek (37.0080, –121.6652); Bodfish Creek (37.0041, –121.6667); Carnadero Creek (36.9603, –121.5328); Llagas Creek (37.1159, –121.6938); Miller Canal (36.9688, –121.4814); Pacheco Creek (37.0055, –121.3598); San Felipe Lake (36.9835, –121.6274); Tar Creek (36.9558, –121.6091); Uvas Creek (37.0660, –121.6912).

(iv) Pacheco-Santa Ana Creek Hydrologic Sub-area 330540.
Outlet(s) = Arroyo Dos Picachos (Lat 36.8866, Long –121.3194); Pacheco Creek (37.0055, –121.5398); upsteam to endpoint(s) in: Arroyo Dos Picachos (36.8912, –121.2305); Cedar Creek (37.0922, –121.3641); North Fork Pacheco Creek (37.0614, –121.2911); Pacheco Creek (37.0445, –121.2662); South Fork Pacheco Creek (37.0227, –121.2603).

(v) San Benito River Hydrologic Sub-area 330550.
Outlet(s) = San Benito River (Lat 36.7838, Long –121.3731); upsteam to endpoint(s) in: Bird Creek (36.7604, –121.4506); Pescadero Creek (36.7202, –121.4187); San Benito River (36.3924, –120.6316); Sawmill Creek (36.3993, –120.6284).

(2) Carmel River Hydrologic Unit 3307—(i) Carmel River Hydrologic Sub-area 330700.
Outlet(s) = Carmel River (Lat 36.5362, Long –121.9285) upstream to endpoint(s) in: Aqua Mojo Creek (36.4711, –121.5407); Big Creek (36.3935, –121.5419); Blue Creek (36.2796, –121.6350); Boronda Creek (36.3542, –121.6011); Bruce Fork (36.3221, –121.6385); Cachagua Creek (36.3909, –121.5950); Carmel River (36.2837, –121.6203); Danish Creek (36.3730, –121.7590); Hickey Creek (36.4470, –121.7597); James Creek (36.3235, –121.5804); Las Gatas Creek (36.4607, –121.7944); Miller's Fork (36.2961, –121.6979); Pinch Creek (36.3236, –121.5574); Pine Creek (36.3827, –121.7727); Potrero Creek (36.4801, –121.8258); Rana Creek (36.4877, –121.5640); Rattlesnake Creek (36.3442, –121.7080); Robertson Canyon (36.4776, –121.8458); Robertson Creek (36.3658, –121.5165); San Clemente Creek (36.4227, –121.8115); Tularcitos Creek (36.4369, –121.5163); Ventana Mesa Creek (36.2977, –121.7116).

(ii) [Reserved]

(3) Santa Lucia Hydrologic Unit 3308—(i) Santa Lucia Hydrologic Sub-area 330800.
Outlet(s) = Alder Creek (Lat 35.8578, Long –121.4165); Big Creek (36.0696, –121.6005); Big Sur River (36.2915, –121.8359); Big Creek (36.3713, –121.9029); Garrapata Creek (36.6766, –121.9157); Limekiln Creek (36.0084, –121.5196); Little Sur River (36.3350, –121.8934); Malpaso Creek (36.4814, –121.9384); Mill Creek (35.9825, –121.4632); North Fork Big Sur River (36.2178, –121.5948); Partington Creek (36.1753, –121.6973); Plaskett Creek (35.9185, –121.4717); Premwitt Creek (35.9353, –121.4760); Rocky Creek (36.3798, –121.9028); Salmon Creek (35.3558, –121.3634); San Jose Creek (36.2929, –121.9253); Vicente Creek (36.0442, –121.5855); Villa Creek (35.8485, –121.4087); Willow Creek (36.1461) upstream to endpoint(s) in: Alder Creek (35.8685, –121.3974); Big Creek (36.0830, –121.5854); Big Sur River (36.2940, –121.7269); Bixby Creek (36.3715, –121.8440); Devil's Canyon Creek (36.0773, –121.5095); Garrapata Creek (36.4042, –121.8594); Joshua Creek (36.4182, –121.9000); Limekiln Creek (36.0154, –121.5146); Little Sur River (36.3312, –121.7557); Malpaso Creek (36.4681, –121.8800); Mill Creek (35.9907, –121.4632); North Fork Big Sur River (36.2176, –121.5948); Partington Creek (36.1929, –121.6825); Plaskett Creek (36.4984, –121.4717).
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(35.9228, –121.4493); Prewitt Creek (35.9419, –121.4598); Redwood Creek (36.2825, –121.6745); Rocky Creek (36.3805, –121.8440); San Jose Creek (36.4662, –121.8118); South Fork Little Sur River (36.3026, –121.8993); Vicente Creek (36.0463, –121.5780); Villa Creek (35.8255, –121.3975); Wildcat Canyon Creek (36.4124, –121.8660); Williams Canyon Creek (36.4466, –121.8526); Willow Creek (35.9050, –121.3851).

(ii) [Reserved]

(4) Salinas River Hydrologic Unit 3309—

(i) Neponset Hydrologic Sub-area 330911. Outlet(s) = Salinas River (Lat 36.7498, Long –121.8055); upstream to endpoint(s) in: Gabilan Creek (36.6923, –121.6300); Old Salinas River (36.7728, –121.7884); Tembladero Slough (36.6865, –121.4609).

(ii) Chualar Hydrologic Sub-area 330920. Outlet(s) = Gabilan Creek (Lat 36.6923, Long –121.6300) upstream.

(iii) Soledad Hydrologic Sub-area 330930. Outlet(s) = Salinas River (Lat 36.4878, Long –121.4688) upstream to endpoint(s) in: Arroyo Seco River (36.2641, –121.3812); Reliz Creek (36.2438, –121.2681).

(iv) Upper Salinas Valley Hydrologic Sub-area 330940. Outlet(s) = Salinas River (Lat 36.3183, Long –121.1837) upstream.

(v) Arroyo Seco Hydrologic Sub-area 330960. Outlet(s) = Arroyo Seco River (Lat 36.2641, Long –121.3812); Reliz Creek (36.2438, –121.2681); Vasqueros Creek (36.2648, –121.3368) upstream to endpoint(s) in: Arroyo Seco River (36.2041, –121.5002); Calaboose Creek (36.2942, –121.5082); Church Creek (36.2762, –121.5877); Horse Creek (36.2546, –121.3931); Paloma Creek (36.2195, –121.4894); Piney Creek (36.3023, –121.5629); Reliz Creek (36.1935, –121.2777); Rocky Creek (36.2676, –121.5225); Santa Lucia Creek (36.1999, –121.7835); Tassajara Creek (36.2679, –121.3609); Willow Creek (36.3059, –121.5642).

(vi) Gabilan Range Hydrologic Sub-area 330970. Outlet(s) = Gabilan Creek (Lat 36.7800, –121.5836) upstream to endpoint(s) in: Gabilan Creek (36.7335, –121.4309).

(vii) Paso Robles Hydrologic Sub-area 330981. Outlet(s) = Salinas River (Lat 35.9241, Long –120.8650) upstream to endpoint(s) in: Atascadero Creek (35.4466, –120.7010); Graves Creek (35.4838, –120.7631); Jack Creek (35.5815, –120.8560); Nacimiento River (35.7610, –120.8853); Paso Robles Creek (35.5636, –120.8455); Salinas River (35.3896, –121.5852); San Antonio River (35.7991, –120.8849); San Marcos Creek (35.6734, –120.8140); Santa Margarita Creek (35.9223, –120.6619); Santa Rita Creek (35.5262, –120.8396); Sheepcreek Creek (35.6416, –120.8946); Tassajera Creek (35.3895, –120.6926); Trout Creek (35.3394, –120.5881); Willow Creek (35.6107, –120.7720).

(5) Estero Bay Hydrologic Unit 3310—

(i) San Carpoforo Hydrologic Sub-area 331011. Outlet(s) = San Carpoforo Creek (Lat 35.7646, Long –121.3247) upstream to endpoint(s) in: Dutra Creek (35.8197, –121.3273); Estrada Creek (35.7710, –121.2661); San Carpoforo Creek (35.8202, –121.2745); Unnamed Tributary (35.7503, –121.2703); Wagner Creek (35.8166, –121.2387).

(ii) Arroyo De La Cruz Hydrologic Sub-area 331012. Outlet(s) = Arroyo De La Cruz (Lat 35.7097, Long –121.3080) upstream to endpoint(s) in: Arroyo De La Cruz (35.6986, –121.1722); Burnett Creek (35.7520, –121.1920); Green Canyon Creek (35.7375, –121.2314); Marmolejo Creek (35.6774, –121.1082); Spanish Cabin Creek (35.7234, –121.1497); Unnamed Tributary (35.7291, –121.1977); West Fork Burnett Creek (35.7516, –121.2075).

(iii) San Simeon Hydrologic Sub-area 331013. Outlet(s) = Arroyo del Corral (Lat 35.6838, Long –121.2875); Arroyo del Puerto (35.6432, –121.1889); Little Pico Creek (35.6336, –121.1639); Oak Knoll Creek (35.6512, –121.2197); Pico Creek (35.6155, –121.1495); San Simeon Creek (35.5950, –121.1272) upstream to endpoint(s) in: Arroyo del Corral (35.6895, –121.2337); Arroyo del Corral (35.6885, –121.2537); Arroyo del Puerto (35.6773, –121.1713); Little Pico Creek (35.6890, –121.1375); Oak Knoll Creek (35.6718, –121.2101); North Fork Pico Creek (35.6886, –121.0861); San Simeon Creek (35.6228, –121.0561); South Fork Pico Creek (35.6040, –121.0685); Steiner Creek (35.6032, –121.0649); Unnamed Tributary (35.6482, –121.1067); Unnamed Tributary (35.6016, –121.0639); Unnamed Tributary (35.6741, –121.0981); Unnamed Tributary
(35.6777, –121.1503); Unnamed Tributary (35.6604, –121.1571); Unnamed Tributary (35.6579, –121.1356); Unnamed Tributary (35.6744, –121.1187); Unnamed Tributary (35.6640, –121.1373); Unnamed Tributary (35.6839, –121.0955); Unnamed Tributary (35.6431, –121.0795); Unnamed Tributary (35.6820, –121.2130); Unnamed Tributary (35.6977, –121.2613); Unnamed Tributary (35.6702, –121.1884); Unnamed Tributary (35.6817, –121.0885); Van Gordon Creek (35.6286, –121.0942).

(iv) Santa Rosa Hydrologic Sub-area 331014. Outlet(s) = Santa Rosa Creek (Lat 35.5685, Long –121.1113) upstream to endpoint(s) in: Green Valley Creek (35.5511, –120.9471); Perry Creek (35.5323–121.0491); Santa Rosa Creek (35.5525, –120.9478); Unnamed Tributary (35.5965, –120.9415); Unnamed Tributary (35.5874, –120.9211); Unnamed Tributary (35.5746, –120.9746).

(v) Villa Hydrologic Sub-area 331015. Outlet(s) = Villa Creek (Lat 35.4601, Long –120.9704) upstream to endpoint(s) in: Brizioliari Creek (35.3236, –120.6411); Froom Creek (35.2525, –120.7144); Prefumo Creek (35.2615, –120.7081); San Luis Obispo Creek (35.3393, –120.6301); See Canyon Creek (35.2306, –120.7675); Stenner Creek (35.3447, –120.6384); Unnamed Tributary (35.2443, –120.7665).

(vi) Cayucos Hydrologic Sub-area 331016. Outlet(s) = Cayucos Creek (Lat 35.4491, Long –120.9079) upstream to endpoint(s) in: Cayucos Creek (35.9257, –120.9271); Unnamed Tributary (35.5157, –120.9005); Unnamed Tributary (35.4943, –120.9513); Unnamed Tributary (35.4887, –120.8968).

(vii) Old Hydrologic Sub-area 331017. Outlet(s) = Old Creek (Lat 35.4345, Long –120.8968) upstream to endpoint(s) in: Old Creek (35.4480, –120.8871).

(viii) Toro Hydrologic Sub-area 331018. Outlet(s) = Toro Creek (Lat 35.4126, Long –120.8739) upstream to endpoint(s) in: Toro Creek (35.4945, –120.7934); Unnamed Tributary (35.4917, –120.7983).

(ix) Morro Hydrologic Sub-area 331021. Outlet(s) = Morro Creek (Lat 35.3762, Long –120.8642) upstream to endpoint(s) in: East Fork Morro Creek (35.4218, –120.7282); Little Morro Creek (35.4155, –120.7332); Morro Creek (35.4291, –120.7515); Unnamed Tributary (35.4292, –120.8122); Unnamed Tributary (35.4458, –120.7966); Unnamed Tributary (35.4122, –120.8335); Unnamed Tributary (35.4420, –120.7796).

(x) Chorro Hydrologic Sub-area 331022. Outlet(s) = Chorro Creek (Lat 35.3413, Long –120.8388) upstream to endpoint(s) in: Chorro Creek (35.3340, –120.6897); Dairy Creek (35.3699, –120.6911); Peninsula Creek (35.3655, –120.7144); San Bernardino Creek (35.3935, –120.7638); San Luisito (35.3755, –120.7100); Unnamed Tributary (35.3921, –120.7217); Unnamed Tributary (35.3815, –120.7350).

(xi) Los Osos Hydrologic Sub-area 331023. Outlet(s) = Los Osos Creek (Lat 35.3379, Long –120.8273) upstream to endpoint(s) in: Los Osos Creek (35.2718, –120.7627).

(xii) San Luis Obispo Creek Hydrologic Sub-area 331024. Outlet(s) = San Luis Obispo Creek (Lat 35.1822, Long –120.7303) upstream to endpoint(s) in: Brizioliari Creek (35.2326, –120.6411); Froom Creek (35.2525, –120.7144); Prefumo Creek (35.2615, –120.7081); San Luis Obispo Creek (35.3393, –120.6301); See Canyon Creek (35.2306, –120.7675); Stenner Creek (35.3447, –120.6384); Unnamed Tributary (35.2443, –120.7665).

(xiii) Point San Luis Hydrologic Sub-area 331025. Outlet(s) = Coon Creek (Lat 35.2590, Long –120.8951); Islay Creek (35.2753, –120.8884) upstream to endpoint(s) in: Coon Creek (35.2493, –120.7774); Islay Creek (35.2574, –120.7810); Unnamed Tributary (35.2753, –120.8146); Unnamed Tributary (35.2809, –120.8147); Unnamed Tributary (35.2648, –120.7936).

(xiv) Pismo Hydrologic Sub-area 331026. Outlet(s) = Pismo Creek (Lat 35.1336, Long –120.6408) upstream to endpoint(s) in: East Corral de Piedra Creek (35.2343, –120.5571); Pismo Creek (35.1969, –120.6107); Unnamed Tributary (35.2462, –120.5856).

(xv) Oceano Hydrologic Sub-area 331031. Outlet(s) = Arroyo Grande Creek (Lat 35.1011, Long –120.6308) upstream to endpoint(s) in: Arroyo Grande Creek (35.1868, –120.4881); Los Berros Creek (Lat 35.7911, –120.4423).

(6) Maps of critical habitat for the South-Central Coast Steelhead ESU follow:
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Critical Habitat for the
South-central California Coast Steelhead

Carmel River Hydrologic Unit
3307

- Cities/Towns
- Critical Habitat
- Calwater Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail

California
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Critical Habitat for the South-central California Coast Steelhead

Salinas Hydrologic Unit 3309

Cities/Towns

- Critical Habitat
- Occupied but excluded streams / areas
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail
(j) Southern California Steelhead (O. mykiss). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units: (1) Santa Maria River Hydrologic Unit 3312—(i) Santa Maria Hydrologic Sub-area 331210. Outlet(s) = Santa Maria River (Lat 34.9710, Long –120.6504) upstream to endpoint(s) in:
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Cuyama River (34.9058, –120.3026); Santa Maria River (34.9042, –120.3077); Sisquoc River (34.8941, –120.3063).

(ii) Sisquoc Hydrologic Sub-area 331220. Outlet(s) = Sisquoc River (Lat 34.8941, Long –120.3063) upstream to endpoint(s) in: Abel Canyon (34.8662, –119.8354); Davey Brown Creek (34.7541, –119.9650); Fish Creek (34.7531, –119.9100); Foresters Leap (34.8112, –119.7545); La Brea Creek (34.8804, –120.1316); Horse Creek (34.8372, –120.0171); Judell Creek (34.7613, –119.6496); Manzana Creek (34.7082, –119.8324); North Fork La Brea Creek (34.9681, –120.0112); Sisquoc River (34.7087, –119.6499); South Fork La Brea Creek (34.9543, –119.9793); South Fork Sisquoc River (34.7300, –120.0140); Unnamed Tributary (34.9626, –120.1500); Unnamed Tributary (34.9672, –119.1941); Unnamed Tributary (34.9682, –120.0590); Unnamed Tributary (34.9973, –120.0662); Unnamed Tributary (34.9922, –120.0043); Unnamed Tributary (35.0158, –120.0337); Unnamed Tributary (34.8694, –119.9325); Unnamed Tributary (34.8659, –119.8982); Unnamed Tributary (34.8677, –119.8513); Unnamed Tributary (34.8608, –119.8541); Unnamed Tributary (34.8784, –119.8438); Unnamed Tributary (34.8615, –119.8159); Unnamed Tributary (34.8694, –119.8229); Unnamed Tributary (34.7931, –119.8485); Unnamed Tributary (34.7846, –119.8337); Unnamed Tributary (34.7872, –119.7684); Unnamed Tributary (34.7866, –119.7552); Unnamed Tributary (34.8129, –119.7714); Unnamed Tributary (34.7760, –119.7149); Unnamed Tributary (34.7617, –119.6878); Unnamed Tributary (34.7680, –119.6503); Unnamed Tributary (34.7738, –119.6493); Unnamed Tributary (34.7332, –119.6286); Unnamed Tributary (34.7519, –119.6209); Unnamed Tributary (34.7188, –119.6673); Water Canyon (34.8774, –119.9324).

(iv) Santa Ynez to Bradbury Hydrologic Sub-area 331440. Outlet(s) = Santa Ynez River (Lat 34.5847, Long –120.1445) upstream to endpoint(s) in: Alisal Creek (34.5456, –120.1358); Hilton Creek (34.5839, –119.9855); Quiota Creek (34.3390, –120.0321); San Lucas Creek (34.5558, –120.0119); Santa Ynez River (34.5829, –119.9805); Unnamed Tributary (34.5646, –120.0043).

(iii) Santa Ynez, Zaca Hydrologic Sub-area 331430. Outlet(s) = Santa Ynez River (Lat 34.6172, Long –120.2532) upstream.

(ii) Santa Ynez, Salsipuedes Hydrologic Sub-area 331420. Outlet(s) = Santa Ynez River (Lat 34.6335, Long –120.4126) upstream to endpoint(s) in: El Calejion Creek (34.5475, –120.2701); El Jaro Creek (34.5327, –120.2861); Llanoito Creek (34.5499, –120.2762); Salsipuedes Creek (34.5711, –120.4076).

(i) Mouth of Santa Ynez Hydrologic Sub-area 331410. Outlet(s) = Santa Ynez River (Lat 34.6309, –120.4631).
(ii) UCSB Slough Hydrologic Sub-area 331531. Outlet(s) = San Pedro Creek (Lat 34.4179, Long –119.8295); Tecolito Creek (34.4179, –119.8295) upstream to endpoint(s) in: Atascadero Creek (34.4345, –119.7755); Carneros Creek (34.4674, –119.8584); Cieneguitas Creek (34.3690, –119.7565); Glen Annie Creek (34.4985, –119.8666); Maria Ygnacio Creek (34.4900, –119.7830); San Antonio Creek (34.4224, –119.2644); Ventura River (34.4852, –119.3001).

(iii) Mission Hydrologic Sub-area 331532. Outlet(s) = Arroyo Burro Creek (Lat 34.4023, Long –119.7430); Mission Creek (34.4124, –119.6876); Sycamore Creek (34.4166, –119.6668) upstream to endpoint(s) in: Arroyo Burro Creek (34.4620, –119.7461); Mission Creek (34.4482, –119.7089); Rattlesnake Creek (34.4633, –119.6902); San Roque Creek (34.4530, –119.7323); Sycamore Creek (34.4570, –119.7323); Unnamed Tributary (34.4774, –119.8846).

(iv) San Ysidro Hydrologic Sub-area 331533. Outlet(s) = Montecito Creek (Lat 34.4167, Long –119.6344); Romero Creek (34.4186, –119.6208); San Ysidro Creek (34.4191, –119.6254) upstream to endpoint(s) in: Cold Springs Creek (34.3794, –119.6694); Montecito Creek (34.4694, –119.6542); Romero Creek (34.4452, –119.5924); San Ysidro Creek (34.4686, –119.6229); Unnamed Tributary (34.4753, –119.6437).

(v) Carpinteria Hydrologic Sub-area 331534. Outlet(s) = Arroyo Paredon (Lat 34.4146, Long –119.5561); Carpenteria Lagoon (Carpenteria Creek) (34.3904, –119.5204); Rincon Lagoon (Rincon Creek) (34.3733, –119.4769) upstream to endpoint(s) in: Arroyo Paredon (34.4371, –119.5481); Carpinteria Creek (34.4329, –119.4964); El Dorado Creek (34.4682, –119.4809); Gobernador Creek (34.4249, –119.4746); Rincon Lagoon (Rincon Creek) (34.3757, –119.4777); Steer Creek (34.4687, –119.4596); Unnamed Tributary (34.4481, –119.5128); Unnamed Tributary (34.3344, –119.2426); Unnamed Tributary (34.3901, –119.2747).

(4) Ventura River Hydrologic Unit 4402—(i) Ventura Hydrologic Sub-area 440220. Outlet(s) = Ventura River (Lat 34.3517, Long –119.3069) upstream to endpoint(s) in: Coyote Creek (34.3735, –119.3357); Matilija Creek (34.4846, –119.3086); North Fork Matilija Creek (34.5129, –119.2737); San Antonio Creek (34.4224, –119.2644); Ventura River (34.4852, –119.3001).

(5) Santa Clara Calleguas Hydrologic Unit 4403—(i) Mouth of Santa Clara Hydrologic Sub-area 440310. Outlet(s) = Santa Clara River (Lat 34.2348, Long –119.2568) upstream to endpoint(s) in: Santa Clara River (34.4500, –119.0563).

(ii) Sisar Hydrologic Sub-area 440322. Outlet(s) = Sisar Creek (Lat 34.4271, Long –119.0998) upstream to endpoint(s) in: Sisar Creek (34.4615, –119.1312).

(iv) Sespe Hydrologic Sub-area 440332. Outlet(s) = Sespe Creek (Lat 34.4509, Long –118.9258) upstream to endpoint(s) in: Abadi Creek (34.6099, –119.2233); Alder Creek (34.5691, –118.9528); Bear Creek (34.4514, –119.1041); Chorro Grande Creek (34.6285, –119.3245); Fourfork Creek (34.4735, –118.8893); Howard Creek (34.5459, –119.2154); Lady Bug Creek (34.5724, –119.3173); Lion Creek (34.5047, –119.1101); Little Sespe Creek (34.4508, –118.8938); Munson Creek (34.6152, –119.2963); Park Creek (34.5537, –119.0028); Piedra Blanca Creek (34.6109, –119.1838); Pine Canyon Creek (34.4488, –118.9661); Porter Rock Creek (34.6010, –119.2095); Red Reef Creek (34.5344, –119.0411); Rose Valley Creek (34.5185, –119.1756); Sespe Creek (34.6295, –119.4412); Timber Creek (34.5184, –119.4412).
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(vi) Santa Clara, Hopper Canyon, Piru Hydrologic Sub-area 440341. Outlet(s) = Santa Clara River (Lat 34.3860, Long –118.8711) upstream to endpoint(s) in: Hopper Creek (34.4263, –118.8309); Piru Creek (34.4613, –118.7537); Santa Clara River (34.3996, –118.7837).

(6) Santa Monica Bay Hydrologic Unit 4404—(i) Topanga Hydrologic Sub-area 440411. Outlet(s) = Topanga Creek (Lat 34.0397, Long –118.5831) upstream to endpoint(s) in: Topanga Creek (34.0838, –118.5980).

(ii) Malibu Hydrologic Sub-area 440421. Outlet(s) = Malibu Creek (Lat 34.0322, Long –118.6796) upstream to endpoint(s) in: Malibu Creek (34.0648, –118.6987).

(iii) Arroyo Sequit Hydrologic Sub-area 440444. Outlet(s) = Arroyo Sequit (Lat 34.0445, Long –118.9338) upstream to endpoint(s) in: Arroyo Sequit (34.0839, –118.9186); West Fork Arroyo Sequit (34.0909, –118.9235).

(7) Calleguas Hydrologic Unit 4408—

(i) Calleguas Estuary Hydrologic Sub-area 440813. Outlet(s) = Mugu Lagoon (Calleguas Creek) (Lat 34.1093, Long –119.0917) upstream to endpoint(s) in: Mugu Lagoon (Calleguas Creek) (Lat 34.1125, Long –119.0816).

(ii) [Reserved]

(8) San Juan Hydrologic Unit 4901—

(i) Middle Trabuco Hydrologic Sub-area 490123. Outlet(s) = Trabuco Creek (Lat 33.5165, Long –117.6727) upstream to endpoint(s) in: Trabuco Creek (33.5264, –117.6700).

(ii) Lower San Juan Hydrologic Sub-area 490127. Outlet(s) = San Juan Creek (Lat 33.4621, Long –117.6842) upstream to endpoint(s) in: San Juan Creek (33.4929, –117.6610); Trabuco Creek (33.5165, –117.6727).

(iii) San Mateo Hydrologic Sub-area 490140. Outlet(s) = San Mateo Creek (Lat 33.3851, Long –117.5933) upstream to endpoint(s) in: San Mateo Creek (33.4779, –117.4386); San Mateo Canyon (33.4957, –117.4522).

(9) Maps of critical habitat for the Southern California Steelhead ESU follow:
Critical Habitat for the Southern California Steelhead

Santa Monica Bay Hydrologic Unit
4404

Cities/Towns

Critical Habitat

Calwater Hydrologic Unit Boundary

Fifth Field Calwater Hydrologic Sub-Area Boundary

331210 Fifth Field Calwater Hydrologic Sub-Area Number
(k) Central Valley Spring Run Chinook Salmon (O. tshawytscha). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Tehama Hydrologic Unit 5504—(i) Lower Stony Creek Hydrologic Sub-area 550410. Outlet(s) = Glenn-Colusa Canal (Lat 39.6762, Long –122.0151); Stony Creek (39.7122, –122.0072) upstream to endpoint(s) in: Glenn-Colusa Canal

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(39.7122, –122.0072); Stony Creek (39.8178, –122.3253).

(ii) Red Bluff Hydrologic Sub-area 550420. Outlet(s) = Sacramento River (Lat 39.6998, Long –121.9419) upstream to endpoint(s) in: Antelope Creek (40.2023, –122.1275); Big Chico Creek (39.7757, –121.7525); Blue Tent Creek (40.2284, –122.2551); Burch Creek (39.8526, –122.1502); Butler Slough (40.1579, –122.1320); Coyote Creek (40.0092, –122.1621); Craig Creek (40.1617, –122.1350); Deer Creek (40.0144, –121.9481); Dibble Creek (40.2003, –122.2420); Dye Creek (40.0904, –122.0767); Elder Creek (40.0550, –122.0317); Mud Creek (39.7931, –121.8865); New Creek (40.1873, –122.1350); Oat Creek (40.0847, –122.1658); Pine Creek (39.8760, –121.9777); Red Bank Creek (40.1869, –122.1845); Singer Creek (39.8913, –122.1005); Kusal Slough (39.7577, –121.9699); Lindo Channel (39.7623, –121.7923); McClure Creek (40.0074, –122.1729); Mill Creek (39.7757, –122.2551); Blue Tent Creek (39.7931, –121.8865); Old Creek (39.8526, –122.1502); Butler Slough (40.1579, –122.1320); Coyote Creek (40.0092, –122.1621); Craig Creek (40.1617, –122.1350); Deer Creek (40.0144, –121.9481); Dibble Creek (40.2003, –122.2420); Dye Creek (40.0904, –122.0767); Elder Creek (40.0550, –122.1717); Jewet Creek (39.8913, –122.1005); Kusal Slough (39.7577, –121.9699); Lindo Channel (39.7623, –121.7923); McClure Creek (40.0074, –122.1729); Mill Creek (40.0550, –122.0317); Mud Creek (39.7931, –121.8865); New Creek (40.0847, –122.1658); Pine Creek (39.8760, –121.9777); Red Bank Creek (40.1391, –122.2157); Reeds Creek (40.1687, –122.2277); Rice Creek (39.8495, –122.1350); Rock Creek (39.8189, –122.1924); Salt Creek (40.1869, –122.1845); Singer Creek (39.9200, –122.9612); Thomas Creek (39.8822, –122.5527); Toomes Creek (39.9068, –122.6642); Unnamed Tributary (39.6302, –122.1627); Unnamed Tributary (40.1662, –122.1450); Unnamed Tributary (40.1667, –122.1353).

(2) Whitmore Hydrologic Unit 5507—(i) Inks Creek Hydrologic Sub-area 550711. Outlet(s) = Inks Creek (Lat 40.3305, Long –122.1520) upstream to endpoint(s) in: Inks Creek (40.3418, –122.1332).

(ii) Lower Cottonwood Hydrologic Sub-area 550720. Outlet(s) = Cottonwood Creek (Lat 40.3777, Long –122.1991) upstream to endpoint(s) in: Cottonwood Creek (40.3943, –122.5254); Middle Fork Cottonwood Creek (40.3314, –122.6663); South Fork Cottonwood Creek (40.1578, –122.5869).

(iii) Inwood Hydrologic Sub-area 550742. Outlet(s) = Mill Creek (Lat 40.0550, Long –122.0317) upstream to endpoint(s) in: Mill Creek (40.3997, –121.9137).

(iv) Inwood Hydrologic Sub-area 550712. Outlet(s) = Battle Creek (Lat 40.0483, Long –122.1102) upstream to endpoint(s) in: Battle Creek (40.4286, –121.9797); North Fork Battle Creek (40.4746, –121.8436); South Fork Battle Creek (40.3549, –121.6861).

(iii) Antelope Creek Hydrologic Sub-area 550722. Outlet(s) = Bear Creek (Lat 40.4332, Long –122.2039) upstream to endpoint(s) in: Bear Creek (40.4859, –122.1320); Dry Creek (40.4574, –122.1993).

(3) Redding Hydrologic Unit 5508—(i) Enterprise Flat Hydrologic Sub-area 550810. Outlet(s) = Sacramento River (Lat 40.2526, Long –122.1707) upstream to endpoint(s) in: Anderson Creek (40.3910, –122.1984); Ash Creek (40.4451, –122.1815); Battle Creek (40.4003, –122.1102); Churn Creek (40.5431, –122.3395); Clear Creek (40.5158, –122.5256); Cow Creek (40.5438, –122.1318); Olney Creek (40.5262, –122.3783); Paynes Creek (40.2810, –122.1587); Stillwater Creek (40.4789, –122.2597).

(ii) Lower Cottonwood Hydrologic Sub-area 550820. Outlet(s) = Cottonwood Creek (Lat 40.3777, Long –122.1991) upstream to endpoint(s) in: Cottonwood Creek (40.3943, –122.5254); Middle Fork Cottonwood Creek (40.3314, –122.6663); South Fork Cottonwood Creek (40.1578, –122.5869).

(iii) Upper Mill Creek Hydrologic Sub-area 550942. Outlet(s) = Mill Creek (Lat 40.0550, Long –122.0317) upstream to endpoint(s) in: Mill Creek (40.3997, –121.9137).

(iv) Antelope Creek Hydrologic Sub-area 550963. Outlet(s) = Antelope Creek (Lat 40.2023, Long –122.1272) upstream to endpoint(s) in: Antelope Creek (40.2416, –121.8630); North Fork Antelope Creek (40.2691, –121.8226); South Fork Antelope Creek (40.2309, –121.8325).

(v) Sacramento Delta Hydrologic Unit 5510—(i) Sacramento Delta Hydrologic Sub-area 551000. Outlet(s) = Sacramento River (Lat 38.0612, Long –121.7948) upstream to endpoint(s) in: Cache Slough (38.3066, –121.7633); Delta Cross Channel (38.2433, –121.4964); Elk Slough (38.4140, –121.5122); Elk Slough (38.2908, –121.6271); Georgiana Slough (38.2401, –121.5172); Miners Slough (38.2864, –121.6051); Prospect Slough (38.1477, –121.6641); Sevenmile Slough (38.1171, –121.6298); Steamboat Slough (38.3052, –121.5737); Sutter Slough (38.3221, –121.5839); Threemile Slough (38.1155, –121.6835); Yolo Bypass (38.5800, –121.5838).

(ii) Lower Putah Creek Hydrologic Sub-area 551120. Outlet(s) = Yolo Bypass (Lat 38.5800, Long –121.5838) upstream to endpoint(s) in: Sacramento River (Lat 38.0612, Long –121.7948).
Bypass (38.6057, –121.5563); Yolo Bypass (38.7627, –121.6325).

(ii) [Reserved]

(7) Marysville Hydrologic Unit 5515—

(i) Lower Yuba River Hydrologic Sub-area 551510. Outlet(s) = Bear River (Lat 38.9296, Long –121.5790) upstream to endpoint(s) in: Bear River (38.9793, –121.5166).

(ii) Lower Yuba River Hydrologic Sub-area 551530. Outlet(s) = Yuba River (Lat 39.1270, Long –121.5981) upstream to endpoint(s) in: Yuba River (39.2203, –121.3314).

(iii) Lower Feather River Hydrologic Sub-area 551540. Outlet(s) = Feather River (Lat 39.1270, Long –121.5981) upstream to endpoint(s) in: Feather River (39.5203, –121.5475).

(8) Yuba River Hydrologic Unit 5517—

(i) Browns Valley Hydrologic Sub-Area 551712. Outlet(s) = Dry Creek (Lat 39.2207, Long –121.4088); Yuba River (39.2203, –121.3314) upstream to endpoint(s) in: Dry Creek (39.3201, –121.3117); Yuba River (39.2305, –121.2813).

(ii) Englebright Hydrologic Sub-area 551714. Outlet(s) = Yuba River (Lat 39.2305, Long –121.2813) upstream to endpoint(s) in: Yuba River (39.2386, –121.2696).

(9) Valley-American Hydrologic Unit 5519—

(i) Lower American Hydrologic Sub-area 551921. Outlet(s) = American River (Lat 38.5971, Long –121.5088) upstream to endpoint(s) in: American River (38.5669, –121.3827).

(ii) Pleasant Grove Hydrologic Sub-area 551922. Outlet(s) = Sacramento River (Lat 38.5965, Long –121.5086) upstream to endpoint(s) in: Feather River (39.1270, –121.5981).

(iii) Colusa Basin Hydrologic Unit 5520—

(10) Colusa Basin Hydrologic Unit 552010. Outlet(s) = Sacramento River (Lat 38.7604, Long –121.6767) upstream to endpoint(s) in: Tisdale Bypass (39.0261, –121.7456).

(ii) Sutter Bypass Hydrologic Sub-area 552030. Outlet(s) = Sacramento River (Lat 38.7849, Long –121.6219) upstream to endpoint(s) in: Butte Creek (39.1987, –121.9285); Butte Slough (39.1987, –121.9285); Nelson Slough (38.8901, –121.6352); Sacramento Slough (38.7843, –121.6544); Sutter Bypass (39.1417, –121.8196; 39.1484, –121.8386); Tisdale Bypass (39.0261, –121.7456); Unnamed Tributary (39.1586, –121.8747).

(iii) Butte Basin Hydrologic Sub-area 552040. Outlet(s) = Butte Creek (Lat 39.1990, Long –121.9286); Sacramento River (39.4141, –122.0087) upstream to endpoint(s) in: Butte creek (39.7095, –121.7506); Colusa Bypass (39.2276, –121.9402); Unnamed Tributary (39.6762, –122.0151).

(11) Butte Creek Hydrologic Unit 5521—Upper Little Chico Hydrologic Sub-area 552130. Outlet(s) = Butte Creek (Lat 39.7096, –121.7504) upstream to endpoint(s) in: Butte Creek (39.8665, –121.6344).

(ii) Shasta Bally Hydrologic Unit 5524—

(12) Platina Hydrologic Sub-area 552436. Outlet(s) = Middle Fork Cottonwood Creek (Lat 40.3314, –122.6663) upstream to endpoint(s) in: Beegum Creek (40.3066, –122.9205); Middle Fork Cottonwood Creek (40.3655, –122.7451).

(iii) Clear Creek Hydrologic Sub-area 552440. Outlet(s) = Sacramento River (Lat 40.5943, Long –122.4343) upstream to endpoint(s) in: Sacramento River (40.6116, –122.4462).

(13) Maps of critical habitat for the Central Valley Spring Run Chinook ESU follow:
Critical Habitat for the Central Valley Spring-run Chinook Salmon

Tehama Hydrologic Unit 5504

Cities/Towns
- Critical Habitat
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail

425
Critical Habitat for the Central Valley Spring-run Chinook Salmon

Whitmore Hydrologic Unit

5507

Bella Vista

Viola

Shingletown

Battie Creek

Manton

Cities/Towns

Critical Habitat

Hydrologic Unit Boundary

Fifth Field Calwater Hydrologic Sub-Area Boundary

110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail

California
Critical Habitat for the Central Valley Spring-run Chinook Salmon

Butte Creek Hydrologic Unit 5521

- Cities/Towns
- Critical Habitat
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number
(1) Central Valley steelhead (O. mykiss). Critical habitat is designated to include the areas defined in the following CALWATER Hydrologic Units:

(1) Tehama Hydrologic Unit 5504—(i) Lower Stony Creek Hydrologic Sub-area 550410. Outlet(s) = Stony Creek (Lat 39.6760, Long -121.9732) upstream to...
(i) Red Bluff Hydrologic Sub-area 550420. Outlet(s) = Sacramento River (Lat 39.6998, Long –122.1419) upstream to endpoint(s) in: Antelope Creek (39.8199, –122.1272); Big Chico Creek (39.7757, –121.7525); Blue Tent Creek (40.2166, –122.2362); Burch Creek (39.8495, –122.1615); Butler Slough (40.1507, –122.1320); Craig Creek (40.1617, –122.1350); Deer Creek (40.0144, –121.9481); Dibble Creek (40.2002, –122.2421); Dye Creek (40.0910, –122.0719); Elder Creek (40.0438, –122.2133); Lindo Channel (39.7623, –121.7923); McClure Creek (40.0074, –122.1723); Mill Creek (40.0550, –122.0317); Mud Creek (39.7985, –121.8803); New Creek (40.1873, –122.1350); Oat Creek (40.0769, –122.1216); Red Bank Creek (40.1421, –122.2399); Rice Creek (39.8495, –122.1615); Rock Creek (39.8034, –121.9403); Salt Creek (40.1572, –122.1646); Thomes Creek (39.8822, –122.5527); Unnamed Tributary (40.1867, –122.1353); Unnamed Tributary (40.1682, –122.1459); Unnamed Tributary (40.1143, –122.1259); Unnamed Tributary (40.0151, –122.1148); Unnamed Tributary (40.0403, –122.1009); Unnamed Tributary (40.0514, –122.0851); Unnamed Tributary (40.0530, –122.0769).

(ii) Red Bluff Hydrologic Sub-area 550420. Outlet(s) = Sacramento River (Lat 39.6998, Long –122.1419) upstream to endpoint(s) in: Antelope Creek (39.8199, –122.1272); Big Chico Creek (39.7757, –121.7525); Blue Tent Creek (40.2166, –122.2362); Burch Creek (39.8495, –122.1615); Butler Slough (40.1507, –122.1320); Craig Creek (40.1617, –122.1350); Deer Creek (40.0144, –121.9481); Dibble Creek (40.2002, –122.2421); Dye Creek (40.0910, –122.0719); Elder Creek (40.0438, –122.2133); Lindo Channel (39.7623, –121.7923); McClure Creek (40.0074, –122.1723); Mill Creek (40.0550, –122.0317); Mud Creek (39.7985, –121.8803); New Creek (40.1873, –122.1350); Oat Creek (40.0769, –122.1216); Red Bank Creek (40.1421, –122.2399); Rice Creek (39.8495, –122.1615); Rock Creek (39.8034, –121.9403); Salt Creek (40.1572, –122.1646); Thomes Creek (39.8822, –122.5527); Unnamed Tributary (40.1867, –122.1353); Unnamed Tributary (40.1682, –122.1459); Unnamed Tributary (40.1143, –122.1259); Unnamed Tributary (40.0151, –122.1148); Unnamed Tributary (40.0403, –122.1009); Unnamed Tributary (40.0514, –122.0851); Unnamed Tributary (40.0530, –122.0769).

(iii) Battle Creek Hydrologic Sub-area 550712. Outlet(s) = Battle Creek (Lat 40.4083, Long –122.1102) upstream to endpoint(s) in: Baldwin Creek (40.4369, –121.9885); Battle Creek (40.4228, –121.9705); Brush Creek (40.4913, –121.8664); Millseat Creek (40.4808, –121.8526); Morgan Creek (40.3654, –121.9132); North Fork Battle Creek (40.4977, –121.8185); Panther Creek (40.3897, –121.6106); South Ditch (40.3997, –121.9223); Ripley Creek (40.4099, –121.6868); Soap Creek (40.3904, –121.7506); South Fork Battle Creek (40.3331, –121.6682); Unnamed Tributary (40.3567, –121.8293); Unnamed Tributary (40.4592, –121.8671).

(iv) Inwood Hydrologic Sub-area 550722. Outlet(s) = Ash Creek (Lat 40.4628, Long –122.0606); Bear Creek (40.4352, –122.2039) upstream to endpoint(s) in: Ash Creek (40.4859, –121.8993); Bear Creek (40.5308, –121.9560); North Fork Bear Creek (40.5736, –121.8683).

(v) South Cow Creek Hydrologic Sub-area 550731. Outlet(s) = South Cow Creek (Lat 40.5438, Long –122.1318) upstream to endpoint(s) in: South Cow Creek (40.6023, –121.8623).

(vi) Old Cow Creek Hydrologic Sub-area 550732. Outlet(s) = Clover Creek (Lat 40.5788, Long –122.1255); Old Cow Creek (40.5442, –122.1317) upstream to endpoint(s) in: Clover Creek (40.6305, –122.0394); Old Cow Creek (40.6295, –122.9619).

(vii) Little Cow Creek Hydrologic Sub-area 550733. Outlet(s) = Little Cow Creek (Lat 40.6148, –122.2271); Oak Run Creek (40.6171, –122.1225) upstream to endpoint(s) in: Little Cow Creek (40.7114, –122.0850); Oak Run Creek (40.6379, –122.0856).

(3) Redding Hydrologic Unit 5508—(i) Enterprise Flat Hydrologic Sub-area 550810. Outlet(s) = Sacramento River (Lat 40.2526, Long –122.1707) upstream to endpoint(s) in: Ash Creek (40.4401, –122.1375); Battle Creek (40.4083, –122.1102); Bear Creek (40.4360, –122.2036); Calaboose Creek (40.5742, –122.4142); Canyon Creek (40.5532, –122.3814); Churn Creek (40.5986, –122.3418); Clear Creek (40.5158, –122.5256); Clover Creek (40.5788, –122.1252); Cottonwood Creek (40.3777, –122.1991); Cow Creek (40.5437, –122.1318); East Fork Stillwater Creek (40.6495, –122.2934); Inks Creek (40.3305, –122.1520); Jenny Creek (40.5734, –122.4338); Little Cow Creek (40.6148, –122.2271); Oak Run (40.6171, –122.1225); Old Cow Creek (40.5442, –122.1317); Olney Creek (40.5439, –122.4687); Oregon Gulch (40.5463, –122.3866); Paynes Creek (40.3024, –122.1012); Stillwater Creek (40.6495, –122.2934); Sulphur Creek (40.6164, –122.4077).

(ii) Lower Cottonwood Hydrologic Sub-area 550820. Outlet(s) = Cottonwood Creek (Lat 40.3577, Long –122.1991) upstream to endpoint(s) in: Cold Fork Cottonwood Creek (40.2314, –122.6663); North Fork Cottonwood Creek (40.3943, –122.0254); Middle Fork Cottonwood Creek (40.3314, –122.6663); North Fork Cottonwood
(4) Eastern Tehama Hydrologic Unit 5509—(i) Big Chico Creek Hydrologic Sub-area 550914. Outlet(s) = Big Chico Creek (Lat 39.7757, Long –121.7623) upstream to endpoint(s) in: Big Chico Creek (39.8086, –121.6942).

(ii) Deer Creek Hydrologic Sub-area 550920. Outlet(s) = Deer Creek (Lat 40.0142, Long –121.9476) upstream to endpoint(s) in: Deer Creek (40.2025, –121.5130).

(iii) Upper Mill Creek Hydrologic Sub-area 550942. Outlet(s) = Mill Creek (Lat 40.0550, Long –122.0317) upstream to endpoint(s) in: Mill Creek (40.3766, –121.5098); Rocky Gulch Creek (40.2888, –121.5997).

(iv) Dye Creek Hydrologic Sub-area 550962. Outlet(s) = Dye Creek (Lat 40.0910, Long –122.0719) upstream to endpoint(s) in: Dye Creek (40.0996, –121.9612).

(v) Antelope Creek Hydrologic Sub-area 550963. Outlet(s) = Antelope Creek (Lat 40.2023, Long –122.1272) upstream to endpoint(s) in: Antelope Creek (40.2416, –121.8630); Middle Fork Antelope Creek (40.2673, –121.7744); North Fork Antelope Creek (40.2807, –121.7645); South Fork Antelope Creek (40.2521, –121.7575).

(5) Sacramento Delta Hydrologic Unit 5510—Sacramento Delta Hydrologic Sub-area 551000. Outlet(s) = Sacramento River (Lat 38.0653, Long –121.8418) upstream to endpoint(s) in: Cache Slough (38.2984, –121.7490); Elk Slough (38.4140, –121.5212); Elkhorn Slough (38.2888, –121.6271); Georgiana Slough (38.2401, –121.5172); Horseshoe Bend (38.1078, –121.7171); Lindsey Slough (38.2592, –121.7580); Miners Slough (38.2664, –121.6651); Prospect Slough (38.2630, –121.5641); Putah Creek (38.5155, –121.5885); Sevenmile Slough (38.1171, –121.6298); Streamboat Slough (38.3052, –121.5737); Sutter Slough (38.3321, –121.5383); Threemile Slough (38.1155, –121.6350); Ulatis Creek (38.2961, –121.5356); Unnamed Tributary (38.2937, –121.7609); Unnamed Tributary (38.2937, –121.7604); Yolo Bypass (38.3800, –121.5383).

(6) Valley-Putah-Cache Hydrologic Unit 5511—Lower Putah Creek Hydrologic Sub-area 551120. Outlet(s) = Sacramento Bypass (Lat 38.5905, Long –121.5563); Yolo Bypass (38.3800, –121.5838) upstream to endpoint(s) in: Sacramento Bypass (38.5969, –121.5888); Yolo Bypass (38.7627, –121.6325).

(7) American River Hydrologic Unit 5514—Auburn Hydrologic Sub-area 551422. Outlet(s) = Auburn Ravine (Lat 38.8921, Long –121.2181); Coon Creek (38.9891, –121.2556); Doty Creek (38.9401, –121.2434) upstream to endpoint(s) in: Auburn Ravine (38.8888, –121.1151); Coon Creek (38.9659, –121.1781); Doty Creek (38.9105, –121.1244).

(8) Marysville Hydrologic Unit 5515—Lower Bear River Hydrologic Sub-area 551510. Outlet(s) = Bear River (Lat 39.9398, Long –121.5790) upstream to endpoint(s) in: Bear River (39.0421, –121.3319).

(ii) Lower Yuba River Hydrologic Sub-area 551530. Outlet(s) = Yuba River (Lat 39.1270, Long –121.5981) upstream to endpoint(s) in: Yuba River (39.2203, –121.3314).

(iii) Lower Feather River Hydrologic Sub-area 551540. Outlet(s) = Feather River (Lat 39.1264, Long –121.5984) upstream to endpoint(s) in: Feather River (39.5203, –121.5475).

(9) Yuba River Hydrologic Unit 5517—Browns Valley Hydrologic Sub-area 551712. Outlet(s) = Dry Creek (Lat 39.2205, Long –121.2314) upstream to endpoint(s) in: Dry Creek (39.2399, –121.2689).

(ii) Englebright Hydrologic Sub-area 551714. Outlet(s) = Yuba River (Lat 39.2305, Long –121.2813) upstream to endpoint(s) in: Yuba River (39.2399, –121.2689).

(10) Valley American Hydrologic Unit 5519—Lower American Hydrologic Sub-area 551921. Outlet(s) = American River (Lat 38.5971, –121.5088) upstream to endpoint(s) in: American River (38.6373, –1121.2202); Dry Creek (38.7554, –121.2676); Miners’ Ravine (38.8429, –121.1178); Natomas East Main Canal (38.6646, –121.4770); Secret Ravine (38.8541, –121.1223).

(ii) Pleasant Grove Hydrologic Sub-area 551922. Outlet(s) = Sacramento River (Lat 38.6026, Long –121.5155) upstream to endpoint(s) in: Auburn Ravine (38.8913, –121.2424); Coon Creek (38.9883, –121.2609); Doty Creek (38.9302, –121.2475); Feather River (39.1264, –121.5984).
National Marine Fisheries Service/NOAA, Commerce §226.211

(11) Colusa Basin Hydrologic Unit 5520—(i) Sycamore-Sutter Hydrologic Sub-area 552010. Outlet(s) = Sacramento River (Lat 38.7604, Long –121.6767) upstream to endpoint(s) in: Tisdale Bypass (39.0261, –1121.7456).

(ii) Sutter Bypass Hydrologic Sub-area 552030. Outlet(s) = Sacramento River (Lat 38.7851, Long –1121.6238) upstream to endpoint(s) in: Butte Creek (39.1990, –1121.9286); Nelson Slough (38.8956, –1121.6180); Sacramento Slough (38.7844, –1121.6544); Sutter Bypass (39.1586, –1121.8747).

(iii) Butte Basin Hydrologic Sub-area 552040. Outlet(s) = Butte Creek (Lat 39.1990, Long –1121.9286); Sacramento River (39.4141, –1122.0087) upstream to endpoint(s) in: Butte Creek (39.7096, –1121.7504); Colusa Bypass (39.2276, –1121.9402); Little Chico Creek (39.7380, –1121.6580).

(12) Butte Creek Hydrologic Unit 5521—(i) Upper Dry Creek Hydrologic Sub-area 552110. Outlet(s) = Little Dry Creek (Lat 39.6781, –1121.6580) upstream to endpoint(s) in: Little Dry Creek (39.7424, –1121.6213).

(ii) Upper Butte Creek Hydrologic Sub-area 552120. Outlet(s) = Little Chico Creek (Lat 39.7380, Long –1121.7490) upstream to endpoint(s) in: Little Chico Creek (39.8680, –1121.6690).

(iii) Upper Little Chico Hydrologic Sub-area 552130. Outlet(s) = Butte Creek (Lat 39.7096, Long –1121.7504) upstream to endpoint(s) in: Little Dry Creek (39.8215, –1121.6468); Little Butte Creek (39.8150, –1121.5819).

(13) Ball Mountain Hydrologic Unit 5523—(i) Thomes Creek Hydrologic Sub-area 552310. Outlet(s) = Thomes Creek (39.8822, –1122.5527) upstream to endpoint(s) in: Thomes Creek (39.8841, –1122.9209); Fish Creek (40.0176, –1122.8142); Snake Creek (39.9454, –1122.7768); Thomes Creek (39.9455, –1122.8491); Willow Creek (39.8941, –1122.9209).

(iv) Kanaka Peak Hydrologic Sub-area 552462. Outlet(s) = Clear Creek (Lat 40.5138, Long –1122.5256) upstream to endpoint(s) in: Clear Creek (40.5998, 122.5399).

(15) North Valley Floor Hydrologic Unit 5531—(i) Lower Mokelumne Hydrologic Sub-area 553120. Outlet(s) = Mokelumne River (Lat 38.2104, Long –1121.3804) upstream to endpoint(s) in: Mokelumne River (38.2263, –1121.0241); Murphy Creek (38.2491, –1121.0119).

(iv) Kanaka Peak Hydrologic Sub-area 553130. Outlet(s) = Calaveras River (Lat 37.9836, Long –1121.3110); Mormon Slough (37.9456, –121.2907) upstream to endpoint(s) in: Calaveras River (38.1025, –1120.8503); Mormon Slough (38.0532, –1121.0102); Stockton Diverting Canal (37.9594, –1121.2024).

(16) Upper Calaveras Hydrologic Unit 5533—New Hogan Reservoir Hydrologic Sub-area 553310. Outlet(s) = Calaveras River (Lat 38.1025, Long –1120.8503) upstream to endpoint(s) in: Calaveras River (38.1502, –1120.8145).

(17) Stanislaus River Hydrologic Unit 5534—Table Mountain Hydrologic Sub-area 553410. Outlet(s) = Stanislaus River (Lat 37.8355, Long –1120.6513) upstream to endpoint(s) in: Stanislaus River (37.8631, –1120.6298).

(18) San Joaquin Valley Floor Hydrologic Unit 5535—Riverbank Hydrologic Sub-area 553530. Outlet(s) = Stanislaus River (Lat 37.6648, Long –1121.2414) upstream to endpoint(s) in: Stanislaus River (37.8355, –1120.6513).

(19) Tulare Hydrologic Sub-area 553550. Outlet(s) = Tulungue River (Lat 37.6059, Long –1121.1739) upstream to
endpoint(s) in: Tuolumne River (37.6401, –1120.6526).

(iii) Montpelier Hydrologic Sub-area 553560. Outlet(s) = Tuolumne River (Lat 37.6401, Long –1120.6526) upstream to endpoint(s) in: Tuolumne River (37.6721, –1120.4445).

(iv) El Nido-Stevinson Hydrologic Sub-area 553570. Outlet(s) = Merced River (Lat 37.3505, Long –1120.9619) upstream to endpoint(s) in: Tuolumne River (37.6721, –1120.4445).

(v) Merced Hydrologic Sub-area 553580. Outlet(s) = Merced River (Lat 37.3620, Long –1120.8507) upstream to endpoint(s) in: Merced River (37.4982, –1120.4612).

(vi) Fahr Creek Hydrologic Sub-area 553590. Outlet(s) = Merced River (Lat 37.3620, Long –1120.8507) upstream to endpoint(s) in: Merced River (37.5081, –1120.3581).

(19) Delta-Mendota Canal Hydrologic Unit 5541—(i) Patterson Hydrologic Sub-area 554110. Outlet(s) = San Joaquin River (Lat 37.5081, Long –1120.3581) upstream to endpoint(s) in: San Joaquin River (37.3491, –1120.9759).

(ii) Los Banos Hydrologic Sub-area 554120. Outlet(s) = Merced River (Lat 37.5490, Long –1120.9756) upstream to endpoint(s) in: Merced River (37.3505, –1120.9619).

(20) North Diablo Range Hydrologic Unit 5543—North Diablo Range Hydrologic Sub-area 554300. Outlet(s) = San Joaquin River (Lat 38.0247, Long –1121.8218) upstream to endpoint(s) in: San Joaquin River (38.0246, –1121.7471).

(21) San Joaquin Delta Hydrologic Unit 5544—San Joaquin Delta Hydrologic Sub-area 554400. Outlet(s) = San Joaquin River (Lat 38.0246, Long –1121.7471) upstream to endpoint(s) in: Big Break (38.0160, –1121.6849); Bishop Cut (38.0870, –1121.4158); Calaveras River (37.9836, –1121.3110); Cosumnes River (38.2538, –1121.4074); Disappointment Slough (38.0439, –1121.4201); Dutch Slough (38.0088, –1121.6281); Empire Cut (37.9714, –1121.4762); False River (38.0479, –1121.6232); Frank’s Tract (38.0220, –1121.5997); Frank’s Tract (38.0300, –1121.5830); Holland Cut (38.9939, –1121.5757); Honker Cut (38.0680, –1121.4589); Kellog Creek (37.9158, –1121.6051); Latham Slough (37.9716, –1121.5212); Middle River (37.6216, –1121.3747); Mokelumne River (38.2104, –1121.2907); Mormon Slough (37.9456, –121.2907); Mosher Creek (38.0327, –1121.3650); North Mokelumne River (38.2274, –1121.4918); Old River (37.8086, –1121.3274); Orwood Slough (37.9409, –1121.5332); Paradise Cut (37.7605, –1121.3085); Pixley Slough (38.0443, –1121.3868); Potato Slough (38.0440, –1121.4997); Rock Slough (37.9754, –1121.5795); Sand Mound Slough (38.0220, –1121.5795); Sand Mound Slough (38.0220, –1121.5795); Stockton Deep Water Channel (38.9937, –1121.4434); Unnamed Tributary (38.1165, –1121.4976); Victoria Canal (38.8891, –1121.4895); White Slough (38.0818, –1121.4156); Woodward Canal (37.9037, –1121.4973).

(22) Maps of critical habitat for the Central Valley Steelhead ESU follow:

440
Critical Habitat for the California Central Valley Steelhead

American River Hydrologic Unit 5514

- Cities/Towns
- Critical Habitat
- Hydrologic Unit Boundary
- Fifth Field Calwater Hydrologic Sub-Area Boundary
- 110701 Fifth Field Calwater Hydrologic Sub-Area Number
Critical Habitat for the California Central Valley Steelhead

San Joaquin Valley Floor Hydrologic Unit

5535

Cities/Towns

- Critical Habitat

- Hydrologic Unit Boundary

- Fifth Field Calwater Hydrologic Sub-Area Boundary

110701 Fifth Field Calwater Hydrologic Sub-Area Number

Area of Detail
§ 226.212 Critical habitat for 13 Evolutionarily Significant Units (ESUs) of salmon and steelhead (Oncorhynchus spp.) in Washington, Oregon and Idaho.

Critical habitat is designated in the following states and counties for the following ESUs as described in paragraph (a) of this section, and as further described in paragraphs (b) through (g) of this section. The textual descriptions of critical habitat for each ESU are included in paragraphs (i) through (u) of this section, and these descriptions are the definitive source for determining the critical habitat boundaries. General location maps are provided at the end of each ESU description (paragraphs (i) through (u) of this section) and are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) Critical habitat is designated for the following ESUs in the following states and counties:

<table>
<thead>
<tr>
<th>ESU</th>
<th>State—Counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Puget Sound chinook salmon</td>
<td>WA—Clallam, Jefferson, King, Mason, Pierce, Skagit, Snohomish, Thurston, and Whatcom.</td>
</tr>
<tr>
<td>(2) Lower Columbia River chinook salmon</td>
<td>OR—Clackamas, Clatsop, Columbia, Hood River, and Multnomah.</td>
</tr>
<tr>
<td></td>
<td>WA—Clark, Cowlitz, Klickitat, Lewis, Pacific, Skamania, and Wahkiakum.</td>
</tr>
<tr>
<td>(3) Upper Willamette River chinook salmon</td>
<td>OR—Benton, Clackamas, Clatsop, Columbia, Lane, Linn, Marion, Multnomah, Polk, and Yamhill.</td>
</tr>
<tr>
<td></td>
<td>WA—Clark, Cowlitz, Pacific, and Wahkiakum.</td>
</tr>
<tr>
<td>(4) Upper Columbia River spring-run chinook salmon</td>
<td>OR—Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Sherman, Umatilla, and Wasco.</td>
</tr>
<tr>
<td></td>
<td>WA—Benton, Chelan, Clark, Cowlitz, Douglas, Franklin, Grant, Kittitas, Klickitat, Okanogan, Pacific, Skamania, Wahkiakum, Walla Walla, and Yakima.</td>
</tr>
<tr>
<td>(5) Hood Canal summer-run chum salmon</td>
<td>WA—Clallam.</td>
</tr>
<tr>
<td>(6) Columbia River chum salmon</td>
<td>OR—Clatsop, Columbia, Hood River, and Multnomah.</td>
</tr>
<tr>
<td></td>
<td>WA—Clark, Cowlitz, Lewis, Pacific, Skamania, and Wahkiakum.</td>
</tr>
<tr>
<td>(7) Ozette Lake sockeye salmon</td>
<td>WA—Clallam.</td>
</tr>
<tr>
<td>(8) Upper Columbia River steelhead</td>
<td>OR—Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Umatilla, and Wasco.</td>
</tr>
<tr>
<td>(10) Middle Columbia River steelhead</td>
<td>OR—Clatsop, Columbia, Crook, Gilliam, Grant, Hood River, Jefferson, Morrow, Multnomah, Sherman, Umatilla, Union, Walla Walla, Wasco, and Wheeler.</td>
</tr>
<tr>
<td>(11) Lower Columbia River steelhead</td>
<td>OR—Clackamas, Clatsop, Columbia, Hood River, Marion, and Multnomah.</td>
</tr>
<tr>
<td></td>
<td>WA—Clark, Cowlitz, Klickitat, Lewis, Pacific, Skamania, and Wahkiakum.</td>
</tr>
<tr>
<td>(12) Upper Willamette River steelhead</td>
<td>OR—Benton, Clackamas, Clatsop, Columbia, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill.</td>
</tr>
<tr>
<td>(13) Oregon Coast coho salmon</td>
<td>OR—Benton, Clatsop, Columbia, Coos, Curry, Douglas, Lane, Oregon Lincoln, Polk, Tillamook, Washington, and Yamhill.</td>
</tr>
</tbody>
</table>

(b) Critical habitat boundaries. Critical habitat includes the stream channels within the designated stream reaches, and includes a lateral extent as defined by the ordinary high-water line (33 CFR 319.11). In areas where ordinary high-water line has not been defined, the lateral extent will be defined by...
the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. Critical habitat in lake areas is defined by the perimeter of the water body as displayed on standard 1:24,000 scale topographic maps or the elevation of ordinary high water, whichever is greater. In estuarine and nearshore marine areas critical habitat includes areas contiguous with the shoreline from the line of extreme high water out to a depth no greater than 30 meters relative to mean lower low water.

(c) Primary constituent elements. Within these areas, the primary constituent elements essential for the conservation of these ESUs are those sites and habitat components that support one or more life stages, including:

1. Freshwater spawning sites with water quantity and quality conditions and substrate supporting spawning, incubation and larval development;
2. Freshwater rearing sites with:
   (i) Water quantity and floodplain connectivity to form and maintain physical habitat conditions and support juvenile growth and mobility;
   (ii) Water quality and forage supporting juvenile development; and
   (iii) Natural cover such as shade, submerged and overhanging large wood, log jams and beaver dams, aquatic vegetation, large rocks and boulders, side channels, and undercut banks.
3. Freshwater migration corridors free of obstruction and excessive predation with water quality and conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation.
4. Estuarine areas free of obstruction and excessive predation with:
   (i) Water quality, substrate quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater;
   (ii) Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels; and
   (iii) Juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation.
5. Nearshore marine areas free of obstruction and excessive predation with:
   (i) Water quality and quantity conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation; and
   (ii) Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, and side channels.
6. Offshore marine areas with water quality conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation.

(d) Exclusion of Indian lands. Critical habitat does not include habitat areas on Indian lands. The Indian lands specifically excluded from critical habitat are those defined in the Secretarial Order, including:

1. Lands held in trust by the United States for the benefit of any Indian tribe;
2. Land held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;
3. Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and
4. Fee lands within the reservation boundaries owned by individual Indians.

(e) Land owned or controlled by the Department of Defense. Critical habitat does not include any areas subject to an approved Integrated Natural Resource Management Plan or associated with Department of Defense easements or right-of-ways. In areas within Navy security zones identified at 33 CFR 334 that are outside the areas described above, critical habitat is only designated within a narrow nearshore zone from the line of extreme high tide down to the line of mean lower low water. The specific sites addressed include:

1. Naval Submarine Base, Bangor;
2. Naval Undersea Warfare Center, Keyport;
3. Naval Ordnance Center, Port Hadlock (Indian Island);
4. Naval Radio Station, Jim Creek;
5. Naval Fuel Depot, Manchester;
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(6) Naval Air Station Whidbey Island;
(7) Naval Air Station, Everett;
(8) Bremerton Naval Hospital;
(9) Fort Lewis (Army);
(10) Pier 23 (Army);
(11) Yakima Training Center (Army);
(12) Puget Sound Naval Shipyard;
(13) Naval Submarine Base Bangor security zone;
(14) Strait of Juan de Fuca naval air-to-surface weapon range, restricted area;
(15) Hood Canal and Dabob Bay naval non-explosive torpedo testing area;
(16) Strait of Juan de Fuca and Whidbey Island naval restricted areas;
(17) Admiralty Inlet naval restricted area;
(18) Port Gardner Naval Base restricted area;
(19) Hood Canal naval restricted areas;
(20) Port Orchard Passage naval restricted area;
(21) Sinclair Inlet naval restricted areas;
(22) Carr Inlet naval restricted areas;
(23) Dabob Bay/Whitney Point naval restricted area; and
(24) Port Townsend/Indian Island/Walan Point naval restricted area.

(f) Land subject to the Washington Department of Natural Resources Habitat Conservation Plan. Critical habitat is excluded on lands covered by the incidental take permit issued by NMFS under section 10(a)(1)(B) of the ESA to the Washington Department of Natural Resources.

(g) Land subject to the Green Diamond Company Habitat Conservation Plan. Critical habitat is excluded on lands covered by the incidental take permit issued by NMFS under section 10(a)(1)(B) of the ESA to the Green Diamond Resources Company (formerly Simpson Timber Company).

(h) Land subject to the West Fork Timber Company Habitat Conservation Plan. Critical habitat is excluded on lands covered by the incidental take permit issued by NMFS under section 10(a)(1)(B) of the ESA to the West Fork Timber Company (formerly Murray Pacific Corporation).

(i) Puget Sound Chinook Salmon (Oncorhynchus tshawytscha). Critical habitat is designated to include the areas defined in the following sub-basins:

(1) Nooksack Subbasin 17110001—(i) Upper North Fork Nooksack River Watershed 1711000401. Outlet(s) = North Fork Nooksack River (Lat 48.9055, Long –121.9806) upstream to endpoint(s) in: Boyd Creek (48.8996, –121.8640); Canyon Creek (48.9366, –121.9451); Cascade Creek (48.8996, –121.8621); Cornell Creek (48.8882, –121.9554); Deadhorse Creek (48.9024, –121.8359); Gallop Creek (48.8849, –121.9474); Glacier Creek (48.8197, –121.8931); Hedrick Creek (48.8953, –121.9705); Thompson Creek (48.8837, –121.9028); Wells Creek (48.8940, –121.7976).

(ii) Lower North Fork Nooksack River Watershed 1711000402. Outlet(s) = Lower North Fork Nooksack River (Lat 48.8342, Long –122.2026) upstream to endpoint(s) in: Anderson Creek (48.8098, –122.3410); Boulder Creek (48.9314, –122.0258); Coal...
National Marine Fisheries Service/NOAA, Commerce § 226.212

Creek (48.8889, –122.1506); Kendall Creek (48.9251, –122.1455); Kenney Creek (48.8510, –122.1368); Macaulay Creek (48.8135, –122.2345); Maple Creek (48.9262, –122.2544); Mitchell Creek (48.8313, –122.1272); Racehorse Creek (48.8619, –122.2544); Smith Creek (48.8439, –122.554); Unnamed (48.9002, –122.1205); Unnamed (48.9040, –122.0875); Unnamed (48.9131, –122.0127); Unnamed (48.9158, –122.0091); Unnamed (48.9162, –122.0615); Unnamed (48.9200, –122.0463); Wildcat Creek (48.9058, –121.9995); Deer Creek (48.8439, –121.1051).

(iii) Racehorse Creek Watershed 1711000503. Outlet(s) = Racehorse Creek (Lat 48.8619, Long –122.2544) upstream to endpoint(s) in: Deception Creek (49.0659, –122.2372); Silesia Creek (48.8436, –122.0875); Wildcat Creek (48.9058, –121.9995).

(iv) Skagit River/Illabot Creek Watershed 1711000607. Outlet(s) = Skagit River (Lat 48.5218, Long –121.4315) upstream to endpoint(s) in: Illabot Creek (48.5218, –121.4315); Skagit River (48.5218, –121.4315); Unnamed (48.5013, –121.6598).

(3) Sauk Subbasin 17110006—

(i) Upper Sauk Watershed 1711000601. Outlet(s) = Sauk River (Lat 48.5333, Long –121.3710) upstream to endpoint(s) in: Camp Creek (48.1559, –121.2909); North Fork Sauk River (48.0692, –121.3710); Owl Creek (48.1623, –121.2948); South Fork Sauk River (48.0670, –121.4088); Swift Creek (48.1011, –121.3975); Unnamed (48.1653, –121.3286); White Chuck River (48.1528, –121.2645).

(ii) Upper Suiattle River Watershed 1711000602. Outlet(s) = Suiattle River (Lat 48.2586, Long –121.2237) upstream to endpoint(s) in: Downey Creek (48.2828, –121.2083); Milk Creek (48.2211, –121.1609); Sulphur Creek (48.2211, –121.1609); Unnamed (48.2338, –121.1792).

(iii) Lower Suiattle River Watershed 1711000603. Outlet(s) = Suiattle River (Lat 48.3384, Long –121.5482) upstream to endpoint(s) in: Big Creek (48.3435, –121.4416); Buck Creek (48.2753, –121.3268); Circle Creek (48.2555, –121.2933); Lime Creek (48.2445, –121.2933); Straight Creek (48.2594, –121.4009); Suiattle River (48.2586, –121.2237); Tenas Creek (48.3371, –121.4904).
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-122.0430); Muddy Creek (48.5278,
-122.0077); Pressentin Creek (48.5099,
-121.8449); Skagit River (48.5333,
-121.7370); Sorenson Creek (48.4875,
-122.0295); Unnamed (48.4887,
-122.0007); Pressentin Creek (48.5333,
-121.7370); Sorenson Creek (48.4875,
-122.0295); Unnamed (48.4887,
-122.0007); Pressentin Creek (48.5333,
-121.7370); Sorenson Creek (48.4875,
-122.0295); Unnamed (48.4887,
-122.0007); Pressentin Creek (48.5333,
-121.7370); Sorenson Creek (48.4875,
-122.0295); Unnamed (48.4887,
-122.0007); Pressentin Creek (48.5333,
-121.7370); Sorenson Creek (48.4875,
-122.0295); Unnamed (48.4887,
-122.0007); Pressentin Creek (48.5333,
-121.7370); Sorenson Creek (48.4875,
-122.0295); Unnamed (48.4887,
-122.0007); Pressentin Creek (48.5333,
-121.7370); Sorenson Creek (48.4875,
-122.0295); Unnamed (48.4887,
(ii) Lower Snoqualmie River Watershed 1711001004. Outlet(s) = Snoqualmie River (Lat 47.8303, Long –122.0451) upstream to endpoint(s) in: Cherry Creek (47.7465, –121.8563); Margaret Creek (47.7547, –121.8933); North Fork Tolt River (47.7060, –121.7957); Snoqualmie River (47.6407, –121.9261); South Fork Tolt River (47.6969, –121.7861); Tuck Creek (47.7442, –122.0032); Unnamed (47.6806, –121.9730); Unnamed (47.6822, –121.9770); Unnamed (47.7420, –122.0084); Unnamed (47.7522, –121.9745); Unnamed (47.7581, –121.9586).

(8) Snohomish Subbasin 17110011—(i) Pilchuck River Watershed 1711001101. Outlet(s) = Pilchuck River (Lat 47.9013, Long –122.0917) upstream to endpoint(s) in: Pilchuck River (48.0052, –121.7718).

(ii) Snohomish River Watershed 1711001102. Outlet(s) = Quilceda Creek (Lat 48.0556, Long –122.1908); Skykomish River (48.0173, –122.1877); Steamboat Slough (48.0365, –122.1814); Union Slough (48.0299, –122.1794); Unnamed (48.0412, –122.1723) upstream to endpoint(s) in: Allen Creek (48.0767, –122.1404); Quilceda Creek (48.1124, –122.1540); Skykomish River (48.0365, –122.0451); Unnamed (47.9545, –122.1969); Unnamed (47.9777, –122.1632); Unnamed (48.0019, –122.1283); Unnamed (48.0055, –122.1303); Unnamed (48.1330, –122.1470).

(9) Lake Washington Subbasin 17110012—(i) Cedar River Watershed 1711001201. Outlet(s) = Cedar River (Lat 47.5003, Long –122.2146) upstream to endpoint(s) in: Cedar River (47.4192, –121.7805); Rock Creek (47.3673, –122.0132); Unnamed (47.4092, –122.0358); Webster Creek (47.3867, –121.5845).

(ii) Lake Washington Watershed 1711001203. Outlet(s) = Lake Washington (Lat 47.6654, Long –122.3960) upstream to endpoint(s) in: Cedar River (47.5003, –122.2146); Sammamish River (47.7543, –122.2465).

(10) Duwamish Subbasin 17110013—(i) Upper Green River Watershed 1711001301. Outlet(s) = Green River (Lat 47.2234, Long –121.6081) upstream to endpoint(s) in: Friday Creek (47.2204, –121.4559); Intake Creek (47.2508, –121.4049); McCain Creek (47.2058, –121.5872); Sawmill Creek (47.2508, –121.5872); Snow Creek (47.2607, –121.4046); Sunday Creek (47.2587, –121.3659); Tacoma Creek (47.1975, –121.3630); Unnamed (47.2129, –121.4579).

(ii) Middle Green River Watershed 1711001302. Outlet(s) = Green River (Lat 47.2911, Long –121.9714) upstream to endpoint(s) in: Bear Creek (47.2774, –121.7960); Cougar Creek (47.2439, –121.6442); Eagle Creek (47.3051, –121.7219); Gale Creek (47.2644, –121.7085); Green River (47.2294, –121.6081); Piling Creek (47.2820, –121.7553); Sylvester Creek (47.2457, –121.6537); Unnamed (47.2600, –121.6333).

(iii) Lower Green River Watershed 1711001303. Outlet(s) = Duwamish River (Lat 47.5113, Long –122.2951) upstream to endpoint(s) in: Big Soos Creek (47.4191, –122.1599); Burns Creek (47.2779, –122.3087); Covington Creek (47.3941, –122.0399); Crisp Creek (47.2897, –122.0599); Green River (47.2911, –121.9714); Jenkins Creek (47.3791, –122.0899); Little Soos Creek (47.4031, –122.1235); Mill Creek (47.3263, –122.2455); Newaukum Creek (47.2363, –121.9618); Unnamed (47.2765, –121.9730); Unnamed (47.2891, –122.1557); Unnamed (47.3007, –122.1774); Unnamed (47.3250, –122.1961); Unnamed (47.3464, –122.2397); Unnamed (47.3751, –122.2348); Unnamed (47.4046, –122.2134); Unnamed (47.4555, –122.2354); Unnamed (47.4618, –122.3315); Unnamed (47.4619, –122.2554); Unnamed (47.4876, –122.2781).

(11) Puyallup Subbasin 17110014—(i) Upper White River Watershed 1711001401. Outlet(s) = White River (Lat 47.1588, Long –121.6587) upstream to endpoint(s) in: Greenwater River (47.1204, –121.5055); Huckleberry Creek (47.0612, –121.6033); Pinochle Creek (47.0478, –121.7043); Unnamed (46.9935, –121.5295); West Fork White River (47.0493, –121.6916); Wrong Creek (47.0493, –121.6999).

(ii) Lower White River Watershed 1711001402. Outlet(s) = White River (Lat 47.2001, Long –122.2579) upstream to endpoint(s) in: Boise Creek (47.2001, –122.2579); Camp Creek (47.1430, –121.7012); Clearwater River (47.0852, –121.7823); Unnamed (47.1509, –121.7230); Unnamed (47.2247, –121.1072); Unnamed (47.2387, –121.0729); Unnamed (47.4733, –122.2346); White River (47.1588, –121.6537).

(iii) Carbon River Watershed 1711001403. Outlet(s) = Carbon River (Lat 47.1308, Long –122.2315) upstream
to endpoint(s) in: Carbon River (46.9965, –121.9198); South Fork South Prairie Creek (47.1203, –121.9963); Voigts Creek (47.0751, –122.1285); Wilkeson Creek (47.0972, –122.0245).

(iv) Upper Puyallup River Watershed

1711001404. Outlet(s) = Puyallup River (Lat 47.1308, Long –122.2315) upstream to endpoint(s) in: Deer Creek (46.8547, –121.9680); Kapowsin Creek (47.1203, –122.2008); Kellog Creek (46.9164, –122.0652); Rushingwater Creek (46.8971, –121.9439); Unnamed (46.8899, –121.9657); Unnamed (46.8867, –122.0194); Unnamed (46.8899, –121.9657).

(v) Lower Puyallup River Watershed

1711001405. Outlet(s) = Hylebos Creek (Lat 47.2611, Long –122.3591); Puyallup River (47.2501, –122.4131) upstream to endpoint(s) in: Canyon Falls Creek (47.1421, –122.2186); Clarks Creek (47.1575, –122.3168); Clear Creek (47.2187, –122.2315); Unnamed (47.1799, –122.3066); Unnamed (47.1928, –122.3371); Unnamed (47.2723, –122.3216); West Hylebos Creek (47.2736, –122.3298).

(12) Nisqually Subbasin 17110015—(i) Mashel/Ohop Watershed 1711001502. Outlet(s) = Nisqually River (Lat 46.8646, Long –122.4776) upstream to endpoint(s) in: Little Mashel River (46.8804, –122.2724); Lynch Creek (46.8760, –122.2620); Mashel River (46.8431, –122.1205); Nisqually River (46.8303, –122.3225); Ohop Creek (46.9264, –122.2603); Powell Creek (46.8328, –122.4505); Tanwax Creek (46.8630, –122.4549); Twentyfive Mile Creek (46.9274, –122.2558).

(ii) Lowland Watershed 1711001503. Outlet(s) = McAllister Creek (Lat 47.1120, Long –122.7215); Nisqually River (47.1110, –122.7026); Unnamed (47.0071, –122.6556); Yelm Creek (46.9712, –122.6263) upstream to endpoint(s) in: Horn Creek (46.9042, –122.4776); McAllister Creek (47.0299, –122.7236); Nisqually River (46.8646, –122.4776); Unnamed (46.9108, –122.5032); Unnamed (47.0001, –122.6510); Unnamed (47.0055, –122.6520); Yelm Creek (46.9629, –122.6194). Excluded is that segment of the Nisqually River from Lat 47.0763, Long –122.7017, to Lat 46.9668, Long –122.5640.

(13) Skokomish Subbasin 17110017—Skokomish River Watershed 1711001701. Outlet(s) = Skokomish River (Lat 47.3543, Long –123.1122); Unnamed (47.3420, –123.1092); Unnamed (47.3471, –123.1275); Unnamed (47.3509, –123.1101) upstream to endpoint(s) in: Brown Creek (47.4238, –123.3052); Fir Creek (47.3603, –123.3016); McTaggert Creek (47.3749, –123.3618); North Fork Skokomish River (47.5197, –123.3229); Purdy Canyon (47.3021, –123.1803); Unnamed (47.3048, –123.1528); Unnamed (47.3077, –123.3012); Unnamed (47.3146, –123.1353); Unnamed (47.3209, –123.2212); Unnamed (47.3222, –123.3060); Unnamed (47.3237, –123.1467); Unnamed (47.3250, –123.1250); Vance Creek (47.3300, –123.3137); Weaver Creek (47.3097, –123.2384).

(14) Hood Canal Subbasin 17110018—(i) Hamma Hamma River Watershed 1711001803. Outlet(s) = Hamma Hamma River (Lat 47.5471, Long –123.0440) upstream to endpoint(s) in: Hamma Hamma River (47.5596, –123.0632); North Fork John Creek (47.5442, –123.3052); Fir Creek (47.3363, –123.3016); McTaggert Creek (47.3749, –123.3618); North Fork Skokomish River (47.5197, –123.3229); Purdy Canyon (47.3021, –123.1803); Unnamed (47.3048, –123.1528); Unnamed (47.3077, –123.3012); Unnamed (47.3146, –123.1353); Unnamed (47.3209, –123.2212); Unnamed (47.3222, –123.3060); Unnamed (47.3237, –123.1467); Unnamed (47.3250, –123.1250); Vance Creek (47.3300, –123.3137); Weaver Creek (47.3097, –123.2384).

(ii) Duckabush River Watershed 1711001804. Outlet(s) = Duckabush River (Lat 47.6502, Long –122.9348) upstream to endpoint(s) in: Duckabush River (47.6825, –123.0675).

(iii) Dosewallips River Watershed 1711001805. Outlet(s) = Dosewallips River (Lat 47.6881, Long –122.8945); Unnamed (47.6857, –122.9677) upstream to endpoint(s) in: Dosewallips River (47.7289, –123.1111); Rocky Brook (47.7212, –122.9405); Unnamed (47.6886, –122.8977).

(15) Dungeness/Elwha 17110020—(i) Dungeness River Watershed 1711002003. Outlet(s) = Dungeness River (Lat 48.1506, Long –123.1311); Unnamed (48.1537, –123.1267) upstream to endpoint(s) in: Dungeness River (47.9386, –123.0885); Gray Wolf River (47.9168, –123.2409); Matriotti Creek (48.1368, –123.1428); Unnamed (48.1514, –123.1216).

(ii) Elwha River Watershed 1711002007. Outlet(s) = Elwha River (Lat 48.1466, Long –123.5671); Unnamed (48.1483, –123.5599) upstream to endpoint(s) in: Elwha River (48.0927, –123.5614).
(16) Nearshore Marine Areas—Except as provided in paragraph (e) of this section, critical habitat includes all nearshore marine areas (including areas adjacent to islands) of the Strait of Georgia (south of the international border), Puget Sound, Hood Canal, and the Strait of Juan de Fuca (to the western end of the Elwha River delta) from the line of extreme high tide out to a depth of 30 meters.

(17) Maps of critical habitat for the Puget Sound chinook salmon ESU follow:
Final Critical Habitat for the Puget Sound Chinook Salmon ESU

NOOKSACK SUBBASIN
17110004:

Legend
- Cities / Towns
- State Boundary
- Shoreline
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 05 = Watershed code - last 2 digits of 17110004xx

Area of Detail

WASHINGTON
OREGON
IDAHO
Final Critical Habitat for the Puget Sound Chinook Salmon ESU

UPPER SKAGIT SUBBASIN 17110005

Legend
- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 08 = Watershed code - last 2 digits of 17110005xx
Final Critical Habitat for the Puget Sound Chinook Salmon ESU

LOWE SKAGIT SUBBASIN 17110007

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 02 = Watershed code - last 2 digits of 17110007xx
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Final Critical Habitat for the Puget Sound Chinook Salmon ESU

SKYKOMISH SUBBASIN
17110099

Legend

Cities / Towns
Critical Habitat
Subbasin Boundary
Watershed Boundaries

01 - 05 = Watershed code - last 2 digits of 1711009xx

Area of Detail

WASHINGTON
OREGON
IDAHO
Final Critical Habitat for the Puget Sound Chinook Salmon ESU

Legend

- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 04 = Watershed code - last 2 digits of 17110010xx
Final Critical Habitat for the Puget Sound Chinook Salmon ESU

LAKE WASHINGTON SUBBASIN
17110012

Legend

Cities / Towns
Shoreline
Critical Habitat
Water Bodies
Subbasin Boundary
Watershed Boundaries

01 - 04 = Watershed code - last 2 digits of 17110012xx

Area of Detail
Final Critical Habitat for the
Puget Sound Chinook Salmon ESU

PUYALLUP SUBBASIN
17110014

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 05 = Watershed code - last 2 digits of 17110014xx
Final Critical Habitat for the Puget Sound Chinook Salmon ESU

DUNGENESS / ELWA SUBBASIN 1711020

Legend

- Cities / Towns
- Shorelines
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 04, 07 = Watershed code - last 2 digits of 17110020xx
(j) Lower Columbia River Chinook Salmon (Oncorhynchus tshawytscha). Critical habitat is designated to include the areas defined in the following subbasins:

1. Middle Columbia/Hood Subbasin
2. East Fork Hood River Watershed

Outlet(s) = Hood River (Lat 45.6050, Long -121.6323) upstream to endpoint(s) in: Dog River (Lat 45.6050, Long -121.6323); East Fork Hood River
(45.4665, –121.5669); Pinnacle Creek (45.4959, –121.6568); Tony Creek (45.5435, –121.6411).

(ii) West Fork Hood River Watershed 1707010507. Outlet(s) = West Fork Hood River (Lat 45.6050, Long –121.6323) upstream to endpoint(s) in: Divers Creek (45.4577, 121.4714); Elk Creek (45.4777, –121.7899); Indian Creek (45.5375, –121.7587); Jones Creek (45.4629, –121.7942); Lake Branch (45.5083, –121.8485); McGee Creek (45.4179, –121.7675); No Name Creek (45.5347, –121.7929); Red Hill Creek (45.4720, –121.7705), Unnamed (45.5502, –121.7014).

(iii) Hood River Watershed 1707010508. Outlet(s) = Hood River (Lat 45.7205, Long –121.5055) upstream to endpoint(s) in: Hood River (45.6050, –121.6323).

(iv) White Salmon River Watershed 1707010509. Outlet(s) = White Salmon River (Lat 45.7226, Long –121.5214) upstream to endpoint(s) in: White Salmon River (45.7677, –121.5374).

(v) Wind River Watershed 1707010510. Outlet(s) = Wind River (Lat 45.7037, Long –121.7986) upstream to endpoint(s) in: Bear Creek (45.7620, –121.8295); Big Hollow Creek (45.9399, –121.9996); Dry Creek (45.9296, –121.9721); Falls Creek (45.9105, –121.9222); Little Wind River (45.7392, –121.7772); Ninemile Creek (45.8929, –121.9526); Paradise Creek (45.9527, –121.9408); Trapper Creek (45.8807, –122.0065); Trout Creek (45.8521, –122.0193); Wind River (45.9372, –121.9031).

(vi) Middle Columbia/Grays Creek Watershed 1707010512. Outlet(s) = Columbia River (Lat 45.7044, Long –121.7980) upstream to endpoint(s) in: Columbia River (45.7205, –121.5056).

(vii) Middle Columbia/Eagle Creek Watershed 1707010513. Outlet(s) = Columbia River (Lat 45.6447, Long –121.9385) upstream to endpoint(s) in: Camp Creek (45.6676, –121.8187); Carson Creek (45.7206, –121.8184); Columbia River (45.7044, –121.7980); Dry Creek (45.6717, –121.8722); Eagle Creek (45.6865, –121.9171); East Fork Herman Creek (45.6538, –121.8122); Herman Creek (45.6749, –121.8477); Rock Creek (45.6958, –121.8915); Unnamed (45.6654, –121.8164); Unnamed (45.6674, –121.8487); Unnamed (45.6899, –121.8444); Unnamed (45.6762, –121.9350); Unnamed (45.6902, –121.9034); Unnamed (45.6948, –121.9424).

(2) Lower Columbia/Sandy Subbasin 17080001—(i) Salmon River Watershed 1708000101. Outlet(s) = Salmon River (Lat 45.3768, Long –122.0293) upstream to endpoint(s) in: Cheeney Creek (45.3514, –121.9561); Copper Creek (45.2506, –121.9035); Salmon River (45.2511, –121.9020); South Fork Salmon River (45.2606, –121.9474); Unnamed (45.3434, –121.9920).

(ii) Zigzag River Watershed 1708000102. Outlet(s) = Zigzag River (Lat 45.3489, Long –121.9442) upstream to endpoint(s) in: Henry Creek (45.3328, –121.9110); Still Creek (45.2755, –121.8413); Unnamed (45.3019, –121.8202); Zigzag River (45.3092, –121.8642).

(iii) Upper Sandy River Watershed 1708000103. Outlet(s) = Sandy River (Lat 45.4489, Long –121.9442) upstream to endpoint(s) in: Alder Creek (45.3776, –122.0994); Bear Creek (45.3368, –121.9285); Cedar Creek (45.4087, –122.2617); East Fork Herman Creek (45.3822, –122.0168); Sandy River (45.3489, –121.9442).

(iv) Middle Sandy River Watershed 1708000104. Outlet(s) = Sandy River (Lat 45.4464, Long –122.2459) upstream to endpoint(s) in: Alder Creek (45.3776, –122.0994); Bear Creek (45.3368, –121.9285); Cedar Creek (45.4087, –122.2617); North Boulder Creek (45.3822, –122.0168); Sandy River (45.3489, –121.9442).

(v) Bull Run River Watershed 1708000105. Outlet(s) = Bull Run River (Lat 45.4464, Long –122.2459) upstream to endpoint(s) in: Bull Run River (45.4455, –122.1561); Little Sandy Creek (45.4235, –122.1975).

(vi) Washougal River (1708000106). Outlet(s) = Washougal River (Lat 45.5795, Long –122.4022) upstream to endpoint(s) in: Cougar Creek (45.6265, –122.2987); Dougan Creek (45.6770, –122.1522); Lacamas Creek (45.5972, –122.3933); Little Washougal River (45.6315, –122.3767); Washougal River (45.6729, –122.1524); West Fork Washougal River (45.6205, –122.2149).

(vii) Columbia Gorge Tributaries Watershed 1708000107. Outlet(s) = Columbia River (Lat 45.5735, Long –122.3945) upstream to endpoint(s) in: Bridal Veil Creek (45.5542, –122.1733); Columbia River (45.6447, –121.9385); Coopey Creek (45.6565, –122.1671); Government Cove (45.5948, –122.0630); Hamilton Creek...
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(45.6414, –121.9764); Hardy Creek (45.6354, –121.9987); Latourell Creek (45.5388, –122.2173); McCord Creek (45.6155, –121.9929); Moffett Creek (45.6185, –121.9685); Multnomah Creek (45.5761, –122.1143), Oneonta Creek (45.5821, –122.0718); Tanner Creek (45.6264, –121.9522); Turnaft Creek (45.6101, –122.0284); Unnamed (45.5421, –122.2624); Unnamed (45.5488, –122.3504); Unnamed (45.6025, –122.0443); Unnamed (45.6055, –122.0392); Unnamed (45.6083, –122.0329); Unnamed (45.6118, –122.0216); Unnamed (45.6124, –122.0172); Unnamed (45.6133, –122.0055); Wahkeena Creek (45.5755, –122.1266); Young Creek (45.5480, –122.1997).

(viii)  Lower Sandy River Watershed 1708000108. Outlet(s) = Sandy River (Lat 45.5680, Long –122.4023) upstream to endpoint(s) in: Beaver Creek (45.5258, –122.3822); Gordon Creek (45.4915, –122.2423); Sandy River (45.4464, –122.2459); Trout Creek (45.4844, –122.2785); Unnamed (45.5542, –122.3768); Unnamed (45.5600, –122.3650).


(ii)  Lower Lewis River Watershed 1708000206. Outlet(s) = Lewis River (Lat 45.8519, Long –122.7806) upstream to endpoint(s) in: Cedar Creek (45.9049, –122.3684); Chelatchie Creek (45.9169, –122.2423); Sandy River (45.4464, –122.2459); Trout Creek (45.8414, –122.3785); Unnamed (45.5542, –122.3785); Unnamed (45.5600, –122.3650).

(4) Lower Columbia/Clatskanie Subbasin 17080003—(i) Kalama River Watershed 1708000301. Outlet(s) = Burris Creek (45.8926, –122.7892); Kalama River (46.0340, –122.8695) upstream to endpoint(s) in: Arnold Creek (46.0463, –122.9388); Burris Creek (45.9391, –122.9700); Elk Creek (46.089, –122.5117); Gobar Creek (46.0698, –122.6042); Hatchery Creek (46.0459, –122.8027); Kalama River (46.1109, –122.3579); Little Kalama River (45.9970, –122.6939); North Fork Kalama River (46.1328, –122.4118); Wild Horse Creek (46.0626, –122.6367).

(ii)  Cispus River Watershed 1708000303. Outlet(s) = Cispus River (Lat 46.1398, Long –123.2303) upstream to endpoint(s) in: Clatskanie River (46.0435, –123.0829); Merrill Creek (46.0916, –123.1727); Perkins Creek (46.0826, –123.1678).

(iii)  Skamokawa/Elochoman Watershed 1708000305. Outlet(s) = Elochoman River (Lat 46.2209, Long –122.3040); Skamokawa Creek (46.2777, –123.5652); Unnamed (46.2243, –123.3975) upstream to endpoint(s) in: Beaver Creek (46.2256, –123.3071); Elochoman River (46.3503, –123.2428); Falk Creek (46.2854, –123.4113); Left Fork Skamokawa Creek (46.3249, –123.4538); McDonald Creek (46.3388, –123.4116); Standard Creek (46.3292, –123.3999); West Fork Elochoman River (46.3211, –123.3605); West Fork Skamokawa Creek (46.2871, –123.4565); Wilson Creek (46.2570, –123.3434).

(iv)  Plympton Creek Watershed 1708000306. Outlet(s) = Plympton Creek (Lat 46.1398, Long –123.2303) upstream to endpoint(s) in: Clatskanie River (46.0435, –123.3816) upstream to endpoint(s) in: Plympton Creek (46.1261, –123.3842); Westport Slough (46.1195, –123.2797).

(5) Upper Cowlitz Subbasin 17080004—(i) Headwaters Cowlitz River 1708000401. Outlet(s) = Cowlitz River (Lat 46.6580, Long –121.6032) upstream to endpoint(s) in: Clear Fork Cowlitz River (46.6580, –121.5688); Muddy Fork Cowlitz River (46.6994, –121.6169); Ohanapeosh Creek (46.6883, –121.5809).

(ii)  Upper Cowlitz River Watershed 1708000402. Outlet(s) = Cowlitz River (Lat 46.5763, Long –121.7051) upstream to endpoint(s) in: Cowlitz River (46.6580, –121.6032).

(iii)  Cowlitz Valley Frontal Watershed 1708000403. Outlet(s) = Cowlitz River (Lat 46.4765, Long –121.8052) upstream to endpoint(s) in: Cowlitz River (46.4765, –121.8052); Silver Creek (46.5576, –121.9178).

(iv)  Upper Cispus River Watershed 1708000404. Outlet(s) = Cispus River (Lat 46.4449, Long –121.7954) upstream to endpoint(s) in: Cispus River (46.3410, –121.6709); East Canyon Creek (46.3454, –121.7031); North Fork Cispus River (46.4355, –121.654).

(v)  Lower Cispus River Watershed 1708000405. Outlet(s) = Cispus River (Lat 46.4765, Long –122.0932) upstream to endpoint(s) in: Cispus River (46.4449, –121.7954); McCoy Creek (46.3892, 488

VerDate Mar<15>2010 11:01 Jan 05, 2011 Jkt 220227 PO 00000 Frm 00498 Fmt 8010 Sfmt 8010 Q:\50\220227.XXX ofr150 PsN: PC150
(6) Cowlitz Subbasin 17080005—(i) **Riffe Reservoir Watershed 1708000502.** Outlet(s) = Cowlitz River (Lat 46.5033, Long –122.3870) upstream to endpoint(s) in: Cowlitz River (46.4765, –122.0992).

(ii) **Jackson Prairie Watershed 1708000503.** Outlet(s) = Cowlitz River (Lat 46.5033, Long –122.3870) upstream to endpoint(s) in: Cowlitz River (46.4765, –122.0992).

(iii) **North Fork Toutle River Watershed 1708000504.** Outlet(s) = North Fork Toutle River (Lat 46.3669, Long –122.5859) upstream to endpoint(s) in: North Fork Toutle River (46.3718, –122.5847).

(iv) **Green River Watershed 1708000505.** Outlet(s) = Green River (Lat 46.3718, Long –122.5847) upstream to endpoint(s) in: Cascade Creek (46.3924, –122.3530); Devils Creek (46.3875, –122.5113); Elk Creek (46.3929, –122.3224); Green River (46.3857, –122.1815); Miners Creek (46.3871, –122.2091); Shultz Creek (46.3744, –122.2987); Unnamed (46.3796, –122.3632).

(v) **South Fork Toutle River Watershed 1708000506.** Outlet(s) = South Fork Toutle River (Lat 46.3282, Long –122.7215) upstream to endpoint(s) in: Johnson Creek (46.3100, –122.6338); South Fork Toutle River (46.3206, –122.449); Studebaker Creek (46.3044, –122.677).

(vi) **East Willapa Watershed 1708000507.** Outlet(s) = Willapa River (Lat 46.2660, Long –122.9145) upstream to endpoint(s) in: Arkansas Creek (46.3275, –123.0123); Baxter Creek (46.3034, –122.9709); Brim Creek (46.4293, –123.0193); Campbell Creek (46.3765, –123.041); Cowlitz River (46.3875, –122.8915); Delameter Creek (46.2495, –122.916); Hemlock Creek (46.2685, –122.7269); Hill Creek (46.3724, –122.9211); King Creek (46.5076, –122.9885); Monahan Creek (46.2594, –123.0286); North Fork Toutle River (46.3069, –122.9839); Olequa Creek (46.5174, –122.9937); Stillwater Creek (46.3851, –123.0478); Sucker Creek (46.2628, –122.8116); Unnamed (46.5074, –122.9585); Unnamed (46.5405, –122.0990); Wyant Creek (46.3424, –122.6302).

(vii) **Coweeman Watershed 1708000508.** Outlet(s) = Cowlitz River (Lat 46.0977, Long –122.9141); Owl Creek (46.0771, –122.9090); Wyant Creek (46.3424, –122.6302).

(7) Lower Columbia Subbasin 17080006—(i) **Big Creek Watershed 1708000602.** Outlet(s) = Bear Creek (Lat 46.1719, Long –123.6388); Big Creek (46.147, –123.5943); Blind Slough (46.2011, –123.5822); John Day River (46.1820, –123.7392) upstream to endpoint(s) in: Bear Creek (46.1181, –123.6388); Big Creek (46.1475, –123.5819); Gnat Creek (46.1614, –123.4813); John Day River (46.1763, –123.7347).

(ii) **Grays Bay Watershed 1708000603.** Outlet(s) = Crooked Creek (Lat 46.2962, Long –123.6795); Deep River (46.3035, –123.7092); Grays River (46.3035, –123.6867); Sisson Creek (46.3011, –123.7237); Unnamed (46.3042, –123.6870) upstream to endpoint(s) in: Crooked Creek (46.3033, –123.6222); East Fork Grays River (46.4425, –123.4081); Fossil Creek (46.3628, –123.5530); Grays River (46.4910, –123.4334); Hull Creek (46.3725, –123.5866); Johnson Canyon (46.3999, –123.6699); Klints Creek (46.3662, –123.5675); Malone Creek (46.3290, –123.6545); Mitchell Creek (46.4512, –123.4371); South Fork Grays River (46.3813, –123.4581); Segie Creek (46.4195, –123.5375); Unnamed (46.3283, –123.7376); Unnamed (46.3651, –123.6839); Unnamed (46.3915, –123.4515); West Fork Grays River (46.4195, –123.5330); Salmon River (46.3961, –123.4516).

(8) Clackamas Subbasin 17090011—(i) **Lower Clackamas River Watershed 1709000100.** Outlet(s) = Clackamas River (Lat 45.3719, Long –122.6071) upstream to endpoint(s) in: Clackamas River (45.3410, –122.2798); Clear Creek (45.3568, –122.4781); Deep Creek (45.3916, –122.4028); Richardson Creek (45.3971, –122.8190); Yellowjacket Creek (46.3871, –121.9335).
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(9) Lower Willamette Subbasin 17090012—(i) Johnson Creek Watershed 1709001201. Outlet(s) = Willamette River (Lat 45.4423, Long –122.6453) upstream to endpoint(s) in: Crystal Springs Creek (45.4770, –122.6403); Kellogg Creek (45.4344, –122.6314); Tryon Creek (45.4239, –122.6595); Unnamed (45.4002, –122.6423); Willamette River (45.3719, –122.6071).  

(ii) Scappoose Creek Watershed 1709001202. Outlet(s) = Multnomah Channel (Lat 45.8577, Long –122.7919) upstream to endpoint(s) in: Cunningham Slough (45.8250, –122.8069); Multnomah Channel (45.6188, –122.7921); North Scappoose Creek (45.8014, –122.9340).  

(iii) Columbia Slough/Willamette River Watershed 1709001203. Outlet(s) = Willamette River (Lat 45.6530, Long –122.7646) upstream to endpoint(s) in: Bybee/Smith Lakes (45.6189, –122.7333); Columbia Slough (45.5979, –122.7137); Willamette River (45.4423, –122.6453).  

(10) Lower Columbia River Corridor—Lower Columbia River Corridor. Outlet(s) = Columbia River (Lat 46.2485, Long –124.0782) upstream to endpoint(s) in: Columbia River (45.5709, –122.4021).  

(11) Maps of critical habitat for the Lower Columbia River chinook salmon ESU follow:
(k) **Upper Willamette River Chinook Salmon** (*Oncorhynchus tshawytscha*). Critical habitat is to include the areas defined in the following subbasins:

1. **Middle Fork Willamette Subbasin** (17090001—(1) Upper Middle Fork Willamette River Watershed 1709000101. Outlet(s) = Middle Fork Willamette River (Lat 43.4961, Long -122.3989) upstream to

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Lower Columbia River Chinook ESU

Lower Columbia River Corridor

The lower Columbia River corridor is that segment from the mouth of the Columbia River at the Pacific Ocean upstream to a line connecting the confluences of the Sandy River (Oregon) and Washougal River (Washington).

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(k) **Upper Willamette River Chinook Salmon** (*Oncorhynchus tshawytscha*). Critical habitat is to include the areas defined in the following subbasins:

1. **Middle Fork Willamette Subbasin** (17090001—(1) Upper Middle Fork Willamette River Watershed 1709000101. Outlet(s) = Middle Fork Willamette River (Lat 43.4961, Long -122.3989) upstream to
endpoint(s) in: Echo Creek (43.4670, -122.3172); Found Creek (43.5048, -122.2831); Middle Fork Willamette River (43.4801, -122.2534); Noisy Creek (43.5083, -122.3016); Simpson Creek (43.5031, -122.3801); Staley Creek (43.4927, -122.3650); Swift Creek (43.5438, -122.2431); Tumblebug Creek (43.4740, -122.2549); Unnamed (43.4967, -122.2645); Unnamed (43.4986, -122.2686); Unnamed (43.5020, -122.2764).

(ii) Hills Creek Watershed 1709000102. Outlet(s) = Hills Creek (Lat 43.7071, Long –122.4195) upstream to endpoint(s) in: Hills Creek (43.6718, –122.3502).

(iii) Salt Creek/Willamette River Watershed 1709000103. Outlet(s) = Salt Creek (Lat 43.7261, Long –122.4381) upstream to endpoint(s) in: Coyote Creek (43.6682, –122.2378); Eagle Creek (43.6722, –122.1413); South Fork Salt Creek (43.6518, –122.2261).

(iv) Hills Creek Reservoir Watershed 1709000105. Outlet(s) = Middle Fork Willamette River (Lat 43.7589, Long –122.5242) upstream to endpoint(s) in: Big Willow Creek (43.6341, –122.4139); Buck Creek (43.5945, –122.4277); Bull Creek (43.6598, –122.4014); Coal Creek (43.4982, –122.4246); Coffeepot Creek (43.6182, –122.4160); Gold Creek (43.5960, –122.4768); Indian Creek (43.5034, –122.4638); Larison Creek (43.6851, –122.4760); Middle Fork Willamette River (43.4961, –122.3989); Packard Creek (43.6516, –122.4904); Snake Creek (43.5386, –122.4554); Snow Creek (43.6061, –122.4585); Windfall Creek (43.5984, –122.4638).

(v) North Fork of Middle Fork Willamette River Watershed 1709000106. Outlet(s) = North Fork Middle Fork Willamette River (Lat 43.7589, Long –122.5242) upstream to endpoint(s) in: Cayuse Creek (43.8651, –122.1856); Chalk Creek (43.8750, –122.4044); Christy Creek (43.9079, –122.3796); Fisher Creek (43.8999, –122.1551); North Fork Middle Fork Willamette River (43.8671, –122.8711).

(vi) Middle Fork Willamette/Lookout Point Watershed 1709000107. Outlet(s) = Middle Fork Willamette River (Lat 43.9495, Long –122.8471) upstream to endpoint(s) in: Anthony Creek (43.8799, –122.8498); Bannister Creek (43.8743, –122.4389); Buckhead Creek (43.7735, –122.5253); Burnt Bridge Creek (43.7900, –122.5334); Carr Creek (43.8558, –122.8177); Deception Creek (43.7551, –122.5541); East Fork Minnow Creek (43.8902, –122.7342); Goodman Creek (43.8309, –122.6940); Gosage Creek (43.8446, –122.8129); Guiley Creek (43.8419, –122.7982); Hazel Creek (43.8561, –122.6891); Lost Creek (43.8427, –122.7781); Middle Creek (43.8624, –122.8323); Middle Fork Willamette River (43.7589, –122.5242); Minnow Creek (43.8872, –122.7458); North Creek (43.8247, –122.6236); Rolling Riffle Creek (43.8750, –122.7050); School Creek (43.6516, –122.6909); South Creek (43.8238, –122.6216); Unnamed (43.8329, –122.6643); Unnamed (43.8433, –122.6950).

(vii) North Fork Willamette Watershed 1709000108. Outlet(s) = North Fork Willamette River (Lat 44.0226, Long –123.0169) upstream to endpoint(s) in: Hills Creek (43.9945, –122.8651); Middle Fork Willamette River (43.9495, –122.8471); Mill Race (44.0407, –123.0004); Pudding Creek (44.0173, –122.9501); Rattlesnake Creek (44.0352, –122.8608); Wallace Creek (44.0074, –122.8981).

(ix) Lower Middle Fork Willamette Watershed 1709000109. Outlet(s) = Willamette River (Lat 44.0226, Long –123.0169) upstream to endpoint(s) in: Alder Creek (44.0000, –122.4993); Fall Creek (43.9922, –122.3758); Gold Creek (43.9772, –122.4051); Logan Creek (43.9447, –122.4504); Nelson Creek (43.9285, –122.6850); Portland Creek (43.9331, –122.4655); Sunshine Creek (43.9943, –122.4672); Winberry Creek (43.9142, –122.6890).

(x) North Fork Willamette River Watershed 1709000110. Outlet(s) = North Fork Willamette River (Lat 43.7589, Long –122.5242) upstream to endpoint(s) in: Cayuse Creek (43.8651, –122.1856); Chalk Creek (43.8750, –122.4044); Christy Creek (43.9079, –122.3796); Fisher Creek (43.8999, –122.1551); North Fork Middle Fork Willamette River (43.8671, –122.8711).

(xi) Middle Fork Willamette/Lookout Point Watershed 1709000111. Outlet(s) = Middle Fork Willamette River (Lat 43.9495, Long –122.8471) upstream to endpoint(s) in: Anthony Creek (43.8799, –122.8498); Bannister Creek (43.8743, –122.4389); Buckhead Creek (43.7735, –122.5253); Burnt Bridge Creek (43.7900, –122.5334); Carr Creek (43.8558, –122.8177); Deception Creek (43.7551, –122.5541); East Fork Minnow Creek (43.8902, –122.7342); Goodman Creek (43.8309, –122.6940); Gosage Creek (43.8446, –122.8129); Guiley Creek (43.8419, –122.7982); Hazel Creek (43.8561, –122.6891); Lost Creek (43.8427, –122.7781); Middle Creek (43.8624, –122.8323); Middle Fork Willamette River (43.7589, –122.5242); Minnow Creek (43.8872, –122.7458); North Creek (43.8247, –122.6236); Rolling Riffle Creek (43.8750, –122.7050); School Creek (43.6516, –122.6909); South Creek (43.8238, –122.6216); Unnamed (43.8329, –122.6643); Unnamed (43.8433, –122.6950).

(ii) Calapooia River Watershed 1709000303. Outlet(s) = Calapooia River (Lat 44.5088, Long –123.1101) upstream to endpoint(s) in: Calapooia River (44.2354, –122.4138).
(iii) Oak Creek Watershed 1709000304. Outlet(s) = Willamette River (Lat 44.7504, Long –123.1421) upstream to endpoint(s) in: Calapooia River (44.5088, –123.1101); Willamette River (44.6400, –123.1096).

(iv) Marys River Watershed 1709000305. Outlet(s) = Marys River (Lat 44.5566, Long –123.2597) upstream to endpoint(s) in: Beaver Creek (44.4554, –123.3748); Marys River (44.5373, –123.3762); Oak Creek (44.5636, –123.2932).

(v) Luckiamute River Watershed 1709000306. Outlet(s) = Luckiamute River (Lat 44.7561, Long –123.1468) upstream to endpoint(s) in: Soap Creek (44.7317, –123.2151); Unnamed (44.7661, –123.2011).

(3) McKenzie Subbasin 17090004—
(i) Upper McKenzie River Watershed 1709000401. Outlet(s) = McKenzie River (Lat 44.1721, Long –122.2058) upstream to endpoint(s) in: Deer Creek (44.2677, –122.0712); Frissell Creek (44.2288, –122.0699); Lost Creek (44.1729, –122.0401); McKenzie River (44.3109, –122.0199); Scott Creek (44.1981, –122.0195); Smith River (44.0602, –122.0506).

(ii) Horse Creek Watershed 1709000402. Outlet(s) = West Fork Horse Creek (Lat 44.1721, Long –122.2058) upstream to endpoint(s) in: Cedar Swamp Creek (44.1563, –122.1132); Horse Creek (44.0902, –122.0087); King Swamp Creek (44.1635, –122.1693); Separation Creek (44.1274, –122.0077).

(iii) South Fork McKenzie River Watershed 1709000403. Outlet(s) = South Fork McKenzie River (Lat 44.1596, Long –122.2946) upstream to endpoint(s) in: Augusta Creek (44.9562, –122.1632); Cougar Creek (44.1397, –122.2437); East Fork South Fork McKenzie (44.0850, –122.0997); Elk Creek (44.9455, –122.0384); French Pete Creek (44.0402, –122.1854); Hardy Creek (44.0345, –122.2047); Rebel Creek (44.0167, –122.1505); Roaring River (43.9479, –122.0811); South Fork McKenzie River (43.9333, –122.9995).

(iv) McKenzie River/Quartz Creek Watershed 1709000404. Outlet(s) = McKenzie River (Lat 44.1112, Long –122.4209) upstream to endpoint(s) in: Cone Creek (44.1528, –122.3649); McKenzie River (44.1721, –122.2058); Quartz Creek (44.0188, –122.3015); Wycoff Creek (44.0846, –122.3143).

(v) Lower McKenzie River Watershed 1709000405. Outlet(s) = McKenzie River (Lat 44.1255, Long –123.1059) upstream to endpoint(s) in: Boulder Creek (44.0601, –122.7825); Camp Creek (44.0896, –122.8544); Deer Creek (44.0895, –122.4294); Ennis Creek (44.0804, –122.3754); Flinn Creek (44.1471, –122.5972); Forest Creek (44.0861, –122.7153); Haagen Creek (44.0860, –122.7126); Hatchery Creek (44.1449, –122.6056); Holden Creek (44.1056, –122.7061); Indian Creek (44.1526, –122.5816); Lane Creek (44.0928, –122.7323); Marten Creek (44.1075, –122.5046); McKenzie River (44.1112, –122.4209); North Fork Gate Creek (44.1718, –122.5248); Osborn Creek (44.0565, –122.7880); Ritchie Creek (44.1028, –122.6567); South Fork Gate Creek (44.1667, –122.4980); Taylor Creek (44.0783, –122.7481); Toms Creek (44.1316, –122.5586); Unnamed (44.0646, –122.9399); Walterville Canal (44.0765, –122.7537).

(4) North Santiam Subbasin 17090005—
(i) Middle North Santiam River Watershed 1709000504. Outlet(s) = North Santiam River (Lat 44.7852, Long –122.6079) upstream to endpoint(s) in: Mad Creek (44.7453, –122.3989); North Santiam River (44.7510, –122.2821); Rock Creek (44.7677, –122.4171); Snake Creek (44.7477, –122.4905).

(ii) Little North Santiam River Watershed 1709000505. Outlet(s) = Little North Santiam River (Lat 44.7510, Long –122.3821) upstream to endpoint(s) in: Elkhorn Creek (44.8134, –122.3561); Little Sinker Creek (44.8191, –122.4111); Sinker Creek (44.8166, –122.4174).

(iii) Lower North Santiam River Watershed 1709000506. Outlet(s) = Santiam River (Lat 44.7504, Long –123.1421) upstream to endpoint(s) in: Bear Branch (44.7559, –122.7974); Cold Creek (44.7522, –122.8848); Morgan Creek (44.7590, –123.0376); North Santiam River (44.7852, –122.6079); Salem Ditch (44.8000, –122.8120); Smallman Creek (44.7300, –122.3834); Sitter Creek (44.7930, –122.6177); Trask Creek (44.7725, –122.6152); Unnamed (44.7672, –123.0617); Valentine Creek (44.8013, –122.7176).

(5) South Santiam Subbasin 17090006—
(i) Hamilton Creek/South Santiam River Watershed 1709000601. Outlet(s) = South Santiam River (Lat 44.6869, Long –123.0032) upstream to endpoint(s) in: Hamilton Creek (44.5037, –122.4905).
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(ii) Crabtree Creek Watershed 1709000602. Outlet(s) = Crabtree Creek (Lat 44.6756, Long –122.9557) upstream to endpoint(s) in: Bald Peter Creek (44.5682, –122.5825); Beaver Creek (44.6271, –122.8504); Crabtree Creek (44.6058, –122.5405); Roaring River (44.6251, –122.7283); South Fork Crabtree Creek (44.5741, –122.5744).

(iii) Thomas Creek Watershed 1709000603. Outlet(s) = Thomas Creek (Lat 44.6778, Long –122.9654) upstream to endpoint(s) in: Jordan Creek (44.7531, –122.6595); Mill Creek (44.7055, –122.7842); Neal Creek (44.7101, –122.6912); South Fork Neal Creek (44.7033, –122.7078); Thomas Creek (44.6776, –122.4650).

(iv) South Santiam River Watershed 1709000606. Outlet(s) = South Santiam River (Lat 44.3977, Long –122.4491) upstream to endpoint(s) in: Falls Creek (44.4007, –122.3828); South Santiam River (44.3890, –122.2610).

(v) South Santiam River/Foster Reservoir Watershed 1709000607. Outlet(s) = South Santiam River (Lat 44.4163, Long –122.6693) upstream to endpoint(s) in: Jordan Creek (44.7531, –122.6595); Mill Creek (44.7055, –122.7842); Neal Creek (44.7101, –122.6912); South Fork Neal Creek (44.7033, –122.7078); Thomas Creek (44.6776, –122.4650).

(vi) Wiley Creek Watershed 1709000608. Outlet(s) = Wiley Creek (Lat 44.4140, Long –122.6752) upstream to endpoint(s) in: Little Wiley Creek (44.3673, –122.5916); Wiley Creek (44.3488, –122.5900).

(vii) Middle Willamette Subbasin 17090007—(i) Mill Creek/Willamette River Watershed 1709000701. Outlet(s) = Mill Creek (Lat 44.9529, Long –123.0381) upstream to endpoint(s) in: Mill Creek (44.8255, –122.8226).

(ii) Rickreall Creek Watershed 1709000702. Outlet(s) = Willamette River (Lat 44.9288, Long –122.1124) upstream to endpoint(s) in: Willamette River (44.7504, –123.1421).

(iii) Willamette River/Chehalem Creek Watershed 1709000703. Outlet(s) = Willamette River (Lat 45.2552, Long –122.8906) upstream to endpoint(s) in: Willamette River (44.9288, –123.1124).

(iv) Abernethy Creek Watershed 1709000704. Outlet(s) = Willamette River (Lat 45.3719, Long –122.6071) upstream to endpoint(s) in: Willamette River (45.2552, –122.8806).

(7) Molalla/Pudding Subbasin 17090009—(i) Butte Creek/Pudding River Watershed 1709000902. Outlet(s) = Pudding River (Lat 45.1907, Long –122.7527) upstream to endpoint(s) in: Pudding River (45.0740, –122.8525).

(ii) Senecal Creek/Mill Creek Watershed 1709000904. Outlet(s) = Pudding River (Lat 45.2843, Long –122.7149) upstream to endpoint(s) in: Pudding River (45.1196, –122.1957).

(iii) Upper Molalla River Watershed 1709000906. Outlet(s) = Molalla River (Lat 44.9124, –122.3238); North Fork Molalla River (45.0872, –122.3849); Table Rock Fork Molalla River (44.9876, –122.2741).

(iv) Lower Molalla River Watershed 1709000907. Outlet(s) = Molalla River (Lat 45.2579, Long –122.2141) upstream to endpoint(s) in: Gribble Creek (45.2146, –122.6988); Milk Creek (45.2278, –122.5670); Molalla River (45.1196, –122.5342).

(8) Clackamas Subbasin 17090011—(i) Collawash River Watershed 1709001101. Outlet(s) = Collawash River (Lat 45.0321, Long –122.0600) upstream to endpoint(s) in: Blister Creek (44.9594, –122.1590); Collawash River (44.9507, –122.0350); Hot Springs Fk Collawash River (44.9385, –122.1721); Nohorn Creek (44.9442, –122.1957).

(ii) Upper Clackamas River 1709001102. Outlet(s) = Clackamas River (Lat 45.0321, Long –122.0600) upstream to endpoint(s) in: Cabin Creek (45.0087, –121.8800); Cub Creek (44.8969, –121.8976); Granite Creek (45.0184, –121.9885); Hunter Creek (44.9068, –121.8929); Last Creek (44.9715, –121.8547); Lowe Creek (44.9487, –121.8983); Pot Creek (45.0149, –121.9084); Unnamed (44.9469, –121.8691); Wall Creek (44.8555, –121.8944).

(iii) Oak Grove Fork Clackamas River Watershed 1709001103. Outlet(s) = Oak Grove Fork Clackamas River (Lat 45.0746, Long –122.0520) upstream to endpoint(s) in: Oak Grove Fork Clackamas River (45.0823, –121.9859).

(iv) Middle Clackamas River Watershed 1709001104. Outlet(s) = Clackamas River
(Lat 45.2440, Long –122.2798) upstream to endpoint(s) in: Clackamas River (45.0321, –122.0600); Fish Creek (45.0962, –122.1683); North Fork Clackamas River (45.2361, –122.2186); Roaring River (45.1773, –122.0650); South Fork Clackamas River (45.1839, –122.2257); Tag Creek (45.0607, –122.0512); Tar Creek (45.0494, –122.0570).

(v) Lower Clackamas River Watershed 1709001106. Outlet(s) = Clackamas River (Lat 45.2440, Long –122.2798); Clear Creek (45.3568, –122.4781); Deep Creek (45.3937, –122.4096); Richardson Creek (45.3971, –122.4712).

(9) Lower Willamette/Columbia River Corridor—Lower Willamette/Columbia River Corridor. Outlet(s) = Columbia River (Lat 46.2485, Long –124.0782) upstream to endpoint(s) in: Willamette River (45.3719, –122.6071).

(10) Maps of critical habitat for the Upper Willamette River chinook salmon ESU follow:
§ 226.212 50 CFR Ch. II (10–1–10 Edition)

Final Critical Habitat for the Upper Willamette River Chinook Salmon ESU

Legend

- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 06 = Watershed code - last 2 digits of 17090005xx

Area of Detail

WASHINGTON
OREGON
IDAHO

NORTH SANTIAM SUBBASIN
17090005

Oregon
Final Critical Habitat for the
Upper Willamette River Chinook Salmon ESU
MIDDLE WILLAMETTE SUBBASIN
17090007

Legend

Cities / Towns
Critical Habitat
Subbasin Boundary
Watershed Boundaries

01 - 04 = Watershed code - last 2 digits of 17090007xx

Area of Detail
(l) Upper Columbia River Spring Chinook Salmon (Oncorhynchus tshawytscha). Critical habitat is to include the areas defined in the following subbasins:

(1) Chief Joseph Subbasin 17020005—Upper Columbia/Swamp Creek Watershed 1702000505. Outlet(s) = Columbia River (Lat 47.8077, Long -119.9754) upstream to endpoint(s) in: Columbia River (48.0502, -119.8942).
§ 226.212 50 CFR Ch. II (10–1–10 Edition)

(2) Methow Subbasin 17020008—(i) Lost River Watershed 1702000801. Outlet(s) = Lost River Gorge (Lat 48.6501, Long −120.5103) upstream to endpoint(s) in: Eureka Creek (48.7020, −120.4986); Lost River Gorge (48.7324, −120.4475).

(ii) Upper Methow River Watershed 1702000802. Outlet(s) = Methow River (Lat 48.6015, Long −120.4376) upstream to endpoint(s) in: Eureka Creek (48.7020, −120.4986); Lost River Gorge (48.7324, −120.4475).

(iii) Upper Chewuch River Watershed 1702000803. Outlet(s) = Chewuch River (Lat 48.7501, Long −120.1356) upstream to endpoint(s) in: Andrews Creek (48.7855, −120.1087); Chewuch River (48.8014, −120.0288); Dog Creek (48.8218, −120.0151); Lake Creek (48.8258, −120.1996); Twentymile Creek (48.8109, −120.0199).

(iv) Lower Chewuch River Watershed 1702000804. Outlet(s) = Chewuch River (Lat 48.4751, Long −120.1790) upstream to endpoint(s) in: Boulder Creek (48.5797, −120.1356); Chewuch River (48.7501, −120.1356); Cub Creek (48.5513, −120.1899); Eightmile Creek (48.6071, −120.1775); Lake Creek (48.4926, −120.1629); Twentymile Creek (48.7029, −120.1117). (v) Twisp River Watershed 1702000805. Outlet(s) = Twisp River (Lat 48.3682, Long −120.1767) upstream to endpoint(s) in: Buttermilk Creek (48.3528, −120.3239); Eagle Creek (48.3584, −120.3914); North Creek (48.4597, −120.5595); Poorman Creek (48.3674, −120.1997); South Creek (48.4330, −120.5431); Twisp River (48.4615, −120.5764); War Creek (48.3649, −120.4030).

(vi) Middle Methow River Watershed 1702000806. Outlet(s) = Methow River (Lat 48.2495, Long −120.1156) upstream to endpoint(s) in: Bear Creek (48.4527, −120.1423); Goat Creek (48.5888, −120.3705); Little Boulder Creek (48.5700, −120.3797); Methow River (48.6015, −120.4376); Wolf Creek (48.4776, −120.2840); Unnamed (48.4896, −120.2116).

(3) Upper Columbia/Entiat Subbasin 17020010—(i) Entiat River Watershed 1702001001. Outlet(s) = Entiat River (Lat 47.6585, Long −120.2194) upstream to endpoint(s) in: Entiat River (47.9855, −120.5749); Hornet Creek (47.7714, −120.4403); Mad River (47.7804, −120.4403); Tullicum Creek (47.7295, −120.4304).

(ii) Lake Entiat Watershed 1702001002. Outlet(s) = Columbia River (Lat 47.3438, Long −120.0929) upstream to endpoint(s) in: Columbia River (47.8077, −119.9754).

(4) Wenatchee Subbasin 17020011—(i) White River Watershed 1702001101. Outlet(s) = White River (Lat 47.8088, Long −120.6589) upstream to endpoint(s) in: Little Wenatchee River (47.8526, −120.9541); Napeequa River (47.9285, −120.8829); Panther Creek (47.9355, −120.9482); White River (47.9355, −120.9380).

(ii) Chiwawa River Watershed 1702001102. Outlet(s) = Chiwawa River (Lat 47.7880, Long −120.6589) upstream to endpoint(s) in: Alder Creek (47.8483, −120.5687); Chikamin River (47.9785, −120.7194); Chiwawa River (48.1048, −120.8773); Goose Creek (47.8392, −120.6461); Minnow Creek (47.9137, −120.7182); Phelps Creek (48.0794, −120.8400); Unnamed (48.0396, −120.7615).

(iii) Nason/Tumwater Watershed 1702001103. Outlet(s) = Wenatchee River (Lat 47.5801, Long −120.6660) upstream to endpoint(s) in: Chiwaukum Creek (47.7039, −120.7791); Nason Creek (47.7769, −120.9103); Skinney Creek (47.6894, −120.7351).

(iv) Icicle/Chumstick Watershed 1702001104. Outlet(s) = Wenatchee River (Lat 47.5575, Long −120.5729) upstream to endpoint(s) in: Wenatchee River (47.5801, −120.6660).

(v) Lower Wenatchee River Watershed 1702001105. Outlet(s) = Wenatchee River (Lat 47.4553, Long −120.3185) upstream to endpoint(s) in: Wenatchee River (47.5575, −120.5729).

(vi) Columbia River Corridor—Columbia River Corridor Outlet(s) = Columbia River (Lat 46.2495, Long −120.0762) upstream to endpoint(s) in: Columbia River (47.3438, −120.0929).

(5) Maps of critical habitat for the Upper Columbia River Spring-run chinook salmon ESU follow:
Final Critical Habitat for the Upper Columbia River Spring-run Chinook Salmon ESU

Legend
- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 07 = Watershed code - last 2 digits of 17020008xx

Area of Detail
Final Critical Habitat for the Upper Columbia River Spring-run Chinook Salmon ESU

UPPER COLUMBIA / ENTIAT SUBBASIN 17020010

Legend

Cities / Towns
Critical Habitat
Water Body
Subbasin Boundary
Watershed Boundaries

01 - 04 = Watershed code - last 2 digits of 17020010xx

This lower segment of the Columbia River is designated Critical Habitat.
See the Migration Corridor map.
(m) **Hood Canal Summer-run Chum Salmon (Oncorhynchus keta).** Critical habitat is designated to include the areas defined in the following subbasins:

1. Skokomoish Subbasin 17110017—Skokomish River 1711001701. Outlet(s) = Skokomish River (Lat 47.3543, Long –123.1122), Unnamed (47.3420, –123.1092), Unnamed (47.3471, –123.1275), Unnamed (47.3509, –123.1101) upstream to endpoint(s) in: Mussel Sheel Creek (47.3099, –123.1990); Skokomish (47.3199, –123.2198); Unnamed (47.3209, –123.2211).
(2) Hood Canal Subbasin 17110018—(i) Lower West Hood Canal Frontal Watershed 1711001802. Outlet(s)= Eagle Creek (Lat 47.4849, Long –123.0766); Finch Creek (47.4067, –123.1377); Fulton Creek (47.6163, –122.9736); Jorsted Creek (47.5363, –123.0489); Lilliwaup Creek (47.4689, –123.1136); Unnamed (47.4576, –123.1117) upstream to endpoint(s) in: Eagle Creek (47.4905, –123.0830); Finch Creek (47.4076, –123.1356); Fulton Creek (47.6275, –122.9805); Jorsted Creek (47.5246, –123.0549); Lilliwaup Creek (47.4704, –123.1166); Unnamed (47.4585, –123.1186).

(ii) Hamma Hamma River Watershed 1711001803. Outlet(s) = Hamma Hamma River (Lat 47.5471, Long –123.0440) upstream to endpoint(s) in: Hamma Hamma River (47.5547, –123.0623); John Creek (47.5369, –123.0619).

(iii) Duckabush River Watershed 1711001804. Outlet(s) = Duckabush River (Lat 47.6502, Long –122.9348) upstream to endpoint(s) in: Duckabush River (47.6654, –122.9728).

(iv) Dosewallips River Watershed 1711001805. Outlet(s) = Dosewallips River (Lat 47.6880, Long –122.8949) upstream to endpoint(s) in: Dosewallips River (47.7157, –122.9396).

(v) Big Quilcene River Watershed 1711001806. Outlet(s) = Big Quilcene River (Lat 47.8188, Long –122.9049) upstream to endpoint(s) in: Big Quilcene River (47.8102, –122.9119).

(vi) Upper West Hood Canal Frontal Watershed 1711001807. Outlet(s)= Little Quilcene River (Lat 47.8266; Long –122.8608) upstream to endpoint(s) in: Little Quilcene River (47.8374, –122.8954).

(vii) West Kitsap Watershed 1711001808. Outlet(s) = Anderson Creek (Lat 47.5670, Long –122.9664); Big Beef Creek (47.6521, –122.7823); Dewatto River (47.4937, –122.9914); East Fork Union River (47.5056, –122.7897); Hazel Creek (47.5170, –122.7945); Little Anderson Creek (47.6606, –122.7543); North East Fork Union River (47.4954, –122.7819); Tahuya River (47.4510, –122.9597); Union River (47.5273, –122.7846); Unnamed (47.4492, –122.9229); Unnamed (47.4527, –122.8294); Unnamed (47.4553, –122.8301); Unnamed (47.4594, –122.8396); Unnamed (47.4700, –122.7559); Unnamed (47.6642, –122.7534).

(3) Puget Sound Subbasin 17110019—Port Ludlow/Chimacum Creek Watershed 1711001908. Outlet(s)= Chimacum Creek (Lat 48.0507, Long –122.7832) upstream to endpoint(s) in: Chimacum Creek (47.9743, –122.7784).

(4) Dungeness/Elwha Subbasin 17110020—(i) Discovery Bay Watershed 1711002001. Outlet(s) = Salmon Creek (Lat 47.9885, Long –122.8879); Snow Creek (47.9900, –122.8827) upstream to endpoint(s) in: Salmon Creek (47.9775, –122.9191), Snow Creek (47.9638, –122.8827).

(ii) Sequim Bay Watershed 1711002002. Outlet(s) = Jimmycomelately Creek (Lat 48.0235, Long –123.0059) upstream to endpoint(s) in: Jimmycomelately Creek (48.0125, –123.0026).

(iii) Dungeness River Watershed 1711002003. Outlet(s) = Dungeness River (Lat 48.1506, Long –123.1311); Unnamed (48.1537, –123.1267) upstream to endpoint(s) in: Dungeness River (48.0258, –123.1358); Matriotti Creek (48.1369, –123.1488); Unnamed (48.1167, –123.1403); Unnamed (48.1514, –123.1216).

(5) Nearshore Marine Areas—Except as provided in paragraph (e) of this section, critical habitat includes all nearshore marine areas (including areas adjacent to islands) of Hood Canal and the Strait of Juan de Fuca (to Dungeness Bay) from the line of extreme high tide out to a depth of 30 meters.

(6) Maps of critical habitat for the Hood Canal summer-run chum salmon ESU follow:
Final Critical Habitat for the
Hood Canal Summer-run Chum Salmon ESU

SKOKOMISH SUBBASIN
17110017

Legend
- Cities / Towns
- Shoreline
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 = Watershed code - last 2 digits of 17110017xx

Area of Detail

WASHINGTON
OREGON
IDAHO

0 2.5 5 10 Miles
0 2 4 6 8 12 15 Kilometers
§ 226.212

Final Critical Habitat for the Hood Canal Summer-run Chum Salmon ESU

HOOD CANAL SUBBASIN 17110018

Legend
- Cities / Towns
- Shoreline
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

02 - 08 = Watershed code - last 2 digits of 17110018xx

Area of Detail

WASHINGTON
OREGON
IDAHO

526
Final Critical Habitat for the Hood Canal Summer-run Chum Salmon ESU

PUGET SOUND / KITSAP SUBBASIN
17110019

Legend

- Cities / Towns
- Shoreline
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 06, 08 = Watershed code - last 2 digits of 17110019xx

Only the occupied watershed in this subbasin is shown.
(n) Columbia River Chum Salmon (Oncorhynchus keta). Critical habitat is designated to include the areas defined in the following subbasins:

(1) Middle Columbia/Hood Subbasin 17070105—(i) White Salmon River Watershed 1707010509. Outlet(s) = White Salmon River (Lat 45.7267, Long −121.5209) upstream to endpoint(s) in: White Salmon River (45.7677, −121.5374).

(ii) Middle Columbia/Grays Creek Watershed 1707010512. Outlet(s) = Columbia
River (Lat 45.7074, Long –121.7965) upstream to endpoint(s) in: Columbia River (45.7267, –121.5209).

(iii) Middle Columbia/Eagle Creek 1707010513. Outlet(s) = Columbia River (Lat 45.6453, Long –121.995) upstream to endpoint(s) in: Columbia River (45.7074, –121.7965).

(2) Lower Columbia/Sandy Subbasin 17080001—(i) Washougal River Watershed 1708000106. Outlet(s) = Columbia River (Lat 45.6453, Long –121.9395) upstream to endpoint(s) in: Columbia River (45.7074, –121.7965).

(ii) Columbia Gorge Tributaries Watershed 1708000107. Outlet(s) = Columbia River (Lat 45.5709, Long –122.4020) upstream to endpoint(s) in: Columbia River (45.6453, –121.9395); Duncan Creek (45.6136, –122.0539); Gibbons Creek (45.5710, –122.3147); Greenleaf Creek (45.6548, –121.9569); Hamilton Creek (45.6535, –121.9879); Hardy Creek (45.6354, –121.9987); Indian Mary Creek (45.5812, –122.4077); Washougal River (45.5795, –122.4023) upstream to endpoint(s) in: Lacamas Creek (45.5972, –122.3933); Little Washougal River (45.6210, –122.3750); Unnamed (45.5861, –122.4083); Washougal River (45.6232, –122.4077).

(iii) Salmon Creek Watershed 1708000109. Outlet(s) = Lake River (Lat 45.8437, Long –122.7800); Love Creek (45.5976, –122.5443); Unnamed (45.5976, –122.5443); Unnamed (45.5976, –122.5443) upstream to endpoint(s) in: Love Creek (45.5981, –122.5444); Salmon Creek (45.7089, –122.6490); Unnamed (45.5873, –122.5015); Unnamed (45.5924, –122.5242); Unnamed (45.5955, –122.5930).

(3) Lewis Subbasin 17080002—(i) East Fork Lewis River Watershed 1708000205. Outlet(s) = East Fork Lewis River (Lat 45.8664, Long –122.7189); Gee Creek (45.8462, –122.7803) upstream to endpoint(s) in: Breese Creek (45.8622, –122.6667); East Fork Lewis River (45.8090, –122.6089);Unnamed (45.8111, –122.5860); Unnamed (45.8149, –122.5654); Unnamed (45.8201, –122.5991); Unnamed (45.8214, –122.6380); Unnamed (45.8280, –122.6431); Unnamed (45.8292, –122.6040); Unnamed (45.8389, –122.6456); Unnamed (45.8439, –122.6478); Unnamed (45.8439, –122.6655).

(ii) Lower Lewis River Watershed 1708000206. Outlet(s) = Lewis River (Lat 45.8519, Long –122.7860) upstream to endpoint(s) in: Cedar Creek (45.9383, –122.3818); Colvin Creek (45.9400, –122.6081); Houghton Creek (45.9395, –122.6478); Johnson Creek (45.9385, –122.6261); Lewis River (45.9570, –122.5550); Ross Creek (45.9340, –122.7076).


(ii) Germany/Abernathy Watershed 1708000304. Outlet(s) = Abernethy Creek (Lat 46.2263, –123.1467); Germany Creek (46.1908, Long –123.1661); Germany Creek (46.1888, –123.1745) upstream to endpoint(s) in: Abernethy Creek (46.2263, –123.1467); Germany Creek (46.2221, –123.1353); Mill Creek (46.1922, –123.1634).

(iii) Skamokawa/Elochoman Watershed 1708000305. Outlet(s) = Elochoman River (Lat 46.2629, Long –123.4039); Jim Crow Creek (46.2662, –123.5511); Skamokawa Creek (46.2677, –123.4562); Unnamed (46.2243, –123.3975) upstream to endpoint(s) in: Beaver Creek (46.2262, –123.3239); Brooks Slough (46.2502, –123.4094); Clear Creek (46.2611, –123.2996); Duck Creek (46.2517, –123.3159); Eggman Creek (46.3248, –123.4951); Elochoman River (46.2615, –123.2965); Indian Jack Slough (46.2371, –123.3955); Jim Crow Creek (46.2691, –123.5535); Kelly Creek (46.3109, –123.4797); Left Fork Skamokawa Creek (46.3331, –123.4610); Quarry Creek (46.3292, –123.4214); Skamokawa Creek (46.3277, –123.4296); Unnamed (46.3292, –123.4296).

Long \(-122.9337\) upstream to endpoint(s) in: Bear Creek (46.4544, \(-122.9187\)); Blue Creek (46.4885, \(-122.7253\)); Coon Creek (46.4272, \(-122.9109\)); Cowlitz River (46.5033, \(-122.5871\)); Lacamas Creek (46.5564, \(-122.6878\)); Mill Creek (46.5025, \(-122.8017\)); Salmon Creek (46.1309, \(-122.8106\)); Skook Creek (46.4708, \(-122.7594\)); Unnamed (46.4191, \(-122.8205\)); Unnamed (46.4205, \(-122.8662\)); Unnamed (46.4280, \(-122.8380\)); Unnamed (46.4707, \(-122.7713\)); Unnamed (46.4885, \(-122.8068\)); Unnamed (46.5076, \(-122.6675\)); Unnamed (46.5311, \(-122.8194\)); Unnamed (46.5432, \(-122.7466\)).

(ii) South Fork Toutle River Watershed 1708000506. Outlet(s) = South Fork Toutle River (Lat 46.3282, Long \(-122.7215\)) upstream to endpoint(s) in: Johnson Creek (46.3102, \(-122.6444\)); South Fork Toutle River (46.2817, \(-122.6420\)).

(iii) East Willapa Watershed 1708000507. Outlet(s) = Cowlitz River (Lat 46.2660, Long \(-122.9154\)) upstream to endpoint(s) in: Arkansas Creek (46.3032, \(-122.9801\)); Cowlitz River (46.3012, \(-122.6444\)); South Fork Toutle River (46.2817, \(-122.6420\)).

(iv) Coweeeman Watershed 1708000508. Outlet(s) = Coweeeman River (Lat 46.0977, Long \(-122.9141\)); Owl Creek (46.0768, \(-122.8679\)) upstream to endpoint(s) in: Baird Creek (46.1789, \(-122.5822\)); Butler Creek (46.1491, \(-123.5170\)); Cowlitz River (46.1309, \(-122.8106\)); Goble Creek (46.1074, \(-122.7068\)); Leckler Creek (46.2164, \(-122.9325\)); Mulholland Creek (46.2004, \(-122.6484\)); Nineteen Creek (46.1593, \(-122.6095\)); North Fork Goble Creek (46.1208, \(-122.7691\)); Owl Creek (46.0914, \(-122.8692\)); Salmon Creek (46.2547, \(-122.8839\)); Sandy Bend Creek (46.2318, \(-122.9143\)); Skipper Creek (46.1625, \(-122.5915\)); Turner Creek (46.1167, \(-122.8150\)); Unnamed (46.0719, \(-122.8607\)); Unnamed (46.0897, \(-122.7355\)); Unnamed (46.1295, \(-122.8930\)); Unnamed (46.1368, \(-122.8034\)); Unnamed (46.1414, \(-122.5816\)); Unnamed (46.1478, \(-122.8649\)); Unnamed (46.1516, \(-122.8749\)); Unnamed (46.1558, \(-122.7803\)); Unnamed (46.1727, \(-122.7716\)); Unnamed (46.1753, \(-122.7757\)); Unnamed (46.1940, \(-122.7068\)); Unnamed (46.2051, \(-122.6914\)); Unnamed (46.2416, \(-122.8869\)).

(6) Lower Columbia Subbasin

Lower Columbia Subbasin 17080006—

(i) Big Creek Watershed 1708000602. Outlet(s) = Big Creek (Lat 46.1476, Long \(-123.5943\)) upstream to endpoint(s) in: Big Creek (46.1746, \(-123.5820\)); Little Creek (46.1519, \(-123.6007\)).

(ii) Grays Bay Watershed 1708000603. Outlet(s) = Deep River (Lat 46.3035, Long \(-123.7092\)); Grays River (46.3035, \(-123.6867\)); Unnamed (46.2419, \(-123.8842\)); Unnamed (46.3026, \(-123.9702\)) upstream to endpoint(s) in: Alder Creek (46.2417, \(-123.4621\)); Blaney Creek (46.3957, \(-123.4607\)); Campbell Creek (46.3435, \(-123.7087\)); Chinook River (46.2685, \(-123.9233\)); Deep River (46.3480, \(-123.6885\)); East Fork Grays River (46.4424, \(-123.4120\)); Fossil Creek (46.3612, \(-123.3612\)); Grays River (46.4628, \(-123.4602\)); Johnson Creek (46.4512, \(-123.5774\)); Kessel Creek (46.3343, \(-123.5850\)); King Creek (46.3444, \(-123.5774\)); Lassila Creek (46.3433, \(-123.7108\)); Mitchell Creek (46.4512, \(-123.4269\)); South Fork Grays River (46.3836, \(-123.4592\)); Thadbar Creek (46.3331, \(-123.6092\)); Unnamed (46.2502, \(-123.8833\)); Unnamed (46.2847, \(-123.9402\)); Unnamed (46.3005, \(-123.5228\)); Unnamed (46.3938, \(-123.5454\)); Unnamed (46.4328, \(-123.4444\)); West Fork Grays River (46.3942, \(-123.5611\)).

(7) Lower Columbia River Corridor—

Lower Columbia River Corridor 1708000604. Outlet(s) = Columbia River (Lat 45.5709, Long \(-122.4020\)) upstream to endpoint(s) in: Columbia River (45.5709, \(-122.4020\)).

(8) Maps of critical habitat for the Columbia River chum salmon ESU follow:
Final Critical Habitat for the Columbia River Chum Salmon ESU

LOWER COLUMBIA / CLATSKANIE SUBBASIN
17080003

Legend
- Cities / Towns
- State Boundary
- Critical Habitat
- Water Bodies
- Subbasin Boundary
- Watershed Boundaries

01 - 06 = Watershed code - last 2 digits of 17080003xx
Final Critical Habitat for the Columbia River Chum Salmon ESU

Legend
- Cities / Towns
- State Boundary
- Critical Habitat
- Water Bodies
- Subbasin Boundary
- Watershed Boundaries

01 - 03 = Watershed code - last 2 digits of 17080006xx
National Marine Fisheries Service/NOAA, Commerce § 226.212

Rearing / Migration Corridor for the Columbia River Chum Salmon ESU

Legend

Cities / Towns

State Boundary

Rearing / Migration Corridor

Columbia River Chum ESU

Lower Columbia River Corridor

The lower Columbia River corridor is that segment from the mouth of the Columbia River at the Pacific Ocean upstream to a line connecting the confluences of the Sandy River (Oregon) and Washougal River (Washington).

(o) Ozette Lake Sockeye Salmon (Oncorhynchus nerka). Critical habitat is designated to include the areas defined in the following subbasin:

1. Hoh/Quillayute Subbasin 17100101—(i) Ozette Lake Watershed 17100102. Outlet(s) = Ozette River (Lat 48.1818, Long –124.7076) upstream to endpoints in: Big River (48.1844, –124.4987); Coal Creek (48.1631, –124.6612); East Branch Umbrella Creek (48.1835, –124.5659); North Fork Crooked Creek
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(ii) [Reserved]

(2) A map of critical habitat for the Ozette Lake sockeye salmon ESU follows:

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Final Critical Habitat for the Ozette Lake Sockeye Salmon ESU

HOH / QUILLAYUTE SUBBASIN

17100101

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Legend

Cities / Towns

Critical Habitat

Subbasin Boundary

Watershed Boundaries

02 = Watershed code - last 2 digits of 17100101xx

Area of Detail

WASHINGTON

OREGON

IDAHO

540
Critical habitat is designated to include the areas defined in the following subbasins:

1. Chief Joseph Subbasin 17020005—Upper Columbia/Scam Creek Watershed 1702000505. Outlet(s) = Columbia River (Lat 47.8077, Long −119.9754) upstream to endpoint(s) in: Columbia River (48.0828, −119.7062).

2. Okanogan Subbasin 17020006—(i) Upper Okanogan River Watershed 1702000601. Outlet(s) = Okanogan River (Lat 48.3593, Long −119.5805) upstream to endpoint(s) in: Salmon Creek (48.539, −119.475); Bonaparte Creek (48.682, −119.3947); Okanogan River (48.735, −119.428); Tunk Creek (48.564, −119.4718).

(ii) Okanogan River/Bonaparte Creek Watershed 1702000602. Outlet(s) = Okanogan River (Lat 48.5612, Long −119.483) upstream to endpoint(s) in: Antoine Creek (48.9755, −119.3834); Okanogan River (49.0002, −119.4409); Similkameen River (48.9345, −119.4141); Tomasket Creek (48.9502, −119.3618); Whitestone Creek (48.7773, −119.4170).

(iii) Salmon Creek Watershed 1702000603. Outlet(s) = Salmon Creek (Lat 48.3593, Long −119.5805) upstream to endpoint(s) in: Salmon Creek (48.5374, −119.7465).

(iv) Okanogan River/Omak Creek Watershed 1702000604. Outlet(s) = Okanogan River (Lat 48.3593, Long −119.5805) upstream to endpoint(s) in: Omak Creek (48.5612, −119.483); Omak Creek (48.3698, −119.4365); Unnamed (48.3802, −119.4915).

(v) Lower Okanogan River Watershed 1702000605. Outlet(s) = Okanogan River (Lat 48.0976, Long −119.7352) upstream to endpoint(s) in: Chiwui Creek (48.2643, −119.7304); Loup Loup Creek (48.3080, −119.7128); Okanogan River (48.3593, −119.5805).


4. Methow Subbasin 17020008—(i) Lost River Watershed 1702000801. Outlet(s) = Lost River Gorge (Lat 48.6501, Long −120.103) upstream to endpoint(s) in: Lost River Gorge (48.7324, −120.4475).

(ii) Upper Methow River Watershed 1702000802. Outlet(s) = Methow River (Lat 48.6015, Long −120.4376) upstream to endpoint(s) in: Early Winters Creek (48.5889, −120.4711); Methow River (48.6597, −120.5368).

(ii) Upper Cheville River Watershed 1702000803. Outlet(s) = Cheville River (Lat 48.7501, Long −120.1356) upstream to endpoint(s) in: Andrews Creek (48.7855, −120.1087); Cheville River (48.8614, −120.0288); Lake Creek (48.8258, −120.1986).

(vi) Lower Cheville River Watershed 1702000804. Outlet(s) = Cheville River (Lat 48.4751, Long −120.1790) upstream to endpoint(s) in: Buttermilk Creek (48.3414, −120.3034); Eagle Creek (48.3579, −120.3653); Little Bridge Creek (48.4289, −120.3552); South Creek (48.4329, −120.5434); Twisp River (48.4545, −120.5621); War Creek (48.3626, −120.4106).

(vii) Middle Cheville River Watershed 1702000805. Outlet(s) = Cheville River (Lat 48.2495, Long −120.1156) upstream to endpoint(s) in: Goat Creek (48.6101, −120.3692); Hancock Creek (48.5338, −120.3310); Little Boulder Creek (48.5569, −120.3847); Methow River (48.6015, −120.4576); North Fork Beaver Creek (48.4340, −120.0229); Wolf Creek (48.4777, −120.2844).

(vii) Lower Methow River Watershed 1702000807. Outlet(s) = Methow River (Lat 48.0502, Long −119.8942) upstream to endpoint(s) in: Black Canyon Creek (48.0721, −120.0186); Foggy Dew Creek (48.1869, −120.2344); Gold Creek (48.2113, −120.2021); Libby Creek (48.2848, −120.1653); Methow River (48.2495, −120.1156); South Fork Gold Creek (48.1468, −120.1650).

(vii) Upper Columbia/Entiat Subbasin 1702001001. Outlet(s) = Entiat River (Lat 47.6585, Long −120.2194) upstream to endpoint(s) in: Entiat River (47.9855, −120.5749); Mad River (47.8254, −120.5301); Potato Creek (47.7944, −120.3889); Roaring Creek (47.6795, −120.4163); Storm Creek (47.8246, −120.4125); Tamarack Creek (47.8246, −120.4125).
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Creek (47.6699, –120.4041); Tillicum Creek (47.7295, –120.4930).

(ii) Lake Entiat Watershed 1702001002. Outlet(s) = Columbia River (Lat 47.5339, Long –120.1105) upstream to endpoint(s) in: Columbia River (47.8077, –119.9754).

(iii) Columbia River/Lynch Coulee Watershed 1702001003. Outlet(s) = Columbia River (Lat 47.0494, Long –120.0241) upstream to endpoint(s) in: Brushy Creek (47.1316, –120.1493); Colockum Creek (47.2919, –120.1592); Columbia River (47.3339, –120.1105); Lynch Coulee (47.2320, –119.9943); Quilomene Creek (47.1105, –120.0379); Tarpiscan Creek (47.2264, –120.0922); Tekison Creek (47.1816, –120.0206).

(iv) Columbia River/Sand Hollow Watershed 1702001004. Outlet(s) = Columbia River (Lat 46.8159, Long –119.9255) upstream to endpoint(s) in: Columbia River (47.0494, –120.0241); Sand Hollow (46.9296, –119.9365); Whiskey Dick Creek (47.0302, –120.0331).

(6) Wenatchee Subbasin 17020011—(i) White River Watershed 1702001101. Outlet(s) = White River (Lat 47.8088, Long –120.7159) upstream to endpoint(s) in: Little Wenatchee River (47.8526, –120.9541); Napeequa River (47.9359, –120.8712); Panther Creek (47.9375, –120.9408); White River (47.9535, –120.9380).

(ii) Chiwawa River Watershed 1702001102. Outlet(s) = Chiwawa River (Lat 47.7880, Long –120.6589) upstream to endpoint(s) in: Alder Creek (47.8565, –120.6210); Alpine Creek (48.0823, –120.6683); Buck Creek (48.1045, –120.8815); Chikamin Creek (47.9111, –120.7165); Chiwawa River (48.1140, –120.8779); Clear Creek (47.8016, –120.6210); James Creek (48.0748, –120.8570); Phelps Creek (48.0748, –120.8570); Unnamed (47.9727, –120.7878).

(iii) Nason/Tumwater Watershed 1702001103. Outlet(s) = Wenatchee River (Lat 47.5572, –120.8203); Skinney Creek (47.7247, –120.7370).

(iv) Icicle/Chumstick Watershed 1702001104. Outlet(s) = Wenatchee River (Lat 47.5339, Long –120.1105) upstream to endpoint(s) in: Chumstick Creek (47.6785, –120.6385); Derby Canyon (47.6036, –120.5623); Eagle Creek (47.6342, –120.6261); Icicle Creek (47.6460, –120.9833); Wenatchee River (47.5801, –120.6660).

(v) Lower Wenatchee River Watershed 1702001105. Outlet(s) = Wenatchee River (Lat 47.4612, –120.6776); King Canyon (47.3522, –120.4423); Mill Creek (47.5139, –120.6274); Mission Creek (47.3289, –120.4771); Peshastin Creek (47.4390, –120.6590); Sand Creek (47.4321, –120.5307); Wenatchee River (47.5575, –120.5729).

(7) Lower Crab Subbasin 17020015—Lower Crab Creek Watershed 1702001509. Outlet(s) = Lower Crab Creek (Lat 46.8159, Long –119.9255) upstream to endpoint(s) in: Hayes Creek (46.8821, –119.2703); Lower Crab Creek (46.9028, –119.2785); Unnamed (46.8157, –119.4326); Unnamed (46.8243, –119.4429); Unnamed (46.8353, –119.3750); Unnamed (46.8658, –119.3757); Unnamed (46.8776, –119.5863).

(8) Upper Columbia/Priest Rapids Subbasin 17020016—(i) Yakima River/Hanson Creek Watershed 1702001604. Outlet(s) = Columbia River (Lat 46.7159, Long –119.5294) upstream to endpoint(s) in: Columbia River (46.8159, –119.2529); Columbia River (46.8159, –119.9255).

(ii) Middle Columbia/Priest Rapids Watershed 1702001605. Outlet(s) = Columbia River (Lat 46.5091, Long –119.2661) upstream to endpoint(s) in: Columbia River (46.7159, –119.5294).

(iii) Columbia River/Zintel Canyon Watershed 1702001606. Outlet(s) = Columbia River (Lat 46.2534, Long –119.2268) upstream to endpoint(s) in: Columbia River (46.5091, –119.2661).

(9) Columbia River Corridor—Columbia River Corridor. Outlet(s) = Columbia River (Lat 46.2485, Long –124.0762) upstream to endpoint(s) in: Columbia River (46.2534, –119.2268).

(10) Maps of critical habitat for the Upper Columbia River Steelhead ESU follow:
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Final Critical Habitat for the Upper Columbia River Steelhead ESU

UPPER COLUMBIA / ENTIAT SUBBASIN 17020010

Legend

- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 04 = Watershed code - last 2 digits of 17020010xx

Area of Detail

WASHINGTON
OREGON
IDAHO
Final Critical Habitat for the Upper Columbia River Steelhead ESU

UPPER COLUMBIA / PRIEST RAPIDS SUBBASIN
17020016

This lower segment of the Columbia River is designated Critical Habitat. See the Migration Corridor map.

Legend
- Cities / Towns
- State Boundary
- Critical Habitat
- Water Body
- Subbasin Boundary
- Watershed Boundaries
01 - 06 = Watershed code - last 2 digits of 17020016xx

Area of Detail

WASHINGTON
OREGON
IDAHO
(q) **Snake River Basin Steelhead (Oncorhynchus mykiss).** Critical habitat is designated to include the areas defined in the following subbasins:

1. **Hells Canyon Subbasin 17060101**
   - **Snake River/Granite Creek Watershed 1706010101.**
     - Outlet(s) = Snake River (Lat 45.467, Long -116.554) upstream to endpoint(s) in: Battle Creek (45.307, -116.697); Bernard Creek (45.329, -116.673); Bull Creek (45.329, -116.673); Deep Creek

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**Legend**
- Cities / Towns
- State Boundary
- Rearing / Migration Corridor

**Upper Columbia River Steelhead ESU**

Columbia River Corridor
The Columbia River Corridor is that segment from the mouth of the Columbia River at the Pacific Ocean upstream to the confluence of the Yakima River.

1706010101.
(45.237, –116.674); Devils Farm Creek (45.301, –116.611); Granite Creek (45.277, –116.630); Hells Canyon (45.254, –116.698); Lightning Creek (45.440, –116.666); North Fork Battle Creek (45.316, –116.687); Rattlesnake Creek (45.457, –116.610); Rough Creek (45.397, –116.638); Granite Creek (45.468, –116.596); Saddle Creek (45.375, –116.721); Sheep Creek (45.406, –116.523); Sluice Creek (45.445, –116.622); Snake River (45.243, –116.700); Stud Creek (45.267, –116.693); Three Creek (45.353, –116.610); Unnamed (45.468, –116.610); Unnamed (45.4787, –116.4799); Wild Sheep Creek (45.326, –116.676).

(ii) Snake River/Getta Creek Watershed 1706010102. Outlet(s) = Snake River (Lat 45.747, Long –116.543) upstream to endpoint(s) in: Big Canyon Creek (45.689, –116.467); Corral Creek (45.588, –116.433); Cove Creek (45.553, –116.574); Durham Creek (45.595, –116.472); Getta Creek (45.736, –116.421); Highrange Creek (45.738, –116.518); Indian Creek (45.744, –116.449); Jones Creek (45.703, –116.526); Kirby Creek (45.575, –116.454); Kirwood Creek (45.548, –116.457); Kloton Creek (45.627, –116.343); Kurvy Creek (45.656, –116.426); Lookout Creek (45.713, –116.542); Lost Valley Creek (45.550, –116.862); Pleasant Valley Creek (45.647, –116.842); Salt Creek (45.576, –116.554); SCreek (45.491, –116.574); Snake River (45.468, –116.554); Somers Creek (45.645, –116.553); Temperance Creek (45.537, –116.571); Tryon Creek (45.694, –116.540); Two Corral Creek (45.561, –116.526); Unnamed (45.5817, –116.5098); West Creek (45.664, –116.453); West Fork West Creek (45.669, –116.463).

(iii) Snake River/Divide Creek Watershed 1706010104. Outlet(s) = Snake River (Lat 45.857, Long –116.794) upstream to endpoint(s) in: Big Canyon Creek (45.859, –116.741); Dry Creek (45.842, –116.598); Snake River (45.747, –116.543); Unnamed (45.7599, –116.6456); Wolf Creek (45.776, –116.567).

(2) Imnaha River Subbasin 17060102—

(i) Upper Imnaha River Watershed 1706010201. Outlet(s) = Imnaha River (Lat 45.232, Long –116.844) upstream to endpoint(s) in: Crazyman Creek (45.190, –116.811); Dry Creek (45.123, –116.867); Gumboot Creek (45.147, –116.968); Mahogany Creek (45.281, –116.905); North Fork Dry Creek (45.143, –116.897); North Fork Gumboot Creek (45.184, –116.928); North Fork Imnaha River (45.118, –117.129); Skookum Creek (45.117, –116.938); South Fork Imnaha River (45.111, –117.230); Unnamed (45.188, –116.923); Unnamed (45.208, –116.890).

(ii) Middle Imnaha River Watershed 1706010202. Outlet(s) = Imnaha River (Lat 45.557, Long –116.834) upstream to endpoint(s) in: Freezeout Creek (45.352, –116.761); Grouse Creek (45.179, –116.976); Imnaha River (45.232, –116.844); Morgan Creek (45.261, –116.948); Rich Creek (45.243, –116.869); Road Creek (45.279, –116.932); Shadow (45.295, –116.860); Summit Creek (45.228, –116.793); Unnamed (45.203, –116.978); Unnamed (45.203, –116.943); Unnamed (45.250, –116.923).

(iii) Big Sheep Creek Watershed 1706010203. Outlet(s) = Big Sheep Creek (Lat 45.557, Long –116.834) upstream to endpoint(s) in: Bear Gulch (45.379, –116.955); Big Sheep Creek (45.520, –116.859); Camp Creek (45.541, –116.959); Canal Creek (45.250, –116.103); Devils Gulch (45.428, –116.962); Downey Gulch (45.405, –116.958); Ferguson Creek (45.287, –117.106); Lightning Creek (45.475, –117.020); Little Sheep Creek (45.236, –116.083); McCully Creek (45.250, –116.959); Summit Creek (45.390, –116.930); Threebuck Creek (45.395, –117.012); Trail Creek (45.563, –116.898).

(iv) Lower Imnaha River Watershed 1706010205. Outlet(s) = Imnaha River (Lat 45.817, Long –116.844) upstream to endpoint(s) in: Corral Creek (45.708, –116.815); Cottonwood Creek (45.659, –116.865); Cow Creek (45.573, –116.628); Dodson Fork (45.725, –116.821); East Fork Fence Creek (45.652, –116.855); Fence Creek (45.655, –116.875); Horse Creek (45.421, –116.725); Imnaha River (45.557, –116.834); Lightning Creek (45.236, –116.676).
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(45.447, –116.682); Prong (45.589, –116.592); Pumpkin Creek (45.517, –116.758); Sleepy Fork (45.604, –116.666); Stubblefield Creek (45.711, –116.815); Tulley Creek (45.743, –116.766).

(3) Lower Snake/Asotin Subbasin

17060103—(i) Snake River/Rogersburg Watershed 1706010301. Outlet(s) = Snake River (Lat 46.080, Long –116.978) upstream to endpoint(s) in: Cache Creek (45.976, –116.928); Cave Gulch (46.023, –116.840); Cook Creek (45.901, –116.865); Corral Creek (46.055, –116.875); Cottonwood Creek (45.944, –116.860); Garden Creek (45.972, –116.903); Snake River (45.857, –116.794).

(ii) Asotin River Watershed 1706010302. Outlet(s) = Asotin Creek (Lat 46.345, Long –117.053) upstream to endpoint(s) in: Ayers Gulch (46.278, –117.094); Charley Creek (46.271, –117.460); Coombs Canyon (46.128, –117.276); George Creek (46.144, –117.303); Heffelfinger Gulch (46.151, –117.231); Huber Gulch (46.155, –117.188); Kelly Creek (46.251, –117.114); Lick Creek (46.260, –117.358); Middle Branch North Fork Asotin Creek (46.195, –117.439); Nims Gulch (46.178, –117.121); North Fork Asotin Creek (46.207, –117.478); Pintler Creek (46.194, –117.153); South Fork Asotin Creek (46.174, –117.341); South Fork North Fork Asotin Creek (46.192, –117.425).

(iii) Snake River/Captain John Creek Watershed 1706010303. Outlet(s) = Snake River (Lat 46.428, Long –117.038) upstream to endpoint(s) in: Captain John Creek (46.145, –116.821); Couse Creek (46.157, –117.032); Edeburn Gulch (46.142, –117.008); Mill Creek (46.157, –117.078); Redbird Creek (46.220, –116.898); Snake River (46.060, –116.978); South Fork Captain John Creek (46.123, –116.864); Tammany Creek (46.362, –117.052); Tenmile Creek (46.284, –118.176); Unnamed (46.119, –117.100); Unnamed (46.124, –117.111).

(iv) Upper Grande Ronde River Subbasin 17060104—(i) Upper Grande Ronde River Watershed 1706010401. Outlet(s) = Grande Ronde River (Lat 45.264, Long –118.376) upstream to endpoint(s) in: Chicken Creek (44.987, –118.378); Clear Creek (45.014, –118.329); Dry Creek (45.052, –118.380); East Fork Grande Ronde River (45.060, –118.237); East Sheep Creek (44.987, –118.425); Fly Creek (45.125, –118.596); Grande Ronde River (44.998, –118.275); Limber Jim Creek (45.107, –118.270); Little Clear Creek (45.038, –118.300); Little Fly Creek (45.062, –118.504); Lookout Creek (45.065, –118.543); Muir Creek (45.066, –118.297); North Fork Limber Jim Creek (45.125, –118.308); Sheep Creek (45.016, –118.507); South Fork Limber Jim Creek (45.088, –118.304); Squaw Creek (45.103, –118.554); Umapine Creek (45.116, –118.571); Unnamed (45.042, –118.269); Unnamed (45.045, –118.417); West Chicken Creek (45.025, –118.404); Winter Canyon (45.215, –118.361).

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(iv) Grande Ronde River/Five Points Creek Watershed 1706010404. Outlet(s) = Grande Ronde River (Lat 45.408, Long –117.930) upstream to endpoint(s) in: California Gulch (45.406, –118.335); Conley Creek (45.406, –118.084); Dobbin Ditch (45.377, –118.017); Dry Creek (45.326, –118.379); Fiddlers Bell (45.444, –118.145); Five Points Creek (45.482, –118.143); Grande Ronde River (45.347, –118.221); Little John Day Creek (45.430, –118.192); Middle Fork Five Points Creek (45.485, –118.129); Mt Emily Creek (45.377, –118.017); Pelican Creek (45.438, –118.318); Tie Creek (45.420, –118.129); Unnamed (45.385, –118.043); Unnamed (45.423, –118.243).

(v) Catherine Creek Watershed 1706010405. Outlet(s) = Catherine Creek (Lat 45.219, Long –117.915) upstream to endpoint(s) in: Buck Creek (45.132, –117.606); Camp Creek (45.100, –117.596); Collins Creek (45.100, –117.531); Corral Creek (45.113, –117.575); Little Catherine Creek (45.148, –117.716); Middle Fork Catherine Creek (45.155, –117.567); Milk Creek (45.092, –117.717); North Fork Catherine Creek (45.219, –117.610); Pole Creek (45.123, –117.544); Prong Creek (45.096, –117.565); SPAas Creek (45.115, –117.528); Scout Creek (45.105, –117.644).

(vi) Ladd Creek Watershed 1706010406. Outlet(s) = Ladd Creek (Lat 45.282, Long –117.936) upstream to endpoint(s) in: Catherine Creek (45.219, –117.915); Ladd Creek (45.215, –118.024); Little Creek (45.210, –117.784); Mill Creek (45.203, –118.083); Unnamed (45.259, –118.039).

(vii) Grande Ronde River/Mill Creek Watershed 1706010407. Outlet(s) = Grande Ronde River (Lat 45.408, Long –117.930) upstream to endpoint(s) in: Catherine Creek (45.282, –117.930); McAllister Slough (45.315, –117.973); Mill Creek (45.278, –117.728); Unnamed (45.297, –117.806).

(viii) Phillips Creek/Willow Creek Watershed 1706010408. Outlet(s) = Willow Creek (Lat 45.492, Long –117.931) upstream to endpoint(s) in: Dry Creek (45.640, –118.114); End Creek (45.4622, –118.0316); Finley Creek (45.625, –118.099); Fir Creek (45.5171, –118.0568); Little Dry Creek (45.5346, –118.0393); McDonald Creek (45.5348, –118.0393); Mill Creek (45.568, –118.025); Slide Creek (45.422, –118.028); Smith Creek (45.5256, –118.0537); Unnamed (45.525, –118.014).

(ix) Grande Ronde River/Indian Creek Watershed 1706010409. Outlet(s) = Grande Ronde River (Lat 45.560, Long –117.910) upstream to endpoint(s) in: Camp Creek (45.386, –117.720); Clark Creek (45.409, –117.728); East Fork Indian Creek (45.363, –117.737); Grande Ronde River (45.408, –117.930); Indian Creek (45.332, –117.717); Little Indian Creek (45.375, –117.785); Middle Fork Clark Creek (45.462, –117.764); North Fork Clark Creek (45.502, –117.739); North Fork Indian Creek (45.419, –117.787); Unnamed (45.375, –117.739); Unnamed (45.476, –117.757).

(x) Lookingglass Creek Watershed 1706010410. Outlet(s) = Lookingglass Creek (Lat 45.845, Long –117.939) upstream to endpoint(s) in: Buzzard Creek (45.845, –117.939); Eagle Creek (45.723, –118.005); Jarboe Creek (45.776, –118.055); Little Lookingglass Creek (45.846, –117.901); Lookingglass Creek (45.777, –118.070); Mottet Creek (45.827, –117.958); Unnamed (45.835, –117.909); Unnamed (45.844, –117.893).

(xi) Grande Ronde River/Cabin Creek Watershed 1706010411. Outlet(s) = Grande Ronde River (Lat 45.707, Long –117.841) upstream to endpoint(s) in: Buck Creek (45.662, –117.919); Duncan Canyon (45.654, –117.776); East Phillips Creek (45.669, –118.066); Gordon Creek (45.665, –118.001); Grande Ronde River (45.502, –117.930); Little Phillips Creek (45.568, –118.091); North Fork Cabin Creek (45.676, –118.051); Phillips Creek (45.666, –118.089); Rysdam Canyon (45.633, –117.812); South Fork Cabin Creek (45.698, –117.963); Unnamed (45.682, –117.974); Unnamed (45.695, –117.927); Unnamed (45.707, –117.916).

(5) Wallowa River Subbasin 17060105—

(1) Upper Wallowa River Watershed 1706010501. Outlet(s) = Wallowa River (Lat 45.427, Long –117.310) upstream to endpoint(s) in: Hurricane Creek (45.337, –117.291); Little Hurricane Creek (45.407, –117.276); Prairie Creek (45.394, –117.189); Spring Creek (45.406, –117.287); Trout Creek (45.455, –117.281); Unnamed (45.386, –117.215); Unnamed (45.392, –117.214); Unnamed (45.411, –117.264); Unnamed (45.422, –117.156); Unnamed (45.422, –118.028); Smith Creek (45.5256, –118.0537); Unnamed (45.525, –118.014).
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(45.424, –117.313); Wallowa River (45.335, –117.222).

(ii) Lostine River Watershed 1706010502.
Outlet(s) = Lostine River (Lat 45.552, Long –117.489) upstream to endpoint(s) in: Lostine River (45.215, –117.375); Silver Creek (45.394, –117.420).

(iii) Middle Wallowa River Watershed 1706010503.
Outlet(s) = Wallowa River (Lat 45.584, Long –117.540) upstream to endpoint(s) in: Middle Fork Whisky Creek (45.590, –117.413); Straight Whisky Creek (45.622, –117.396); Wallowa River (45.427, –117.310); Whisky Creek (45.608, –117.397).

(iv) Bear Creek Watershed 1706010504.
Outlet(s) = Bear Creek (Lat 45.584, Long –117.540) upstream to endpoint(s) in: Bear Creek (45.347, –117.500); Doc Creek (45.449, –117.572); Fox Creek (45.447, –117.562); Goat Creek (45.413, –117.519); Little Bear Creek (45.456, –117.500).

(v) Minam River Watershed 1706010505.
Outlet(s) = Minam River (Lat 45.621, Long –117.720) upstream to endpoint(s) in: Cougar Creek (45.517, –117.672); Elk Creek (45.157, –117.490); Little Minam River (45.339, –117.643); Minam River (45.149, –117.392); Murphy Creek (45.414, –117.644); North Minam River (45.275, –117.520); Patrick Creek (45.426, –117.645); Squaw Creek (45.576, –117.706); Trout Creek (45.471, –117.602).

(vi) Lower Wallowa River Watershed 1706010506.
Outlet(s) = Wallowa River (Lat 45.726, Long –117.784) upstream to endpoint(s) in: Deer Creek (45.452, –117.606); Dry Creek (45.659, –117.439); Fisher Creek (45.660, –117.750); Howard Creek (45.735, –117.606); Reagin Gulch (45.670, –117.550); Rock Creek (45.679, –117.620); Sage Creek (45.486, –117.590); Tamarack Canyon (45.656, –117.518); Unnamed (45.618, –117.629); Unnamed (45.654, –117.442); Unnamed (45.678, –117.546); Wallowa River (45.584, –117.540); Water Canyon (45.589, –117.614); Wise Creek (45.671, –117.705).

Outlet(s) = Grande Ronde River (Lat 45.896, Long –117.575) upstream to endpoint(s) in: Alder Creek (45.844, –117.750); Bear Creek (45.885, –117.752); Clear Creek (45.775, –117.714); Deep Creek (45.817, –117.651); East Grossman Creek (45.819, –117.625); Elbow Creek (45.927, –117.630); Grande Ronde River (45.726, –117.784); Grossman Creek (45.782, –117.614); Meadow Creek (45.825, –117.760); Sheep Creek (45.756, –117.797); Siskfoot Creek (45.842, –117.567); Unnamed (45.746, –117.656).

(ii) Grande Ronde River/Mud Creek Watershed 1706010602.
Outlet(s) = Grande Ronde River (Lat 45.946, Long –117.450) upstream to endpoint(s) in: Bishop Creek (45.747, –117.555); Bobcat Creek (45.853, –117.370); Buck Creek (45.758, –117.298); Burnt Creek (45.769, –117.283); Courtney Creek (45.857, –117.314); Grande Ronde River (45.896, –117.493); Little Courtney Canyon (45.903, –117.385); McAllister Creek (45.683, –117.361); McCubbin Creek (45.700, –117.294); Mud Creek (45.633, –117.291); Unnamed (45.867, –117.329); Shamrock Creek (45.828, –117.335); Simmons Draw (45.730, –117.514); Sled Creek (45.730, –117.278); Toepee Creek (45.594, –117.349); Tope Creek (45.634, –117.330); Unnamed (45.710, –117.283); Unnamed (45.856, –117.312); Wallupa Creek (45.765, –117.528); Wildcat Creek (45.732, –117.498).

(iii) Wenaha River Watershed 1706010603.
Outlet(s) = Wenaha River (Lat 45.946, Long –117.450) upstream to endpoint(s) in: Beaver Creek (46.002, –117.815); Crooked Creek (46.046, –117.624); First Creek (46.071, –117.519); Melton Creek (46.060, –117.560); Milk Creek (45.973, –117.902); North Fork Wenaha River (46.064, –117.912); Rock Creek (45.999, –117.766); Second Creek (46.065, –117.595); Slick Ear Creek (45.863, –117.784); South Fork Wenaha River (45.872, –117.897); Third Creek (46.069, –117.627); Weller Creek (45.989, –117.648); West Fork Butte Creek (46.064, –117.759).

(iv) Chesnimnus Creek Watershed 1706010604.
Outlet(s) = Chesnimnus Creek (Lat 45.715, Long –117.155) upstream to endpoint(s) in: Alder Creek (45.702, –116.997); Billy Creek (45.815, –117.032); Butte Creek (45.641, –117.096); Chesnimnus Creek (45.718, –116.906); Deadman Gulch (45.659, –117.049); Devils Run Creek (45.775, –116.882); Doe Creek (45.751, –117.029); Dry Salmon Creek (45.663, –117.051); East Fork Peavine Creek (45.830, –117.061); Gooseberry Creek (45.885, –117.752); Clear Creek (45.775, –117.714); Deep Creek (45.817, –117.651); East Grossman Creek (45.819, –117.625); Elbow Creek (45.927, –117.630); Grande Ronde River (45.726, –117.784); Grossman Creek (45.782, –117.614); Meadow Creek (45.825, –117.760); Sheep Creek (45.756, –117.797); Siskfoot Creek (45.842, –117.567); Unnamed (45.746, –117.656).
Creek (45.681, –117.110); McCarty Gulch (45.749, –117.064); Peavine Creek (45.795, –117.084); Pine Creek (45.673, –117.029); Poison Creek (45.791, –116.979); Salmon Creek (45.662, –117.038); South Fork Chesnimnus Creek (45.743, –116.861); Sterling Gulch (45.712, –117.000); Summit Creek (45.794, –116.947); Telephone Gulch (45.767, –117.076); TNT Gulch (45.754, –116.919); Unnamed (45.694, –117.013); Unnamed (45.709, –116.878); Unnamed (45.724, –116.867); Unnamed (45.742, –116.900); Unnamed (45.825, –116.904); Unnamed (45.838, –117.009); Unnamed (45.846, –117.029); West Fork Peavine Creek (45.805, –117.100).

(v) Upper Joseph Creek Watershed 1706010605. Outlet(s) = Joseph Creek (Lat 45.823, Long –117.231) upstream to endpoint(s) in: Alford Gulch (45.729, –117.165); Cougar Creek (45.806, –117.150); Creek Creek (45.536, –117.115); Davis Creek (45.658, –117.257); Elk Creek (45.598, –117.167); Gould Gulch (45.657, –117.181); Little Elk Creek (45.694, –117.199); Sumac Creek (45.753, –117.148); Swamp Creek (45.543, –117.218); Unnamed (45.597, –117.141).

(vi) Lower Joseph Creek Watershed 1706010606. Outlet(s) = Joseph Creek (Lat 46.053, Long –117.005) upstream to endpoint(s) in: Basin Creek (45.910, –117.057); Broady Creek (45.882, –117.076); Cottonwood Creek (45.832, –116.950); Horse Creek (45.945, –116.962); Joseph Creek (45.823, –117.291); Peavine Creek (45.879, –117.162); Rush Creek (45.899, –117.150); Tamarack Creek (45.964, –117.127); Unnamed (45.826, –116.957); West Fork Broady Creek (45.862, –117.102).

(vii) Lower Grande Ronde River/ Menatche Creek Watershed 1706010607. Outlet(s) = Grande Ronde River (Lat 46.080, Long –116.978) upstream to endpoint(s) in: Bear Creek (45.973, –117.455); Buford Creek (45.975, –117.276); Cottonwood Creek (46.071, –117.301); Cougar Creek (46.049, –117.327); Deer Creek (45.992, –117.191); East Bear Creek (45.960, –117.307); Grande Ronde River (45.946, –117.450); Grouse Creek (46.031, –117.460); Menatche Creek (46.018, –117.371); Rattlesnake Creek (46.079, –117.294); Shumaker Creek (46.049, –117.117); West Bear Creek (45.951, –117.337); West Branch Rattlesnake Creek (46.086, –117.258).

(7) Lower Snake/Tucannon Subbasin 17060107—(i) Alpowa Creek Watershed 1706010701. Outlet(s) = Alpowa Creek (Lat 46.422, Long –117.203) upstream to endpoint(s) in: Kidwell Gulch (46.338, –117.480); Page Creek (46.402, –117.210); Pow Wah Kee Creek (45.389, –117.288).

(ii) Snake River/Steptoe Canyon Watershed 1706010702. Outlet(s) = Snake River (Lat 46.660, Long –117.038) upstream to endpoint(s) in: Offield Canyon (46.048, –117.420); Snake River (46.428, –117.038); Steptoe Canyon (46.455, –117.192); Trux Canyon (46.565, –117.348); Wawawai Canyon (46.636, –117.375).

(iii) Deadman Creek Watershed 1706010703. Outlet(s) = Deadman Creek (Lat 46.626, Long –117.799) upstream to endpoint(s) in: Deadman Gulch (46.374, –117.565); Lynn Gulch (46.628, –117.597); North Deadman Creek (46.578, –117.457); North Meadow Creek (46.517, –117.489); South Meadow Creek (46.507, –117.508).

(iv) Upper Tucannon River Watershed 1706010706. Outlet(s) = Tucannon River (Lat 46.509, Long –117.995) upstream to endpoint(s) in: Cummings Creek (46.235, –117.610); Little Tucannon River (46.221, –117.759); Meadow Creek (46.163, –117.728); Panjab Creek (46.171, –117.709); Sheep Creek (46.196, –117.623); Tucannon River (46.188, –117.599); Tumalum Creek (46.315, –117.385).

(v) Lower Tucannon River Watershed 1706010707. Outlet(s) = Tucannon River (Lat 46.558, Long –118.174) upstream to endpoint(s) in: Kellogg Creek (46.430, –118.067); Smith Hollow (46.463, –118.017); Tucannon River (46.509, –117.995).

(vi) Snake River/Penawawa Creek Watershed 1706010708. Outlet(s) = Snake River (Lat 46.589, Long –118.215) upstream to endpoint(s) in: Almota Creek (46.706, –117.363); Little Almota Creek (46.715, –117.465); Penawawa Creek (46.728, –117.625); Snake River (46.660, –117.433); Unnamed (46.698, –117.381).

(8) Upper Salmon Subbasin 17060201—(i) Salmon River/Challis Watershed 1706020101. Outlet(s) = Salmon River (Lat 44.692, Long –114.049) upstream to endpoint(s) in: Challis Creek (46.049, –117.301); Cougar Creek (46.049, –117.327); Deer Creek (45.992, –117.191); East Bear Creek (45.960, –117.307); Grande Ronde River (45.946, –117.450); Grouse Creek (46.031, –117.460); Menatche Creek (46.018, –117.371); Rattlesnake Creek (46.079, –117.294); Shumaker Creek (46.049, –117.117); West Bear Creek (45.951, –117.337); West Branch Rattlesnake Creek (46.086, –117.258).

(ii) Salmon River/Bayhorse Creek Watershed 1706020104. Outlet(s) = Salmon River (Lat 44.470, Long –114.192) upstream to endpoint(s) in: Bayhorse Creek (44.305, –114.308); Salmon River (44.268, –114.326).
(iii) East Fork Salmon River/McDonald Creek Watershed 1706020105. Outlet(s) = East Fork Salmon River (Lat 44.268, Long –114.326) upstream to endpoint(s) in: Big Lake Creek (44.165, –114.394); East Fork Salmon River (44.147, –114.378); McDonald Creek (44.091, –114.318); Pine Creek (44.136, –114.367). (iv) Herd Creek Watershed 1706020108. Outlet(s) = Herd Creek (Lat 44.154, Long –114.300) upstream to endpoint(s) in: East Fork Herd Creek (44.037, –114.203); East Pass Creek (44.009, –114.369); Lake Creek (44.103, –114.194); Taylor Creek (44.067, –114.317); West Fork Herd Creek (44.032, –114.248). (v) East Fork Salmon River/Big Boulder Creek Watershed 1706020109. Outlet(s) = East Fork Salmon River (Lat 44.147, Long –114.378) upstream to endpoint(s) in: Big Boulder Creek (44.131, –114.518); East Fork Salmon River (44.039, –114.461); Little Boulder Creek (44.065, –114.542). (vi) Upper East Fork Salmon River Watershed 1706020110. Outlet(s) = East Fork Salmon River (Lat 44.039, Long –114.461) upstream to endpoint(s) in: Bowery Creek (44.0316, –114.4587); South Fork East Fork Salmon River (43.902, –114.562); West Fork East Fork Salmon River (43.929, –114.575); West Pass Creek (43.922, –114.446). (vii) Germania Creek Watershed 1706020111. Outlet(s) = Germania Creek (Lat 44.039, Long –114.461) upstream to endpoint(s) in: Germania Creek (44.003, –114.332). (viii) Salmon River/Kinnikinic Creek Watershed 1706020112. Outlet(s) = Salmon River (Lat 44.268, Long –114.326) upstream to endpoint(s) in: Kinnikinic Creek (44.2667, –114.4026); Salmon River (44.249, –114.454). (ix) Salmon River/Slate Creek Watershed 1706020113. Outlet(s) = Salmon River (Lat 44.249, Long –114.454) upstream to endpoint(s) in: Holman Creek (44.250, –114.529); Salmon River (44.254, –114.675); Silver Rule Creek (44.196, –114.386); Lake Creek (44.163, –114.626); Thompson Creek (44.318, –114.586). (x) Warm Springs Creek Watershed 1706020114. Outlet(s) = Warm Springs Creek (Lat 44.254, Long –114.675) upstream to endpoint(s) in: Warm Springs Creek (44.151, –114.718). (xi) Salmon River/Big Casino Creek Watershed 1706020115. Outlet(s) = Salmon River (Lat 44.254, Long –114.675) upstream to endpoint(s) in: Big Casino Creek (44.216, –114.830); Litttle Casino Creek (44.224, –114.861); Lower Harden Creek (44.274, –114.778); Nip Tuck Creek (44.234, –114.929); Salmon River (44.169, –114.898); Upper Harden Creek (44.272, –114.791). (xii) Salmon River/Fisher Creek Watershed 1706020117. Outlet(s) = Salmon River (Lat 44.169, Long –114.898) upstream to endpoint(s) in: Decker Creek (44.072, –114.879); Gold Creek (44.114, –114.846); Huckleberry Creek (44.061, –114.875); Salmon River (44.032, –114.836); Williams Creek (44.096, –114.852). (xiii) Salmon River/Fourth of July Creek Watershed 1706020118. Outlet(s) = Salmon River (Lat 44.032, Long –114.836) upstream to endpoint(s) in: Champion Creek (44.019, –114.825); Fourth of July Creek (44.035, –114.784); Hell Roaring Creek (44.0268, –114.9252); Salmon River (44.004, –114.836); Unnamed (44.017, –114.879). (xiv) Upper Salmon River Watershed 1706020119. Outlet(s) = Salmon River (Lat 44.004, Long –114.836) upstream to endpoint(s) in: Beaver Creek (43.919, –114.813); Camp Creek (43.876, –114.738); Frenchman Creek (43.822, –114.792); Pole Creek (43.960, –114.666); Salmon River (43.837, –114.759); Smiley Creek (43.829, –114.823); Twin Creek (43.935, –114.723); Unnamed (43.843, –114.742); Unnamed (43.990, –114.803). (xv) Alturas Lake Creek Watershed 1706020120. Outlet(s) = Alturas Lake Creek (Lat 44.004, Long –114.836) upstream to endpoint(s) in: Alpine Creek (43.905, –114.923); Alturas Lake Creek (43.895, –114.910); Cabin Creek (43.897, –114.856); Pettit Lake Creek (43.961, –114.916); Unnamed (43.952, –114.858); Vat Creek (43.967, –114.871); Yellowbelly Creek (43.995, –114.847). (xvi) Redfish Lake Creek Watershed 1706020121. Outlet(s) = Redfish Lake Creek (Lat 44.169, Long –114.898) upstream to endpoint(s) in: Fishhook Creek (44.137, –114.966); Redfish Lake Creek (44.097, –114.95). (xvii) Valley Creek/Iron Creek Watershed 1706020122. Outlet(s) = Valley Creek (Lat 44.225, Long –114.927) upstream to endpoint(s) in: Crooked Creek (44.214, –115.094); Goat Creek (44.179, –115.008); Iron Creek (44.191, –115.025); Job Creek (44.242, –115.027);
Meadow Creek (44.190, –114.961); Park Creek (44.281, –115.036); Stanley Creek (44.276, –114.938); Valley Creek (44.291, –115.018).

(xviii) Upper Valley Creek Watershed 1706020123. Outlet(s) = Valley Creek (Lat 44.347, Long –115.041); Meadow Creek (44.291, –115.119); Stanley Lake Creek (44.248, –115.045); Trap Creek (44.311, –115.121); Valley Creek (44.392, –114.980).

(xix) Basin Creek Watershed 1706020124. Outlet(s) = Basin Creek (Lat 44.264, Long –114.817) upstream to endpoint(s) in: Basin Creek (44.361, –114.902); East Basin Creek (44.314, –114.823).

(x) Pahsimeroi Subbasin 17060202—(i) Lower Pahsimeroi River Watershed 1706020201. Outlet(s) = Pahsimeroi River (Lat 44.692, Long –114.049) upstream to endpoint(s) in: Pahsimeroi River (44.559, –113.900); Patterson Creek (44.561, –113.897).

(ii) Owl Creek Watershed 1706020302. Outlet(s) = Owl Creek (Lat 45.340, Long –114.462) upstream to endpoint(s) in: East Fork Owl Creek (45.367, –114.430); Owl Creek (45.382, –114.469).

(iii) Salmon River/Pine Creek Watershed 1706020303. Outlet(s) = Salmon River (Lat 45.316, Long –114.405) upstream to endpoint(s) in: Boulder Creek (45.385, –114.207); Pine Creek (45.307, –114.186); Salmon River (45.309, –114.165); Spring Creek (45.421, –114.278); Squaw Creek (45.449, –114.215).

(iv) Indian Creek Watershed 1706020304. Outlet(s) = Indian Creek (Lat 45.400, Long –114.167) upstream to endpoint(s) in: Indian Creek (45.523, –114.151); McConn Creek (45.519, –114.183); West Fork Indian Creek (45.481, –114.168).

(v) Salmon River/Moose Creek Watershed 1706020305. Outlet(s) = Salmon River (Lat 45.399, Long –114.168) upstream to endpoint(s) in: Dump Creek (45.369, –114.035); Fourth of July Creek
(54.417, –113.857); Little Fourth of July Creek (54.396, –113.912); Moose Creek (54.346, –114.080); Salmon River (54.320, –113.909); Wagonhammer Creek (54.395, –113.945).

(vi) North Fork Salmon River Watershed 1706020306. Outlet(s) = North Fork Salmon River (Lat 45.405, Long –113.994) upstream to endpoint(s) in: Anderson Creek (45.577, –113.918); Dahlonega Creek (45.559, –113.845); Ditch Creek (45.534, –113.994); Hughes Creek (45.541, –114.069); Moose Creek (45.674, –113.951); Pierce Creek (45.640, –114.089); Sheep Creek (45.502, –113.889); Smithy Creek (45.575, –113.889); Threemile Creek (45.577, –113.866); Twin Creek (45.591, –114.081).

(vii) Salmon River/Tower Creek Watershed 1706020307. Outlet(s) = Salmon River (Lat 45.320, Long –113.909) upstream to endpoint(s) in: Salmon River (45.250, –113.899); Tower Creek (45.367, –113.857); Wallace Creek (45.2645, –113.866).

(viii) Carmen Creek Watershed 1706020308. Outlet(s) = Carmen Creek (Lat 45.250, Long –113.899) upstream to endpoint(s) in: Carmen Creek (45.316, –113.800); Freeman Creek (45.269, –113.752).

(ix) Salmon River/Jesse Creek Watershed 1706020309. Outlet(s) = Salmon River (Lat 45.109, Long –113.901) upstream to endpoint(s) in: Salmon River (45.011, –113.932); Williams Creek (45.081, –113.935).

(x) Salmon River/Williams Creek Watershed 1706020310. Outlet(s) = Salmon River (Lat 45.109, Long –113.901) upstream to endpoint(s) in: Salmon River (45.011, –113.932); Williams Creek (45.081, –113.935).

(xi) Salmon River/Twelvemile Creek Watershed 1706020311. Outlet(s) = Salmon River (Lat 45.011, Long –113.932) upstream to endpoint(s) in: Lake Creek (45.015, –113.959); Salmon River (44.896, –113.963); Twelvemile Creek (45.011, –113.927).

(xii) Salmon River/Cow Creek Watershed 1706020312. Outlet(s) = Salmon River (Lat 44.896, Long –113.963) upstream to endpoint(s) in: Cow Creek (44.730, –113.940); McKim Creek (44.810, –114.068); Poison Creek (44.676, –113.994); Salmon River (44.692, –114.049); Warm Spring Creek (44.913, –113.914).

(xiii) Hat Creek Watershed 1706020313. Outlet(s) = Hat Creek (Lat 44.795, Long –114.001) upstream to endpoint(s) in: Hat Creek (44.785, –114.040).

(xiv) Iron Creek Watershed 1706020314. Outlet(s) = Iron Creek (Lat 44.887, Long –113.968) upstream to endpoint(s) in: Iron Creek (44.921, –114.124).

(xv) Upper Panther Creek Watershed 1706020315. Outlet(s) = Panther Creek (Lat 45.022, Long –114.313) upstream to endpoint(s) in: Cabin Creek (44.957, –114.365); Opal Creek (44.901, –114.307); Panther Creek (44.887, –114.305); Porphyry Creek (45.034, –114.388).

(xvi) Moyer Creek Watershed 1706020316. Outlet(s) = Moyer Creek (Lat 45.024, Long –114.311) upstream to endpoint(s) in: Moyer Creek (44.949, –114.265); South Fork Moyer Creek (44.944, –114.305).

(xvii) Carmen Creek Watershed 1706020317. Outlet(s) = Carmen Creek (Lat 45.022, Long –114.313) upstream to endpoint(s) in: Cabin Creek (44.957, –114.365); Opal Creek (44.901, –114.307); Panther Creek (44.887, –114.305); Porphyry Creek (45.034, –114.388).

(xviii) Deep Creek Watershed 1706020318. Outlet(s) = Deep Creek (Lat 45.024, Long –114.311) upstream to endpoint(s) in: Deep Creek (45.060, –114.258); Fawn Creek (45.073, –114.247); Musgrove Creek (45.064, –114.368); Panther Creek (45.022, –114.313); Woodtick Creek (45.088, –114.235).

(xix) Panther Creek/Trail Creek Watershed 1706020320. Outlet(s) = Panther Creek (Lat 45.176, Long –114.314) upstream to endpoint(s) in: Little Deer Creek (45.156, –114.298); Panther Creek (45.079, –114.251); Spring Creek (45.088, –114.223).

(xx) Big Deer Creek Watershed 1706020321. Outlet(s) = Big Deer Creek (Lat 45.176, Long –114.314) upstream to endpoint(s) in: Big Deer Creek (45.169, –114.325).

(xxi) Panther Creek/Trail Creek Watershed 1706020322. Outlet(s) = Panther Creek (Lat 45.316, Long –114.405) upstream to endpoint(s) in: Beaver Creek (45.291, –114.274); Garden Creek (45.295, –114.429); Trail Creek (45.231, –114.263); Panther Creek (45.176, –114.314).

(xxxii) Clear Creek Watershed 1706020323. Outlet(s) = Clear Creek (Lat 45.250, Long –114.351) upstream to endpoint(s) in: Clear Creek (45.210, –114.485).
(11) Lemhi Subbasin 17060204—(i) Lemhi River/Bohannon Creek Watershed 1706020401. Outlet(s) = Lemhi River (Lat 45.188, Long –113.889) upstream to endpoint(s) in: Bohannon Creek (45.189, –113.692); Lemhi River (45.098, –113.720).

(ii) Lemhi River/Whimpey Creek Watershed 1706020402. Outlet(s) = Lemhi River (Lat 45.098, Long –113.720) upstream to endpoint(s) in: Lemhi River (45.032, –113.662); Wimpey Creek (45.131, –113.678); Withington Creek (45.058, –113.750).

(iii) Lemhi River/Kenney Creek Watershed 1706020403. Outlet(s) = Lemhi River (Lat 45.032, Long –113.662) upstream to endpoint(s) in: Kenney Creek (45.087, –113.551); Lemhi River (44.940, –113.639).

(iv) Lemhi River/McDevitt Creek Watershed 1706020405. Outlet(s) = Lemhi River (Lat 44.940, Long –113.626) upstream to endpoint(s) in: Lemhi River (44.870, –113.626).

(v) Lemhi River/Yearian Creek Watershed 1706020406. Outlet(s) = Lemhi River (Lat 44.867, Long –113.626) upstream to endpoint(s) in: Lemhi River (44.870, –113.750).

(vi) Peterson Creek Watershed 1706020407. Outlet(s) = Lemhi River (Lat 44.778, Long –113.535) upstream to endpoint(s) in: Lemhi River (44.739, –113.459).

(vii) Big Eight Mile Creek Watershed 1706020408. Outlet(s) = Lemhi River (Lat 44.739, Long –113.459) upstream to endpoint(s) in: Lemhi River (44.692, –113.366).

(viii) Canyon Creek Watershed 1706020409. Outlet(s) = Lemhi River (Lat 44.692, Long –113.366) upstream to endpoint(s) in: Lemhi River (44.682, –113.355).

(ix) Texas Creek Watershed 1706020412. Outlet(s) = Texas Creek (Lat 44.682, Long –113.3545) upstream to endpoint(s) in: Purcell Creek (44.5726, –113.3459); Texas Creek (44.5348, –113.3018).

(x) Hayden Creek Watershed 1706020414. Outlet(s) = Hayden Creek (Lat 44.870, Long –113.626) upstream to endpoint(s) in: Bear Valley Creek (44.796, –113.790); East Fork Hayden Creek (44.706, –113.706); Hayden Creek (44.726, –113.769); Kadietz Creek (44.761, –113.767); West Fork Hayden Creek (44.706, –113.768); Wright Creek (44.739, –113.794).

(12) Upper Middle Fork Salmon Subbasin 17060205—(i) Lower Loon Creek Watershed 1706020501. Outlet(s) = Loon Creek (Lat 44.808, Long –114.811) upstream to endpoint(s) in: Cabin Creek (44.742, –114.708); Loon Creek (44.552, –114.849).

(ii) Warm Springs Watershed 1706020502. Outlet(s) = Warm Spring Creek (Lat 44.653, Long –114.736) upstream to endpoint(s) in: Trapper Creek (44.504, –114.617); Warm Spring Creek (44.609, –114.481).

(iii) Upper Loon Creek Watershed 1706020503. Outlet(s) = Loon Creek (Lat 44.552, Long –114.849) upstream to endpoint(s) in: Cottonwood Creek (44.593, –114.679); East Fork Mayfield Creek (44.494, –114.700); Loon Creek (44.469, –114.923); Pioneer Creek (44.466, –114.873); South Fork Cottonwood Creek (44.563, –114.780); Trail Creek (44.506, –114.959); West Fork Mayfield Creek (44.473, –114.730).

(iv) Little Loon Creek Watershed 1706020504. Outlet(s) = Little Loon Creek (Lat 44.731, Long –114.940) upstream to endpoint(s) in: Little Loon Creek (44.615, –114.963).

(v) Rapid River Watershed 1706020505. Outlet(s) = Rapid River (Lat 44.680, Long –115.152) upstream to endpoint(s) in: Float Creek (44.546, –115.148); North Fork Sheep Creek (44.656, –114.997); Rapid River (44.551, –115.007); South Fork Sheep Creek (44.628, –114.988); Vanity Creek (44.500, –115.072).

(vi) Marsh Creek Watershed 1706020506. Outlet(s) = Marsh Creek (Lat 44.419, Long –115.230) upstream to endpoint(s) in: Asher Creek (44.374, –115.126); Banner Creek (44.291, –115.187); Bear Creek (44.490, –115.098); Beaver Creek (44.494, –114.964); Camp Creek (44.384, –115.144); Cape Horn Creek (44.333, –115.287); Knapp Creek (44.424, –114.915); Marsh Creek (44.329, –115.091); Swamp Creek (44.300, –115.175); Winnemucca Creek (44.479, –114.972).

(xv) Middle Fork Salmon River/Soldier Creek Watershed 1706020507. Outlet(s) = Middle Fork Salmon River (Lat 44.680, Long –115.152) upstream to endpoint(s) in: Boundary Creek (44.507, –115.328); Dagger Creek (44.498, –115.307); Elkhorn Creek (44.582, –115.369); Greyhound Creek (44.626, –115.158); Middle Fork Salmon River (44.449, –115.230); Soldier Creek (44.528, –115.201).
(viii) Bear Valley Creek Watershed 1706020508. Outlet(s) = Bear Valley Creek (Lat 44.449, Long –115.230) upstream to endpoint(s) in: Ayers Creek (44.454, –115.330); Bear Valley Creek (44.236, –115.499); Bearskin Creek (44.331, –115.528); Cache Creek (44.286, –115.409); Cold Creek (44.371, –115.317); Cook Creek (44.389, –115.438); East Fork Elk Creek (44.481, –115.359); Flir Creek (44.354, –115.296); Little Beaver Creek (44.415, –115.504); Little East Fork Elk Creek (44.479, –115.407); Mace Creek (44.289, –115.307); North Fork Elk Creek (44.527, –115.458); Poker Creek (44.444, –115.345); Pole Creek (44.361, –115.366); Porter Creek (44.466, –115.529); Sack Creek (44.320, –115.351); Sheep Trail Creek (44.360, –115.451); West Fork Elk Creek (44.465, –115.499); Wyoming Creek (44.302, –115.335).

(ix) Sulphur Creek Watershed 1706020509. Outlet(s) = Sulphur Creek (Lat 44.555, Long –115.297) upstream to endpoint(s) in: Blue Moon Creek (44.572, –115.364); Full Moon Creek (44.535, –115.400); Honeymoon Creek (44.605, –115.399); North Fork Sulphur Creek (44.583, –115.367); Sulphur Creek (44.510, –115.518).

(x) Pistol Creek Watershed 1706020610. Outlet(s) = Pistol Creek (Lat 44.724, Long –115.149) upstream to endpoint(s) in: Little Pistol Creek (44.721, –115.404); Luger Creek (44.636, –115.386); Pistol Creek (44.644, –115.442).

(xi) Indian Creek Watershed 1706020511. Outlet(s) = Indian Creek (Lat 44.770, Long –115.089) upstream to endpoint(s) in: Big Chief Creek (44.817, –115.368); Indian Creek (44.803, –115.383); Little Indian Creek (44.879, –115.226).

(xii) Upper Marble Creek Watershed 1706020512. Outlet(s) = Marble Creek (Lat 44.797, Long –114.971) upstream to endpoint(s) in: Big Cottonwood Creek (44.879, –115.206); Canyon Creek (44.822, –114.943); Cornish Creek (44.933, –115.127); Dynamite Creek (44.871, –115.207); Marble Creek (44.883, –115.679); Trail Creek (44.917, –114.930).

(xiii) Middle Fork Salmon River/Lower Marble Creek Watershed 1706020513. Outlet(s) = Middle Fork Salmon River (Lat 44.808, Long –114.811) upstream to endpoint(s) in: Marble Creek (44.797, –114.971); Middle Fork Salmon River (44.680, –115.152).

(13) Lower Middle Fork Salmon Subbasin 17060206—(i) Lower Middle Fork Salmon River Watershed 1706020601. Outlet(s) = Middle Fork Salmon River (Lat 45.297, Long –114.591) upstream to endpoint(s) in: Middle Fork Salmon River (45.095, –114.732); Roaring Creek (45.189, –114.574); Stoddard Creek (45.244, –114.702).


(iii) Yellow Jacket Creek Watershed 1706020604. Outlet(s) = Yellow jacket Creek (Lat 44.892, Long –114.644) upstream to endpoint(s) in: Beagle Creek (44.993, –114.466); Hoodoo Creek (44.993, –114.568); Lake Creek (44.967, –114.603); Little Jacket Creek (44.931, –114.505); Meadow Creek (44.984, –114.481); Shovel Creek (45.006, –114.463); Trail Creek (44.939, –114.461); Yellow Jacket Creek (45.050, –114.480).

(iv) Silver Creek Watershed 1706020605. Outlet(s) = Silver Creek (Lat 44.830, Long –114.501) upstream to endpoint(s) in: Silver Creek (44.856, –114.458).

(vi) Upper Camas Creek Watershed 1706020606. Outlet(s) = Camas Creek (Lat 44.830, Long –114.501) upstream to endpoint(s) in: Castle Creek (44.825, –114.415); Fly Creek (44.703, –114.509); Furnace Creek (44.767, –114.421); J Fell Creek (44.669, –114.459); South Fork Camas Creek (44.731, –114.553); Spider Creek (44.688, –114.495); White Goat Creek (44.731, –114.460).

(vii) West Fork Camas Creek Watershed 1706020607. Outlet(s) = West Fork Camas Creek (Lat 44.831, Long –114.504) upstream to endpoint(s) in: Flume Creek (44.806, –114.520); Martindale Creek (44.822, –114.560); West Fork Camas Creek (44.795, –114.599).

(viii) Lower Camas Creek Watershed 1706020608. Outlet(s) = Camas Creek (Lat 44.892, Long –114.722) upstream to endpoint(s) in: Camas Creek (44.830, –114.501); Duck Creek (44.852, –114.521); Woodtick Creek (44.870, –114.636).
Middle Fork Salmon River (Lat 44.955, Long –114.733) upstream to endpoint(s) in: Middle Fork Salmon River (44.806, –114.811); Sheep Creek (44.923, –114.873).

(x) Rush Creek Watershed 1706020610. Outlet(s) = Rush Creek (Lat 45.105, Long –114.861) upstream to endpoint(s) in: Rush Creek (44.998, –114.992); South Fork Rush Creek (45.013, –114.972); Two Point Creek (45.027, –114.947).

(xi) Monumental Creek Watershed 1706020611. Outlet(s) = Monumental Creek (Lat 45.163, Long –115.128) upstream to endpoint(s) in: Big Creek (45.153, –115.297); Little Marble Creek (45.062, –115.276).

(xii) Upper Big Creek Watershed 1706020613. Outlet(s) = Big Creek (Lat 45.153, Long –115.297) upstream to endpoint(s) in: Big Creek (45.075, –115.342); Jacobs Ladder Creek (45.063, –115.322); Middle Fork Smith Creek (45.166, –115.411); Smith Creek (45.170, –115.390); Unnamed (45.129, –115.422).

(xiv) Beaver Creek Watershed 1706020614. Outlet(s) = Beaver Creek (Lat 45.163, Long –115.242) upstream to endpoint(s) in: Beaver Creek (45.242, –115.314); Coin Creek (45.218, –115.320); HCreek (45.266, –115.270).

(xv) Big Ramey Creek Watershed 1706020615. Outlet(s) = Big Ramey Creek (Lat 45.177, Long –115.159) upstream to endpoint(s) in: Big Ramey Creek (45.279, –115.243).

(vii) Salmon River/Rabbit Creek Watershed 1706020708. Outlet(s) = Salmon River (Lat 45.378, Long –115.512) upstream to endpoint(s) in: Indian Creek (45.409, –115.608); Rabbit Creek (45.416, –115.667); Salmon River (45.378, –115.512).

(viii) Bargamin Creek Watershed 1706020709. Outlet(s) = Bargamin Creek (Lat 45.567, Long –115.191) upstream to endpoint(s) in: Cliffs Creek (45.105, –114.937); Cliff Creek (45.127, –114.857); Cougar Creek (45.138, –114.813); Pioneer Creek (45.066, –114.842).


(iii) Salmon River/California Creek Watershed 1706020703. Outlet(s) = Salmon River (Lat 45.455, Long –115.941) upstream to endpoint(s) in: Bear Creek (45.435, –115.852); Bull Creek (45.482, –115.716); California Creek (45.341, –115.850); Cotton tail Creek (45.388, –115.752); Maxwell Creek (45.392, –115.841); Salmon River (45.434, –115.666).

(iv) Sheep Creek Watershed 1706020704. Outlet(s) = Sheep Creek (Lat 45.468, Long –115.810) upstream to endpoint(s) in: East Fork Sheep Creek (45.546, –115.769); Meadow Creek (45.544, –115.792); Plummer Creek (45.531, –115.807); Porcupine Creek (45.506, –115.817); Sheep Creek (45.591, –115.705).

(x) Middle Salmon-Chamberlain Subbasin 17060207—(i) Salmon River/Fall Creek Watershed 1706020701. Outlet(s) = Salmon River (Lat 45.426, Long –116.025) upstream to endpoint(s) in: Carey Creek (45.426, –115.934); Fall Creek (45.415, –115.975); Salmon River (45.455, –115.941).


(iii) Salmon River/California Creek Watershed 1706020703. Outlet(s) = Salmon River (Lat 45.455, Long –115.941) upstream to endpoint(s) in: Bear Creek (45.435, –115.852); Bull Creek (45.482, –115.716); California Creek (45.341, –115.850); Cotton tail Creek (45.388, –115.752); Maxwell Creek (45.392, –115.841); Salmon River (45.434, –115.666).

(iv) Sheep Creek Watershed 1706020704. Outlet(s) = Sheep Creek (Lat 45.468, Long –115.810) upstream to endpoint(s) in: East Fork Sheep Creek (45.546, –115.769); Meadow Creek (45.544, –115.792); Plummer Creek (45.531, –115.807); Porcupine Creek (45.506, –115.817); Sheep Creek (45.591, –115.705).
endpoint(s) in: Bargamin Creek (45.706, –115.046); Cache Creek (45.691, –115.180); Porcupine Creek (45.725, –115.128); Prospector Creek (45.688, –115.153); Rainey Creek (45.617, –115.210); Salt Creek (45.643, –115.189).

(ix) Salmon River/Rattlesnake Creek Watershed 1706020710. Outlet(s) = Salmon River (Lat 45.567, Long –115.191) upstream to endpoint(s) in: Rattlesnake Creek (45.560, –115.143); Salmon River (45.511, –115.041).

(x) Salmon River/Hot Springs Creek Watershed 1706020712. Outlet(s) = Salmon River (Lat 45.511, Long –115.041) upstream to endpoint(s) in: Big Harrington Creek (45.498, –114.895); Hot Springs Creek (45.465, –115.135); Salmon River (45.454, –114.981).

(x) Salmon River/Disappointment Creek Watershed 1706020713. Outlet(s) = Salmon River (Lat 45.454, Long –114.931) upstream to endpoint(s) in: Salmon River (45.395, –115.732).

(xi) Horse Creek Watershed 1706020714. Outlet(s) = Horse Creek (Lat 45.395, Long –114.732) upstream to endpoint(s) in: East Fork Reynolds Creek (45.541, –114.493); Horse Creek (45.496, –114.421); Reynolds Creek (45.555, –114.558); West Horse Creek (45.494, –114.754).

(xiv) Salmon River/Kitchen Creek Watershed 1706020715. Outlet(s) = Salmon River (Lat 45.395, Long –114.732) upstream to endpoint(s) in: Corn Creek (45.370, –114.681); Kitchen Creek (45.295, –114.752); Salmon River (45.297, –114.591).

(xv) Cottonwood Creek Watershed 1706020716. Outlet(s) = Cottonwood Creek (Lat 45.394, Long –114.802) upstream to endpoint(s) in: Cottonwood Creek (45.354, –114.825).

(xvi) Lower Chamberlain/McCalla Creek Watershed 1706020717. Outlet(s) = Chamberlain Creek (Lat 45.484, Long –114.931) upstream to endpoint(s) in: McCalla Creek (45.321, –115.115); Unnamed (45.433, –114.955); Whimstick Creek (45.241, –115.053).

(xvii) Upper Chamberlain Creek Watershed 1706020718. Outlet(s) = Chamberlain Creek (Lat 45.414, Long –114.981) upstream to endpoint(s) in: Flossie Creek (45.384, –115.248); Lodgepole Creek (45.305, –115.254); Moose Creek (45.283, –115.292); South Fork Chamberlain Creek (45.288, –115.342).

(xviii) Warren Creek Watershed 1706020719. Outlet(s) = Warren Creek (Lat 45.397, Long –115.592) upstream to endpoint(s) in: Richardson Creek (45.372, –115.625); Slaughter Creek (45.269, –115.648); Steamboat Creek (45.259, –115.722); Warren Creek (45.248, –115.653).

(15) South Fork Salmon Subbasin 17060208—(i) Lower South Fork Salmon River Watershed 1706020801. Outlet(s) = South Fork Salmon River (Lat 45.378, Long –115.512) upstream to endpoint(s) in: Big Buck Creek (45.253, –115.554); Pony Creek (45.209, –115.663); Porphry Creek (45.255, –115.462); Smith Creek (45.265, –115.550); South Fork Salmon River (45.156, –115.586).

(ii) South Fork Salmon River/Sheep Creek Watershed 1706020802. Outlet(s) = South Fork Salmon River (Lat 45.156, Long –115.585) upstream to endpoint(s) in: Bear Creek (45.124, –115.643); Contux Creek (45.155, –115.620); Deer Creek (45.162, –115.606); Elk Creek (45.149, –115.506); Sheep Creek (45.039, –115.583); South Fork Salmon River (45.025, –115.706).

(iii) Lower East Fork South Fork Salmon River Watershed 1706020803. Outlet(s) = East Fork South Fork Salmon River (Lat 45.015, Long –115.713) upstream to endpoint(s) in: Caton Creek (44.900, –115.584); East Fork South Fork Salmon River (44.963, –115.501); Loosum Creek (44.918, –115.529); Parks Creek (44.969, –115.530).

(iv) Upper East Fork South Fork Salmon River Watershed 1706020804. Outlet(s) = East Fork South Fork Salmon River (Lat 44.963, Long –115.501) upstream to endpoint(s) in: East Fork South Fork Salmon River (44.934, –115.336); Profile Creek (45.035, –115.409); Quartz Creek (45.046, –115.496); Salt Creek (44.975, –115.245); Tamarack Creek (44.995, –115.318).

(v) Lower Johnson Creek Watershed 1706020805. Outlet(s) = Johnson Creek (Lat 44.963, Long –115.501) upstream to endpoint(s) in: Johnson Creek (44.803, –115.518); Riordan Creek (44.808, –115.472); Trapper Creek (44.829, –115.508).
(vi) Burntlog Creek Watershed
1706020806. Outlet(s) = Burntlog Creek (Lat 44.803, Long –115.518) upstream to endpoint(s) in: Burntlog Creek (44.718, –115.419).

(vii) Upper Johnson Creek Watershed
1706020807. Outlet(s) = Johnson Creek (Lat 44.803, Long –115.518) upstream to endpoint(s) in: Boulder Creek (44.565, –115.595); Johnson Creek (44.550, –115.590); Landmark Creek (44.630, –115.574); Rock Creek (44.600, –115.592); S Creek (44.699, –115.413); Whiskey Creek (44.563, –115.486).

(viii) Upper South Fork Salmon River Watershed 1706020808. Outlet(s) = South Fork Salmon River (Lat 44.652, Long –115.703) upstream to endpoint(s) in: Bear Creek (44.607, –115.600); Camp Creek (44.605, –115.639); Curtis Creek (44.593, –115.752); Lodgepole Creek (44.576, –115.610); Mormon Creek (44.499, –115.654); Rice Creek (44.510, –115.644); South Fork Salmon River (44.480, –115.688); Tyndall Creek (44.568, –115.736).

(ix) South Fork Salmon River/Cabin Creek Watershed 1706020809. Outlet(s) = South Fork Salmon River (Lat 44.759, Long –115.684) upstream to endpoint(s) in: Cabin Creek (44.713, –115.638); Dollar Creek (44.758, –115.751); North Fork Dollar Creek (44.755, –115.745); Six-Bit Creek (44.684, –115.724); South Fork Salmon River (44.652, –115.703); Two-bit Creek (44.655, –115.747); Warm Lake Creek (44.653, –115.662).

(x) South Fork Salmon River/Blackmare Creek Watershed 1706020810. Outlet(s) = South Fork Salmon River (Lat 44.898, Long –115.715) upstream to endpoint(s) in: Blackmare Creek (44.809, –115.795); Camp Creek (44.889, –115.691); Cougar Creek (44.823, –115.804); Phoebe Creek (44.910, –115.705); South Fork Salmon River (44.759, –115.684).

(xi) [Reserved]

(xii) Buckhorn Creek Watershed
1706020811. Outlet(s) = Buckhorn Creek (Lat 44.922, Long –115.736) upstream to endpoint(s) in: Buckhorn Creek (44.881, –115.856); Little Buckhorn Creek (44.902, –115.756); West Fork Buckhorn Creek (44.909, –115.832).

(xiii) South Fork Salmon River/Fitsum Creek Watershed 1706020812. Outlet(s) = South Fork Salmon River (Lat 45.025, Long –115.706) upstream to endpoint(s) in: Fitsum Creek (44.996, –115.784); North Fork Fitsum Creek (44.992, –115.870); South Fork Fitsum Creek (44.981, –115.768); South Fork Salmon River (44.898, –115.715).

(xiv) Lower Secesh River Watershed 1706020813. Outlet(s) = Secesh River (Lat 45.025, Long –115.706) upstream to endpoint(s) in: Cly Creek (45.097, –115.903); Lick Creek (45.049, –115.906); Secesh River (45.183, –115.821); Split Creek (45.109, –115.805); Zena Creek (45.057, –115.732).

(xv) Middle Secesh River Watershed 1706020814. Outlet(s) = Secesh River (Lat 45.183, Long –115.821) upstream to endpoint(s) in: Lake Creek (45.374, –115.867); Threemile Creek (45.334, –115.891).

(xvi) Lower Salmon Subbasin 1706020901—(i) Salmon River/China Creek Watershed 1706020901. Outlet(s) = Salmon River (Lat 45.987, Long –116.794) upstream to endpoint(s) in: China Creek (46.004, –116.817); Flynn Creek (45.911, –116.714); Salmon River (45.999, –116.695); Wapshilla Creek (45.945, –116.766).

(ii) Eagle Creek Watershed 1706020902. Outlet(s) = Eagle Creek (Lat 45.997, Long –116.700) upstream to endpoint(s) in: Eagle Creek (46.057, –116.814).

(iii) Deer Creek Watershed 1706020903. Outlet(s) = Deer Creek (Lat 45.999, Long –116.695) upstream to endpoint(s) in: Deer Creek (46.061, –116.702).

(iv) Salmon River/Cottonwood Creek Watershed 1706020904. Outlet(s) = Salmon River (Lat 45.999, Long –116.695) upstream to endpoint(s) in: Billy Creek (45.999, –116.643); Cottonwood Creek (45.932, –116.598); Maloney Creek (46.068, –116.625); Salmon River (46.038, –116.625); West Fork Maloney Creek (46.061, –116.632).

(v) Salmon River/Deep Creek Watershed 1706020905. Outlet(s) = Salmon River (Lat 46.038, Long –116.625) upstream to endpoint(s) in: Burnt Creek (45.966, –116.548); Deep Creek (46.005, –116.547); Round Spring Creek (45.972, –116.501); Salmon River (45.911, –116.410); Telicher Creek (45.978, –116.443).
(vi) Rock Creek Watershed 1706020906. Outlet(s) = Rock Creek (Lat 45.905, Long –116.396) upstream to endpoint(s) in: Grave Creek (45.978, –116.359); Johns Creek (45.930, –116.245); Rock Creek (45.919, –116.245).

(vii) Salmon River/Hammer Creek Watershed 1706020907. Outlet(s) = Salmon River (Lat 45.911, Long –116.410) upstream to endpoint(s) in: Salmon River (45.752, –116.322).

(viii) White Bird Creek Watershed 1706020908. Outlet(s) = White Bird Creek (Lat 45.752, Long –116.322) upstream to endpoint(s) in: Asbestos Creek (45.722, –116.050); Cabin Creek (45.842, –116.110); Chapmap Creek (45.841, –116.216); Cold Springs Creek (45.716, –116.037); Fish Creek (45.865, –116.084); Jungle Creek (45.739, –116.093); Little White Bird Creek (45.740, –116.087); North Fork White Bird Creek (45.797, –116.089); Pinnacle Creek (45.779, –116.080); South Fork White Bird Creek (45.772, –116.028); Twin Cabins Creek (45.782, –116.048); Unnamed (45.809, –116.086); Unnamed (45.841, –116.114); Unnamed (45.858, –116.105).

(ix) Salmon River/McKinzie Creek Watershed 1706020909. Outlet(s) = Salmon River (Lat 45.911, Long –116.410) upstream to endpoint(s) in: Deer Creek (45.706, –116.332); McKinzie Creek (45.676, –116.260); Salmon River (45.640, –116.284); Sotin Creek (45.725, –116.341).

(x) Skookumchuck Creek Watershed 1706020910. Outlet(s) = Skookumchuck Creek (Lat 45.700, Long –116.313) upstream to endpoint(s) in: North Fork Skookumchuck Creek (45.732, –116.114); South Fork Skookumchuck Creek (45.711, –116.197).

(xi) Slate Creek Watershed 1706020911. Outlet(s) = Slate Creek (Lat 45.640, Long –116.284) upstream to endpoint(s) in: Deadhorse Creek (45.603, –116.093); Little Slate Creek (45.587, –116.075); North Fork Slate Creek (45.671, –116.095); Slate Creek (45.634, –116.000); Slide Creek (45.662, –116.146); Unnamed (45.559, –116.106); Waterspout Creek (45.571, –116.106).

(xii) Salmon River/John Day Creek Watershed 1706020912. Outlet(s) = Salmon River (Lat 45.640, Long –116.284) upstream to endpoint(s) in: China Creek (45.547, –116.310); Cow Creek (45.539, –116.330); East Fork John Day Creek (45.575, –116.221); Fiddle Creek (45.490, –116.269); John Day Creek (45.564, –116.220); Race Creek (45.437, –116.316); South Fork Race Creek (45.440, –116.403); West Fork Race Creek (45.464, –116.352).

(xiii) Salmon River/Lake Creek Watershed 1706020913. Outlet(s) = Salmon River (Lat 45.437, Long –116.316) upstream to endpoint(s) in: Allison Creek (45.597, –116.156); Berg Creek (45.426, –116.244); Lake Creek (45.294, –116.219); Salmon River (45.418, –116.162); West Fork Allison Creek (45.457, –116.184); West Fork Lake Creek (45.370, –116.241).

(xiv) Salmon River/Van Creek Watershed 1706020914. Outlet(s) = Salmon River (Lat 45.418, Long –116.162) upstream to endpoint(s) in: Robbins Creek (45.430, –116.026); Salmon River (45.426, –116.025); Van Creek (45.431, –116.138).

(xv) French Creek Watershed 1706020915. Outlet(s) = French Creek (Lat 45.425, Long –116.030) upstream to endpoint(s) in: French Creek (45.375, –116.040).

(xvi) Partridge Creek Watershed 1706020916. Outlet(s) = Elkhorn Creek (Lat 45.404, Long –116.094) upstream to endpoint(s) in: Elkhorn Creek (45.369, –116.092); Partridge Creek (45.389, –116.146).

(17) Little Salmon Subbasin 17060210—(i) Lower Little Salmon River Watershed 1706021001. Outlet(s) = Little Salmon River (Lat 45.417, Long –116.313) upstream to endpoint(s) in: Deadhorse Creek (45.603, –116.093); Little Salmon River (45.204, –116.310); Lockwood Creek (45.254, –116.366); North Fork Squaw Creek (45.426, –116.430); Popoose Creek (45.407, –116.393); Rattlesnake Creek (45.268, –116.339); Sheep Creek (45.344, –116.336); South Fork Squaw Creek (45.409, –116.435).

(ii) Little Salmon River/John Day Creek Watershed 1706021002. Outlet(s) = Little Salmon River (Lat 45.294, Long –116.310) upstream to endpoint(s) in: Bascum Canyon (45.145, –116.248); Hard Creek (45.125, –116.239); Little Salmon River (45.123, –116.298); Trail Creek (45.164, –116.338).

(iii) Hazard Creek Watershed 1706021003. Outlet(s) = Hazard Creek (Lat 45.183, Long –116.283) upstream to
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endpoint(s) in: Hazard Creek (45.201, –116.248).

(iv) Boulder Creek Watershed 1706021006. Outlet(s) = Boulder Creek (Lat 45.204, Long –116.310) upstream to endpoint(s) in: Ant Basin Creek (45.126, –116.474); Boulder Creek (45.103, –116.379); Bull Horn Creek (45.150, –116.407); Pollock Creek (45.168, –116.395); Pony Creek (45.190, –116.374); Squirrel Creek (45.198, –116.368); Star Creek (45.152, –116.418); Unnamed (45.085, –116.461); Unnamed (45.116, –116.455); Yellow Jacket Creek (45.141, –116.426).

(v) Boulder Creek Watershed 1706021006. Outlet(s) = Boulder Creek (Lat 45.204, Long –116.310) upstream to endpoint(s) in: Ant Basin Creek (45.126, –116.474); Boulder Creek (45.103, –116.379); Bull Horn Creek (45.150, –116.407); Pollock Creek (45.168, –116.395); Pony Creek (45.190, –116.374); Squirrel Creek (45.198, –116.368); Star Creek (45.152, –116.418); Unnamed (45.085, –116.461); Unnamed (45.116, –116.455); Yellow Jacket Creek (45.141, –116.426).

(v) Rapid River Watershed 1706021007. Outlet(s) = Rapid River (Lat 45.375, Long –116.355) upstream to endpoint(s) in: Granite Fork Lake Fork Rapid River (45.179, –116.526); Paradise Creek (45.609, –114.561); Gable Creek (45.714, –114.666); Hells Half Acre Creek (45.689, –114.708); Lazy Creek (45.670, –114.553); Line Creek (45.590, –114.585); Mist Creek (45.561, –114.629); Pete Creek (45.720, –114.557); Selway River (45.502, –114.702); Slow Gulch Creek (45.678, –114.520); Storm Creek (45.641, –114.596); Surprise Creek (45.533, –114.672); Swet Creek (45.516, –114.804); Three Lakes Creek (45.620, –114.803); Unnamed (45.569, –114.642); Vance Creek (45.661, –114.594); Wilkerson Creek (45.561, –114.601).

(vi) Upper Selway Subbasin 17060301—(i) Selway River/Pettibone Creek Watershed 1706030101. Outlet(s) = Selway River (Lat 46.122, Long –114.935) upstream to endpoint(s) in: Ditch Creek (46.022, –114.900); Elk Creek (45.987, –114.872); Pettibone Creek (46.105, –114.745); Selway River (45.962, –114.826).

(ii) Bear Creek Watershed 1706030102. Outlet(s) = Bear Creek (Lat 46.019, Long –114.844) upstream to endpoint(s) in: Bear Creek (46.104, –114.588); Brushy Fork Creek (45.978, –114.602); Cub Creek (46.021, –114.602); Granite Creek (45.102, –114.619); Paradise Creek (46.036, –114.710); Wahoo Creek (46.104, –114.633).

(iii) Selway River/Gardner Creek Watershed 1706030103. Outlet(s) = Selway River (Lat 45.962, Long –114.828) upstream to endpoint(s) in: Bad Luck Creek (45.896, –114.752); Crooked Creek (45.865, –114.764); Gardner Creek (45.937, –114.772); Magruder Creek (45.702, –114.795); North Star Creek (45.950, –114.806); Selway River (45.707, –114.719); Sheep Creek (45.821, –114.741); Snake Creek (45.855, –114.728).

(iv) White Cap Creek Watershed 1706030104. Outlet(s) = White Cap Creek (Lat 45.860, Long –114.744) upstream to endpoint(s) in: Barefoot Creek (45.866, –114.639); Canyon Creek (45.878, –114.422); Cedar Creek (45.896, –114.668); Clover (45.861, –114.537); Elk Creek (45.928, –114.574); Fox Creek (45.898, –114.597); Granite Creek (45.931, –114.506); Lookout Creek (45.959, –114.625); Paloma Creek (45.918, –114.592); Peach Creek (45.868, –114.607); South Fork Lookout Creek (45.929, –114.649); Unnamed (45.855, –114.557); White Cap Creek (45.947, –114.534).

(v) Indian Creek Watershed 1706030105. Outlet(s) = Indian Creek (Lat 45.792, Long –114.764) upstream to endpoint(s) in: Indian Creek (45.786, –114.581); Jack Creek (45.789, –114.681); Saddle Gulch (45.766, –114.641); Schofield Creek (45.818, –114.586).

(vi) Upper Selway River Watershed 1706030106. Outlet(s) = Selway River (Lat 45.707, Long –114.719) upstream to endpoint(s) in: Cayuse Creek (45.752, –114.572); Deep Creek (45.703, –114.517); French Creek (45.699, –114.561); Gable Creek (45.714, –114.666); Hells Half Acre Creek (45.689, –114.708); Lazy Creek (45.670, –114.553); Line Creek (45.590, –114.585); Mist Creek (45.561, –114.629); Pete Creek (45.720, –114.557); Selway River (45.502, –114.702); Slow Gulch Creek (45.678, –114.520); Storm Creek (45.641, –114.596); Surprise Creek (45.533, –114.672); Swet Creek (45.516, –114.804); Three Lakes Creek (45.620, –114.803); Unnamed (45.569, –114.642); Vance Creek (45.661, –114.594); Wilkerson Creek (45.561, –114.601).

(vii) Little Clearwater River Watershed 1706030107. Outlet(s) = Little Clearwater River (Lat 45.754, Long –114.775) upstream to endpoint(s) in: Burnt Knob Creek (45.697, –114.950); FCreek (45.644, –114.847); Little Clearwater River (45.740, –114.949); Lonely Creek (45.727, –114.865); Salamander Creek (45.655, –114.883); Short Creek (45.759, –114.859); Throng Creek (45.736, –114.904).

(viii) Running Creek Watershed 1706030108. Outlet(s) = Running Creek (Lat 45.919, Long –114.832) upstream to endpoint(s) in: Eagle Creek (45.844, –114.886); Lynx Creek (45.794, –114.993); Running Creek (45.910, –115.027); South Fork Running Creek (45.820, –115.024).

(ix) Goat Creek Watershed 1706030109. Outlet(s) = Goat Creek (Lat 45.962, Long –114.828) upstream to endpoint(s) in: Goat Creek (45.940, –115.038).

(19) Lower Selway Subbasin 17060302—(i) Selway River/Goddard Creek Watershed 1706030201. Outlet(s) = Selway River (Lat 46.140, Long –115.599) upstream to endpoint(s) in: Boyd Creek...
(46.092, –115.431); Glover Creek (46.082, –115.361); Goddard Creek (46.059, –115.610); Johnson Creek (46.139, –115.514); Rackliff Creek (46.110, –115.494); Selway River (46.046, –115.295).

(ii) Gedney Creek Watershed 1706030202. Outlet(s) = Gedney Creek (Lat 46.082, Long –115.321) upstream to endpoint(s) in: Gedney Creek (46.111, –115.206).

(iii) Selway River/Three Links Creek Watershed 1706030203. Outlet(s) = Selway River (Lat 46.046, Long –115.295) upstream to endpoint(s) in: Mink Creek (46.041, –115.087); Otter Creek (46.042, –115.216); Pinchot Creek (46.120, –115.108); Selway River (46.098, –115.071); Three Links Creek (46.143, –115.093).

(iv) Upper Three Links Creek Watershed 1706030204. Outlet(s) = Three Links Creek (Lat 46.143, Long –115.093) upstream to endpoint(s) in: Three Links Creek (46.155, –115.100).

(v) Rhoda Creek Watershed 1706030205. Outlet(s) = Rhoda Creek (Lat 46.234, Long –115.968) upstream to endpoint(s) in: North Fork Moose Creek (46.305, –114.835); West Moose Creek (46.322, –114.970).

(vi) North Fork Moose Creek Watershed 1706030207. Outlet(s) = North Fork Moose Creek (Lat 46.165, Long –114.897) upstream to endpoint(s) in: North Fork Moose Creek (46.305, –114.835); West Moose Creek (46.322, –114.970).

(vii) East Fork Moose Creek/Trotter Creek Watershed 1706030208. Outlet(s) = Selway River (Lat 46.098, Long –115.071) upstream to endpoint(s) in: Double Creek (46.220, –115.136); Rhoda Creek (46.252, –115.164); Wounded Doe Creek (46.299, –115.078).

(viii) Upper East Fork Moose Creek Watershed 1706030209. Outlet(s) = East Fork Moose Creek (Lat 46.204, –114.722) upstream to endpoint(s) in: Cedar Creek (46.201, –114.716); Elbow Creek (46.231, –114.861); Maple Creek (46.218, –114.875); Monument Creek (46.180, –114.728); Selway River (46.122, –114.935); Trout Creek (46.181, –114.961).

(ix) Marten Creek Watershed 1706030210. Outlet(s) = Marten Creek (Lat 46.099, Long –115.052) upstream to endpoint(s) in: Marten Creek (45.988, –115.029).

(x) Upper Meadow Creek Watershed 1706030211. Outlet(s) = Meadow Creek (Lat 45.88043738, Long –115.1034371) upstream to endpoint(s) in: Butter Creek (45.804, –115.149); Meadow Creek (45.698, –115.217); Three Prong Creek (45.790, –115.062).

(xi) Middle Meadow Creek Watershed 1706030212. Outlet(s) = Meadow Creek (Lat 45.88043738, Long –115.1034371) upstream to endpoint(s) in: East Fork Meadow Creek (45.868, –115.067); Meadow Creek (45.880, –115.103); Sable Creek (45.853, –115.219); Schwar Creek (45.905, –115.108); Simmons Creek (45.856, –115.247).

(xii) Lower Meadow Creek Watershed 1706030213. Outlet(s) = Meadow Creek (Lat 45.0463958, Long –115.2853459) upstream to endpoint(s) in: Buck Lake Creek (45.992, –115.084); Butte Creek (45.678, –115.248); Fivemile Creek (45.953, –115.310); Little Boulder Creek (45.935, –115.293); Meadow Creek (45.882, –115.218).

(xiii) O'Hara Creek Watershed 1706030214. Outlet(s) = O'Hara Creek (Lat 45.0463958, Long –115.2853459) upstream to endpoint(s) in: East Fork O'Hara Creek (45.995, –115.521); West Fork O'Hara Creek (45.995, –115.543).

(20) Lochsa Subbasin 17060303—(i) Lower Lochsa River Watershed 1706030301. Outlet(s) = Lochsa River (Lat 46.14004554, Long –115.5986467) upstream to endpoint(s) in: Canyon Creek (46.227, –115.580); Coolwater Creek (46.215, –115.464); Deadman Creek (46.262, –115.517); East Fork Deadman Creek (46.275, –115.505); Fire Creek (46.203, –115.411); Kerr Creek (46.102, –115.579); Lochsa River (46.338, –115.314); Nut Creek (46.180, –115.601); Pete King Creek (46.182, –115.67); Placer Creek (46.196, –115.631); South Fork Canyon Creek (46.211, –115.556); Split Creek (46.207, –115.364); Walde Creek (46.193, –115.662).

(ii) Fish Creek Watershed 1706030302. Outlet(s) = Fish Creek (Lat 46.33337703, Long –115.3449332) upstream to endpoint(s) in: Alder Creek (46.319, –115.460); Ceanothus Creek (46.341, –115.470); Fish Creek (46.341, –115.575); Frenchman Creek (46.330, –115.544); Gass Creek (46.390, –115.511); Ham Creek (46.391, –115.365); Hungery Creek (46.377, –115.542); Myrtle Creek (46.343, –115.569); Poker Creek (46.346, –115.447); Willow Creek (46.396, –115.369).

(iii) Lochsa River/Stanley Creek Watershed 1706030303. Outlet(s) = Lochsa River (Lat 46.33815653, Long –115.3449332) upstream to endpoint(s) in: Alder Creek (46.319, –115.460); Ceanothus Creek (46.341, –115.470); Fish Creek (46.341, –115.575); Frenchman Creek (46.330, –115.544); Gass Creek (46.390, –115.511); Ham Creek (46.391, –115.365); Hungery Creek (46.377, –115.542); Myrtle Creek (46.343, –115.569); Poker Creek (46.346, –115.447); Willow Creek (46.396, –115.369).
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(ix) Storm Creek Watershed 1706030309. Outlet(s) = Storm Creek (Lat 46.46307502, Long –114.5482819) upstream to endpoint(s) in: Maud Creek (46.495, –114.511); Storm Creek (46.540, –114.424).

(x) Upper White Sands Creek Watershed 1706030310. Outlet(s) = White Sands Creek (Lat 46.4330966, Long –114.595027) upstream to endpoint(s) in: Big FCreek (46.401, –114.475); Big SCreek (46.407, –114.534); Colt Creek (46.403, –114.726); White Sands Creek (46.422, –114.462).

(xi) Warm Springs Creek Watershed 1706030311. Outlet(s) = Warm Springs Creek (Lat 46.4733796, Long –114.8972254) upstream to endpoint(s) in: Cooperation Creek (46.453, –114.866); Warm Springs Creek (46.426, –114.888).

(xii) Fish Lake Creek Watershed 1706030312. Outlet(s) = Fish Lake Creek (Lat 46.46336343, Long –114.9957028) upstream to endpoint(s) in: Fish Lake Creek (46.405, –115.000); Heslip Creek (46.393, –115.027); Sponge Creek (46.384, –115.048).

(xiv) Old Man Creek Watershed 1706030314. Outlet(s) = Old Man Creek (Lat 46.2524595, Long –115.3988563) upstream to endpoint(s) in: Old Man Creek (46.256, –115.343).

(21) Middle Fork Clearwater Subbasin 17060304—(i) Middle Fork Clearwater River/Maggie Creek Watershed 1706030401. Outlet(s) = Middle Fork Clearwater River (Lat 46.1459, Long –115.9797) upstream to endpoint(s) in: Maggie Creek (46.195, –115.801); Middle Fork Clearwater River (46.140, –115.599).

(ii) Clear Creek Watershed 1706030402. Outlet(s) = Clear Creek (Lat 46.1349, Long –115.9515) upstream to endpoint(s) in: Browns Spring Creek (46.067, –115.658); Clear Creek (46.056, –115.659); Kay Creek (46.005, –115.725); Middle Fork Clear Creek (46.030, –115.738); Pine Knob Creek (46.093, –115.702); South Fork Clear Creek (45.941, –115.769); West Fork Clear Creek (46.013, –115.621).

(22) South Fork Clearwater Subbasin 17060305—(i) Lower South Fork Clearwater River Watershed 1706030501. Outlet(s) = South Fork Clearwater River (Lat 46.1459, Long –115.9797) upstream to endpoint(s) in: Butcher Creek (45.945, 569

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–116.064; Castle Creek (45.834, –115.966); Earthquake Creek (45.853, –116.005); Green Creek (45.957, –115.937); Lightning Creek (45.936, –115.946); Mill Creek (45.934, –116.010); Rabbit Creek (46.028, –115.877); Sally Ann Creek (46.019, –115.893); Schwartz Creek (45.914, –116.000); South Fork Clearwater River (45.830, –115.931); Wall Creek (45.996, –115.926).

(ii) *South Fork Clearwater River/Meadow Creek Watershed 1706030502.* Outlet(s) = South Fork Clearwater River (Lat 45.830, Long –115.931) upstream to endpoint(s) in: Covert Creek (45.890, –115.933); North Meadow Creek (45.923, –115.890); South Fork Clearwater River (45.824, –115.889); Storm Creek (45.952, –115.848); Whitman Creek (45.914, –115.919).

(iii) *South Fork Clearwater River/Peasley Creek Watershed 1706030503.* Outlet(s) = South Fork Clearwater River (Lat 45.823, Long –115.889) upstream to endpoint(s) in: South Fork Clearwater River (45.795, –115.763).

(iv) *South Fork Clearwater River/Leggett Creek Watershed 1706030504.* Outlet(s) = South Fork Clearwater River (Lat 45.795, Long –115.763) upstream to endpoint(s) in: Allison Creek (45.832, –115.588); Buckhorn Creek (45.907, –115.689); Fall Creek (45.833, –115.696); Leggett Creek (45.862, –115.685); Maurice Creek (45.856, –115.514); Moose Creek (45.835, –115.578); Rabbit Creek (45.822, –115.603); Santiam Creek (45.811, –115.624); South Fork Clearwater River (45.808, –115.474); Twentymile Creek (45.791, –115.765); Whiskey Creek (45.869, –115.544).

(v) *Newsome Creek Watershed 1706030505.* Outlet(s) = Newsome Creek (Lat 45.824, Long –115.614) upstream to endpoint(s) in: Baldy Creek (45.944, –115.681); Bear Creek (45.887, –115.580); Beaver Creek (45.943, –115.568); Haysfork Creek (45.953, –115.678); Mule Creek (45.982, –115.606); Newsome Creek (45.972, –115.654); Nugget Creek (45.897, –115.600); Pilot Creek (45.939, –115.716); Sawmill Creek (45.904, –115.701); Sing Lee Creek (45.898, –115.677); West Fork Newsome Creek (45.880, –115.661).

(vi) *American River Watershed 1706030506.* Outlet(s) = American River (Lat 45.806, Long –115.474) upstream to endpoint(s) in: American River (45.996, –115.445); Big Elk Creek (45.902, –115.513); Box Sing Creek (45.850, –115.386); Buffalo Gulch (45.873, –115.522); East Fork American River (45.905, –115.381); Flint Creek (45.913, –115.423); Kirsks Fork American River (45.842, –115.385); Lick Creek (45.945, –115.477); Little Elk Creek (45.894, –115.476); Monroe Creek (45.871, –115.495); Unnamed (45.884, –115.510); West Fork American River (45.904, –115.510); West Fork Big Elk Creek (45.883, –115.515).

(vii) *Red River Watershed 1706030507.* Outlet(s) = Red River (Lat 45.808, Long –115.474) upstream to endpoint(s) in: Bridge Creek (45.814, –115.163); Campbell Creek (45.792, –115.486); Dawson Creek (45.728, –115.393); Deadwood Creek (45.794, –115.471); Ditch Creek (45.794, –115.293); Jungle Creek (45.710, –115.286); Little Campbell Creek (45.801, –115.478); Little Moose Creek (45.710, –115.399); Moose Butte Creek (45.695, –115.365); Otterson Creek (45.803, –115.222); Red Horse Creek (45.822, –115.355); Red River (45.788, –115.174); Siegel Creek (45.800, –115.323); Soda Creek (45.741, –115.257); South Fork Red River (45.646, –115.407); Trail Creek (45.784, –115.265); Trapper Creek (45.672, –115.311); Unnamed (45.788, –115.199); West Fork Red River (45.662, –115.447).

(viii) *Crooked River Watershed 1706030508.* Outlet(s) = Crooked River (Lat 45.821, Long –115.529) upstream to endpoint(s) in: American Creek (45.715, –115.9679); East Fork Crooked River (45.655, –115.562); East Fork Relief Creek (45.736, –115.401); Fivemile Creek (45.721, –115.568); Quartz Creek (45.702, –115.536); Relief Creek (45.712, –115.472); Silver Creek (45.713, –115.535); Trout Creek (45.687, –115.9463); West Fork Crooked River (45.666, –115.596).

(ix) *Ten Mile Creek Watershed 1706030509.* Outlet(s) = Tenmile Creek (Lat 45.806, Long –115.683) upstream to endpoint(s) in: Mackey Creek (45.754, –115.683); Morgan Creek (45.731, –115.672); Sixmile Creek (45.762, –115.641); Tenmile Creek (45.694, –115.694); Williams Creek (45.703, –115.636).

(x) *John’s Creek Watershed 1706030510.* Outlet(s) = John’s Creek (Lat 45.823, Long –115.889) upstream to endpoint(s) in: American Creek (45.750, –115.961); Frank Brown Creek (45.706, –115.765); Gospel Creek (45.637, –115.915); Johns Creek (45.665, –115.827); Trout Creek (45.687, –115.9463).

(xi) Mill Creek Watershed 1706030511. Outlet(s) = Mill Creek (Lat 45.6829, Long –115.9312) upstream to endpoint(s) in: Mill Creek (45.641, –116.008); West Fork Gospel Creek (45.6768, –115.9640); Mill Creek (45.641, –116.008); Unnamed (45.6964, –115.9641).

(xii) Mill Creek Watershed 1706030511. Outlet(s) = Mill Creek (Lat 45.6829, Long –115.9312) upstream to endpoint(s) in: Adams Creek (45.6556, –116.0408); Camp Creek (45.6615, –115.9820); Corral Creek (45.6719, –115.9778); Hunt Creek (45.6768, –115.9640); Mill Creek (45.641, –116.008); Unnamed (45.6964, –115.9641).

(xi) Mill Creek Watershed 1706030511. Outlet(s) = Mill Creek (Lat 45.6829, Long –115.9312) upstream to endpoint(s) in: Adams Creek (45.6556, –116.0408); Camp Creek (45.6615, –115.9820); Corral Creek (45.6719, –115.9778); Hunt Creek (45.6768, –115.9640); Mill Creek (45.641, –116.008); Unnamed (45.6964, –115.9641).

(xii) Mill Creek Watershed 1706030511. Outlet(s) = Mill Creek (Lat 45.6829, Long –115.9312) upstream to endpoint(s) in: Adams Creek (45.6556, –116.0408); Camp Creek (45.6615, –115.9820); Corral Creek (45.6719, –115.9778); Hunt Creek (45.6768, –115.9640); Mill Creek (45.641, –116.008); Unnamed (45.6964, –115.9641).

(xii) Mill Creek Watershed 1706030511. Outlet(s) = Mill Creek (Lat 45.6829, Long –115.9312) upstream to endpoint(s) in: Adams Creek (45.6556, –116.0408); Camp Creek (45.6615, –115.9820); Corral Creek (45.6719, –115.9778); Hunt Creek (45.6768, –115.9640); Mill Creek (45.641, –116.008); Unnamed (45.6964, –115.9641).
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(xv) Middle Lolo Creek Watershed 1706030616. Outlet(s) = Lolo Creek (Lat 46.2844, Long –115.8818) upstream to endpoint(s) in: Crocker Creek (46.254, –115.859); Lolo Creek (46.381, –115.708); Mud Creek (46.274, –115.759); Nevada Creek (46.322, –115.735); Pete Charlie Creek (46.289, –115.823); Yakus Creek (46.238, –115.763).

(xvi) Musselshell Creek Watershed 1706030617. Outlet(s) = Jim Brown Creek (Lat 46.3098, Long –115.7531) upstream to endpoint(s) in: Gold Creek (46.376, –115.735); Jim Brown Creek (46.357, –115.790); Musselshell Creek (46.394, –115.744).

(xvii) Upper Lolo Creek Watershed 1706030618. Outlet(s) = Lolo Creek (Lat 46.3815, Long –115.7078) upstream to endpoint(s) in: Camp Creek (46.416, –115.624); Lolo Creek (46.425, –115.679); Relaskon Creek (46.394, –115.647); Siberia Creek (46.384, –115.707); Yoosa Creek (46.408, –115.589).

(xviii) Eldorado Creek Watershed 1706030619. Outlet(s) = Eldorado Creek (Lat 46.2947, Long –115.7500) upstream to endpoint(s) in: Cedar Creek (46.296, –115.11); Dollar Creek (46.301, –115.640); Eldorado Creek (46.300, –115.645); Four Bit Creek (46.294, –115.644).

(xix) Clearwater River/Fivemile Creek Watershed 1706030620. Outlet(s) = Clearwater River (Lat 46.4759, Long –116.2543) upstream to endpoint(s) in: Clearwater River (46.550, –116.154); Fivemile Creek (46.3473, –116.1839).

(xx) Clearwater River/Sixmile Creek Watershed 1706030621. Outlet(s) = Clearwater River (Lat 46.3500, Long –116.154) upstream to endpoint(s) in: Clearwater River (46.257, –116.007); Sixmile Creek (46.269, –116.213).

(xxi) Clearwater River/Tom Taha Creek Watershed 1706030622. Outlet(s) = Clearwater River (Lat 46.2565, Long –116.067) upstream to endpoint(s) in: Clearwater River (46.146, –115.980); Tom Taha Creek (46.244, –115.993).

(xxii) Lower Lawyer Creek Watershed 1706030623. Outlet(s) = Lawyer Creek (Lat 46.2257, Long –116.0116) upstream to endpoint(s) in: Lawyer Creek (46.155, –116.190); Sevenmile Creek (46.1498, –116.0838).

(xxiii) Middle Lawyer Creek Watershed 1706030624. Outlet(s) = Lawyer Creek (Lat 46.1546, Long –116.1899) upstream to endpoint(s) in: Lawyer Creek (46.188, –116.380).

(xxiv) Cottonwood Creek Watershed 1706030627. Outlet(s) = Cottonwood Creek (Lat 46.5023, Long –116.7127) upstream to endpoint(s) in: Cottonwood Creek (46.387, –116.622); Coyote Creek (46.4622, –116.6377); Magpie Creek (46.4814, –116.6643).

(xxv) Upper Lapwai Creek Watershed 1706030628. Outlet(s) = Lapwai Creek (Lat 46.3674, Long –116.7352) upstream to endpoint(s) in: Mission Creek (46.2724, –116.6949); Rock Creek (46.3048, –116.6250).


(xxvii) Upper Sweetwater Creek Watershed 1706030630. Outlet(s) = Webb Creek (Lat 46.3310, Long –116.6369) upstream to endpoint(s) in: Sweetwater Creek (46.2751, –116.8513); Webb Creek (46.2383, –116.7500).

(xxviii) Lower Sweetwater Creek Watershed 1706030631. Outlet(s) = Lapwai Creek (Lat 46.4512, Long –116.8182) upstream to endpoint(s) in: Lapwai Creek (46.364, –116.750); Sweetwater Creek (46.3311, –116.837); Tom Beall Creek (46.4290, –116.782).

(24) Lower Snake/Columbia River Corridor—Lower Snake/Columbia River Corridor. Outlet(s) = Columbia River (Lat 46.2465, Long –124.0782) upstream to endpoint at the confluence of the Palouse River (46.589, –117.215).

(25) Maps of critical habitat for the Snake River Basin Steelhead ESU follow:
Final Critical Habitat for the
Snake River Basin Steelhead ESU

IMNAHA RIVER SUBBASIN
17060102

Legend

Cities / Towns
State Boundary
Critical Habitat
Subbasin Boundary
Watershed Boundaries

01 - 05 = Watershed code - last 2 digits of 17060102xx
Final Critical Habitat for the
Snake River Basin Steelhead ESU

LOWER SNAKE / ASOTIN SUBBASIN
17060103

Legend
- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 03 = Watershed code - last 2 digits of 17060103xx

Area of Detail

WASHINGTON
OREGON
IDAHO
Final Critical Habitat for the
Snake River Basin Steelhead ESU

UPPER GRANDE RONDE RIVER SUBBASIN
17060104

Legend

- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

04, 08 - 11 = Watershed code - last 2 digits of 17060104xx
Final Critical Habitat for the Snake River Basin Steelhead ESU

WALLOWA RIVER SUBBASIN
17060105

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundaries
- Watershed Boundaries

01 - 06 = Watershed code - last 2 digits of 17060105xx

Area of Detail

WASHINGTON
OREGON
IDAHO
Final Critical Habitat for the
Snake River Basin Steelhead ESU

LOWER GRANDE RONDE SUBBASIN
17060106

Legend
- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 07 = Watershed code - last 2 digits of 17060106xx
Final Critical Habitat for the Snake River Basin Steelhead ESU

SOUTH FORK CLEARWATER SUBBASIN

Legend

- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 13 = Watershed code - last 2 digits of 17060305xx
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Final Critical Habitat for the
Snake River Basin Steelhead ESU

CLEARWATER SUBBASIN
17060306

Legend
○ Cities / Towns
— State Boundary
— Critical Habitat
— Subbasin Boundary
— Watershed Boundaries

01 - 31 = Watershed code - last 2 digits of 17060306xx

Area of Detail

WASHINGTON  OREGON  IDAHO
(r) Middle Columbia River Steelhead (Oncorhynchus mykiss). Critical habitat is designated to include the areas defined in the following subbasins:
(1) Upper Yakima Subbasin 17030001—
(1) Upper Yakima River Watershed 1703000101. Outlet(s) = Yakima River (Lat 47.1770, Long -120.9964) upstream to endpoint(s) in: Big Creek (47.1951, -121.1181); Cabin Creek (47.2457, -121.0729); Kachess River (47.2645, -121.2400).
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(ii) Teanaway River Watershed 1703000102. Outlet(s) = Yakima River (Lat 47.1673, Long –120.8338) upstream to endpoint(s) in: Bear Creek (47.3684, –120.7902); DeRoux Creek (47.4202, –120.9477); Dickey Creek (47.3414, –120.8322); Indian Creek (47.2880, –120.8145); Jack Creek (47.3453, –120.8951); Mason Creek (47.2528, –120.7889); Middle Creek (47.2973, –120.8204); Middle Fork Teanaway River (47.3750, –120.9800); Middle Fork Teanaway River (47.3040, –121.2148); Survey Creek (46.9435, –121.3296); Yakima River (47.1770, –120.9964).

(iii) Middle Upper Yakima River Watershed 1703000103. Outlet(s) = Yakima River (Lat 46.8987, Long –120.5035) upstream to endpoint(s) in: Badger Creek (46.9305, –120.4805); Coleman Creek (46.9636, –120.4764); Cooke Creek (46.9738, –120.3831); Dry Creek (47.0366, –120.6122); First Creek (47.2082, –120.6732); Iron Creek (47.3495, –120.7032); Manastash Creek (46.9637, –120.7347); Naneum Creek (46.9561, –120.4987); North Fork Taneum Creek (47.1224, –121.0396); Reecer Creek (47.0066, –120.5817); South Fork Taneum Creek (47.0962, –120.9713); Swauk Creek (47.3274, –120.6586); Unnamed (46.8979, –120.5407); Unnamed (47.0000, –120.5534); Unnamed (47.0193, –120.5676); Williams Creek (47.2638, –120.6513); Wilson Creek (46.9931, –120.5497); Yakima River (47.1673, –120.8338).

(iv) Umtanum/Wenas Watershed 1703000104. Outlet(s) = Yakima River (Lat 46.6309, Long –120.5130) upstream to endpoint(s) in: Burbank Creek (46.7663, –120.4238); Lmuma Creek (46.8224, –120.4510); Umtanum Creek (46.8826, –120.6130); Wenas Creek (46.7087, –120.5170); Yakima River (46.8987, –120.5030).

(2) Naches Subbasin 17030002—(i) Little Naches River Watershed 1703000201. Outlet(s) = Little Naches River (Lat 46.9854, Long –121.0615) upstream to endpoint(s) in: American River (46.9068, –121.1494); Barton Creek (46.9845, –121.2869); Bear Creek (47.0793, –121.2415); Blowout Creek (47.0946, –121.3046); Crow Creek (47.0147, –121.3241); Goat Creek (46.9193, –121.3262); Mathew Creek (47.0829, –121.4131); North Fork Little Naches River (47.0958, –121.3141); Parker Creek (46.9589, –121.2900); Pinus Creek (46.9662, –121.2766); Quartz Creek (47.0382, –121.1128); Scab Creek (46.8869, –121.2459); South Fork Little Naches River (47.0574, –121.2760); Sunrise Creek (46.9041, –121.2448); Survey Creek (46.9435, –121.3296); Timber Creek (46.9113, –121.3822); Union Creek (46.9366, –121.3596); Unnamed (46.8705, –121.2809); Unnamed (46.8741, –121.2856); Unnamed (46.8872, –121.2811); Unnamed (46.8911, –121.2816); Unnamed (46.9033, –121.3404); Unnamed (46.9431, –121.2286); Unnamed (46.9432, –121.3484); Unnamed (46.9433, –121.3482); Unnamed (46.9384, –121.3200); Unnamed (46.9390, –121.1988); Unnamed (46.9396, –121.3404); Unnamed (46.9431, –121.3088); Unnamed (46.9507, –121.2694); Unnamed (46.9774, –121.3092); Wash Creek (46.9639, –121.2810).

(ii) Naches River/Rattlesnake Creek Watershed 1703000202. Outlet(s) = Naches River (Lat 46.7467, Long –120.7858) upstream to endpoint(s) in: Glass Creek (46.8697, –121.0974); Gold Creek (46.9219, –121.0464); Hindoo Creek (46.7962, –121.1689); Little Rattlesnake Creek (46.7550, –121.0543); Lost Creek (46.9200, –121.0568); Naches River (46.9854, –121.0915); North Fork Rattlesnake Creek (46.9340, –121.1493); Rattlesnake Creek (46.7316, –121.2339); Rock Creek (46.8847, –120.9718).

(iii) Naches River/Tieton River Watershed 1703000203. Outlet(s) = Naches River (Lat 46.7467, Long –120.7858) upstream to endpoint(s) in: Glass Creek (46.8697, –121.0974); Gold Creek (46.9219, –121.0464); Hindoo Creek (46.7962, –121.1689); Little Rattlesnake Creek (46.7550, –121.0543); Lost Creek (46.9200, –121.0568); Naches River (46.9854, –121.0915); North Fork Rattlesnake Creek (46.8340, –121.1493); Rattlesnake Creek (46.7316, –121.2339); Rock Creek (46.8847, –120.9718).

(iii) Naches River/Tieton River Watershed 1703000203. Outlet(s) = Naches River (Lat 46.7467, Long –120.7858) upstream to endpoint(s) in: Glass Creek (46.8697, –121.0974); Gold Creek (46.9219, –121.0464); Hindoo Creek (46.7962, –121.1689); Little Rattlesnake Creek (46.7550, –121.0543); Lost Creek (46.9200, –121.0568); Naches River (46.9854, –121.0915); North Fork Rattlesnake Creek (46.8340, –121.1493); Rattlesnake Creek (46.7316, –121.2339); Rock Creek (46.8847, –120.9718).
endpoint(s) in: Foundation Creek (46.5549, −121.0134); Middle Fork Ahtanum Creek (46.5075, −121.0225); Nasty Creek (46.5718, −120.9721); North Fork Ahtanum Creek (46.5217, −121.0917); South Fork Ahtanum Creek (46.4917, −120.9590); Unnamed (46.5811, −120.6390).

(ii) Upper Lower Yakima River Watershed 1703000302. Outlet(s) = Yakima River (Lat 46.5283, Long −120.4732) upstream to endpoint(s) in: Unnamed (46.5460, −120.4383); Yakima River (46.6309, −120.5130).

(iii) Upper Toppenish Creek Watershed 1703000303. Outlet(s) = Toppenish Creek (Lat 46.3767, Long −120.6172) upstream to endpoint(s) in: Agency Creek (46.3619, −120.9646); Branch Creek (46.2958, −120.9898); North Fork Simcoe Creek (46.4548, −120.9307); North Fork Toppenish Creek (46.3217, −120.9985); Old Maid Canyon (46.4210, −120.9349); South Fork Toppenish Creek (46.2422, −121.0885); Toppenish Creek (46.3180, −121.1387); Unnamed (46.3758, −120.9336); Unnamed (46.4555, −120.8436); Wahtum Creek (46.3942, −120.9146); Willy Dick Canyon (46.2952, −120.9021).

(iv) Lower Toppenish Creek Watershed 1703000304. Outlet(s) = Yakima River (Lat 46.3246, Long −120.1671) upstream to endpoint(s) in: Toppenish Creek (46.3767, −120.6172); Unnamed (46.3224, −120.4464); Unnamed (46.3363, −120.5891); Unnamed (46.3364, −120.2288); Unnamed (46.3679, −120.2801); Unnamed (46.4107, −120.5382); Unnamed (46.4379, −120.4538); Yakima River (46.5383, −120.4732).

(v) Satus Creek Watershed 1703000305. Outlet(s) = Satus Creek (Lat 46.2893, Long −120.1972) upstream to endpoint(s) in: Bull Creek (46.0314, −120.5147); Kusshi Creek (46.0994, −120.6094); Logy Creek (46.1357, −120.6389); Mule Dry Creek (46.0959, −120.3186); North Fork Dry Creek (46.1779, −120.7669); Satus Creek (46.0185, −120.7269); Unnamed (46.0883, −120.5278); Wilson Charley Canyon (46.0419, −120.6479).

(vi) Yakima River/Spring Creek Watershed 1703000306. Outlet(s) = Yakima River (Lat 46.3361, Long −119.4817) upstream to endpoint(s) in: Corral Creek (46.2971, −119.5302); Satus Creek (46.2893, −120.1972); Snipes Creek (46.2119, −119.6805); Spring Creek (46.2359, −119.6602); Unnamed (46.2169, −120.0189); Unnamed (46.2426, −120.0993); Unnamed (46.2598, −120.1322); Unnamed (46.2514, −120.0190); Yakima River (46.3246, −120.1671).

(vii) Yakima River/Cold Creek Watershed 1703000307. Outlet(s) = Yakima River (Lat 46.2534, Long −119.2268) upstream to endpoint(s) in: Yakima River (46.3391, −119.4817).

(4) Middle Columbia/Lake Wallula Subbasin 17070101—(i) Upper Lake Wallula Watershed 1707010101. Outlet(s) = Columbia River (Lat 46.0594, Long −118.9445) upstream to endpoint(s) in: Columbia River (46.1776, −119.0183).

(ii) Lower Lake Wallula Watershed 1707010102. Outlet(s) = Columbia River (Lat 45.9376, Long −119.2969) upstream to endpoint(s) in: Columbia River (45.8978, −119.6962).

(iii) Glade Creek Watershed 1707010105. Outlet(s) = Glade Creek (Lat 45.8895, Long −119.6809) upstream to endpoint(s) in: Glade Creek (45.8978, −119.6962).

(iv) Upper Lake Umatilla Watershed 1707010106. Outlet(s) = Columbia River (Lat 45.8895, Long −119.6809) upstream to endpoint(s) in: Columbia River (45.9376, −119.2969).

(v) Middle Lake Umatilla Watershed 1707010109. Outlet(s) = Columbia River (Lat 45.8318, Long −119.9069) upstream to endpoint(s) in: Columbia River (45.8978, −119.6962).

(vi) Alder Creek Watershed 1707010110. Outlet(s) = Alder Creek (Lat 45.8298, Long −119.9277) upstream to endpoint(s) in: Alder Creek (45.8668, −119.9224).

(vii) Pine Creek Watershed 1707010111. Outlet(s) = Pine Creek (Lat 45.7843, Long −120.0823) upstream to endpoint(s) in: Pine Creek (45.8234, −120.1386).

(viii) Wood Gulch Watershed 1707010112. Outlet(s) = Wood Creek (Lat 45.7433, Long −120.1930) upstream to endpoint(s) in: Big Horn Canyon (45.8322, −120.2467); Wood Gulch (45.8386, −120.3006).

(ix) Rock Creek Watershed 1707010113. Outlet(s) = Rock Creek (Lat 45.6985, Long −120.4597) upstream to endpoint(s) in: Rock Creek (45.8835, −120.5557); Squaw Creek (45.8399, −120.4935).

(x) Lower Lake Umatilla Watershed 1707010114. Outlet(s) = Columbia River (Lat 45.7168, Long −120.6927) upstream to endpoint(s) in: Chapman Creek (45.7293, −120.3148); Columbia River (45.8318, −119.9069).
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(5) Walla Walla Subbasin 17070102—(i) Upper Walla Walla River Watershed 1707010201. Outlet(s) = Walla Walla River (Lat 45.9104, Long –118.3696) upstream to endpoint(s) in: Bear Creek (45.8328, –118.0991); Big Meadow Canyon (45.9000, –118.1116); Burnt Cabin Gulch (45.8056, –118.0553); Couse Creek (45.8035, –118.2032); Elbow Creek (45.7999, –118.1462); Kees Canyon (45.8262, –118.0967); Little Meadow Canyon (45.9094, –118.1333); North Fork Walla Walla River (45.9342, –118.0169); Reser Creek (45.8840, –117.9950); Rodgers Gulch (45.8513, –118.0839); South Fork Walla Walla River (45.9512, –117.9687); Swede Canyon (45.8506, –118.0640); Table Creek (45.8540, –118.0546); Unnamed (45.8026, –118.1412); Unnamed (45.8547, –117.9915); Unnamed (45.8787–118.0387); Unnamed (45.8868, –117.9629); Unnamed (45.9095, –117.9621).

(ii) Mill Creek Watershed 1707010202. Outlet(s) = Mill Creek (Lat 46.0391, Long –118.4779) upstream to endpoint(s) in: Blue Creek (46.0188, –118.0407); Broken Creek (45.9745, –117.9899); Cold Creek (46.0540, –118.4097); Deadman Creek (46.0421, –117.9503); Doan Creek (46.0437, –118.4353); Green Fork (46.0296, –117.9369); Henry Canyon (45.9554, –118.1104); Low Creek (45.9645, –117.9901); Mill Creek (46.0112, –117.9406); North Fork Mill Creek (46.0322, –117.9937); Paradise Creek (46.0005, –117.9900); Tiger Creek (45.9888, –118.0253); Unnamed (46.0233, –117.9320); Unnamed (46.0383, –117.9463); Webb Creek (45.9800, –118.0675).

(iii) Upper Touchet River Watershed 1707010203. Outlet(s) = Touchet River (Lat 46.3196, Long –117.9841) upstream to endpoint(s) in: Burnt Fork (46.0391, Long –118.4779); Coates Creek (46.1585, –117.9431); Green Fork (46.0737, –117.9712); Griffin Fork (46.1100, –117.9336); Ireland Gulch (46.1894, –117.8070); Jim Creek (46.2156, –117.7959); Lewis Creek (46.1855, –117.7791); North Fork Touchet River (46.0398, –118.0460); North Patit Creek (46.3418, –117.7538); Robinson Fork (46.1200, –117.9066); Rodgers Gulch (46.2813, –117.8411); Spangler Creek (46.1156, –117.7934); Unnamed (46.1049, –117.9351); Unnamed (46.1061, –117.8544); Unnamed (46.1206, –117.9386); Unnamed (46.1334, –117.9512); Unnamed (46.1604, –117.9018); Unnamed (46.2900, –117.7339); Weidman Gulch (46.2359, –117.8067); West Patit Creek (46.2940, –117.7164); Whitney Creek (46.1348, –117.8491); Wolf Fork (46.1035, –117.8797).

(iv) Middle Touchet River Watershed 1707010204. Outlet(s) = Touchet River (Lat 46.2952, Long –118.3320) upstream to endpoint(s) in: North Fork Copen Creek (46.1384, –118.0181); South Fork Copen Creek (46.1302, –118.0608); Touchet River (46.3196, –117.9841); Whisky Creek (46.2438, –118.0785).

(v) Lower Touchet River Watershed 1707010207. Outlet(s) = Touchet River (Lat 46.0340, Long –118.6828) upstream to endpoint(s) in: Touchet River (46.2952, –118.3320).

(vi) Cottonwood Creek Watershed 1707010208. Outlet(s) = Walla Walla River (Lat 46.0391, Long –118.4779) upstream to endpoint(s) in: Birch Creek (45.9489, –118.2541); Caldwell Creek (46.0493, –118.3022); East Little Walla Walla River (46.0008, –118.0469); Garrison Creek (46.0753, –118.2726); Middle Fork Cottonwood Creek (45.9566, –118.1776); North Fork Cottonwood Creek (45.9738, –118.1533); Reser Creek (46.0370, –118.3085); Russell Creek (46.0424, –118.2488); South Fork Cottonwood Creek (45.9252, –118.1798); Stone Creek (46.0618, –118.3081); Unnamed (45.9022, –118.4070); Walla Walla River (45.9104, –118.3696); Yellowhawk Creek (46.0753, –118.2726).

(vii) Dry Creek Watershed 1707010210. Outlet(s) = Dry Creek (Lat 46.0507, Long –118.5932) upstream to endpoint(s) in: Dry Creek (46.0725, –118.0268); Mud Creek (46.1414, –118.1313); South Fork Dry Creek (46.0751, –118.0514); Unnamed (46.1122, –118.1141).

(viii) Lower Walla Walla River Watershed 1707010211. Outlet(s) = Walla Walla River (Lat 46.0391, Long –118.4779) upstream to endpoint(s) in: Bear Creek (45.7955, –118.1942); Bobtail Creek (45.7268, –118.2035); Buck Creek (45.7081, –118.1059); East Fork Coyote Creek (45.7553, –118.1263); Johnson Creek #4 (45.7239, –118.0797); Lake Creek #2 (45.7040, –118.1297); Lick Creek (45.7400, –118.1880); North Fork Umatilla River

(6) Umatilla Subbasin 17070103—(i) Upper Umatilla River Watershed 1707010301. Outlet(s) = Umatilla River (Lat 45.7024, Long –118.3593) upstream to endpoint(s) in: Bear Creek (45.7595, –118.1942); Bobsled Creek (45.7268, –118.2035); West Patit Creek (46.2940, –117.7164); Whitney Creek (46.1348, –117.8491); Wolf Fork (46.1035, –117.8797).
National Marine Fisheries Service/NOAA, Commerce

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(ii) Meacham Creek Watershed

Outlet(s) = Meacham Creek (Lat 45.4364, Long –118.3963) upstream to endpoint(s) in: Bear Creek #3 (45.4882, –118.1993); Beaver Creek (45.4940, –118.4411); Boston Canyon (45.6294, –118.3344); Butcher Creek (45.4558, –118.3737); Camp Creek (45.5285, –118.3414); East Meacham Creek (45.4170, –118.2212); Hoskins Creek (45.5188, –118.2059); Line Creek (45.5303, –118.3291); Meacham Creek (45.4364, –118.3963); North Fork Meacham Creek (45.5676, –118.1721); Owseley Creek (45.4349, –118.2434); Pot Creek (45.6036, –118.1438); Sheep Creek (45.5121, –118.3945); Twomile Creek (45.5085, –118.4579); Unnamed (45.4540, –118.2192); Unnamed (45.5585, –118.2064); Unnamed (45.6019, –118.2871); Unnamed (45.6774, –118.3415).

(iii) Umatilla River/Mission Creek Watershed

Outlet(s) = Umatilla River (Lat 45.6559, Long –118.8804) upstream to endpoint(s) in: Bachelor Canyon (45.6368, –118.3890); Buckaroo Creek (45.6062, –118.5000); Cooskin Creek (45.6026, –118.5239); Cottonwood Creek (45.6122, –118.5704); Little Squaw Creek (45.5699, –118.4905); Mission Creek (45.6256, –118.6133); Moonshine Creek (45.6166, –118.5392); Patawa Creek (45.6424, –118.7125); Red Elk Canyon (45.6718, –118.4413); Saddle Hollow (45.7067, –118.3968); South Patawa Creek (45.6250, –118.6919); Squaw Creek (45.5584, –118.4389); Stage Gulch (45.6533, –118.4841); Thorn Hollow Creek (45.6957, –118.6330); Umatilla River (45.7024, –118.3959); Unnamed (45.5649, –118.4221); Unnamed (45.6692, –118.7003); Unnamed (45.6100, –118.4046); Unnamed (45.6571, –118.7473); Unnamed (45.6599, –118.4641); Unnamed (45.6599, –118.4711); Unnamed (45.6676, –118.6176); Unnamed (45.6688, –118.5575); Unnamed (45.6745, –118.5859).

(iv) McKay Creek Watershed

Outlet(s) = McKay Creek (Lat 45.6865, Long –118.8400) upstream to endpoint(s) in: McKay Creek (45.0797, –118.7917).

(v) Birch Creek Watershed

Outlet(s) = Birch Creek (Lat 45.6559, Long –118.8804) upstream to endpoint(s) in: Bear Creek (45.2793, –118.6939); Bridge Creek (45.3603, –118.9039); California Gulch (45.3950, –118.8149); Dark Canyon (45.3119, –118.7572); East Birch Creek (45.3676, –118.6085); Johnson Creek #2 (45.3931, –118.7518); Littlee Pearseon Creek (45.3892, –118.7415); Merle Gulch (45.3450, –118.8136); Owings Creek (45.3864, –118.9000); Pearson Creek (45.2901, –118.7965); South Canyon #2 (45.3444, –118.6949); Unnamed (45.2703, –118.7624); Unnamed (45.3016, –118.7705); Unnamed (45.3232, –118.7264); Unnamed (45.3470, –118.7984); Unnamed (45.3478, –118.6703); Unnamed (45.3511, –118.6328); Unnamed (45.4628, –118.7491); West Birch Creek (45.2973, –118.8341); Willow Spring Canyon (45.3426, –118.9833).

(vi) Umatilla River/Alkali Canyon Watershed

Outlet(s) = Umatilla River (Lat 45.7831, Long –119.2372) upstream to endpoint(s) in: Umatilla River (45.6559, –118.8804).

(vii) Lower Umatilla River Watershed

Outlet(s) = Umatilla River (Lat 45.7831, Long –119.2372) upstream to endpoint(s) in: Umatilla River (45.7831, –119.2372).

(7) Middle Columbia/Hood Subbasin

Outlet(s) = Columbia River (Lat 45.6426, Long –120.9142) upstream to endpoint(s) in: Columbia River (45.7168, –120.6927); Frank Fulton Canyon (45.6244, –120.8258); Spanish Hollow Creek (45.6469, –120.8069); Unnamed (45.6404, –120.8654).

(ii) Fifteenmile Creek Watershed

Outlet(s) = Fifteenmile Creek (Lat 45.6246, Long –119.2372) upstream to endpoint(s) in: Cedar Creek (45.3713, –121.4153); Dry Creek (45.4918, –121.0479); Fifteenmile Creek (45.3668, –121.4390); Ramsey Creek (45.3979, –121.4454); Unnamed (45.3768, –121.4410).
(iii) Fivemile Creek Watershed
1707010503. Outlet(s) = Eightmile Creek (Lat 45.6064, Long –121.0654) upstream to endpoint(s) in: Eightmile Creek (45.3944, –121.4983); Middle Fork Fivemile Creek (45.4502, –121.4324); South Fork Fivemile Creek (45.4622, –121.3641).

(iv) Middle Columbia/Mill Creek Watershed
1707010504. Outlet(s) = Columbia River (Lat 45.6920, Long –121.2937) upstream to endpoint(s) in: Bear Creek (46.0770, –121.2262); Klickitat River (45.6263, –121.2881); Outlet Creek (45.0178, –121.1740); Summit Creek (45.6003, –121.0918); Trout Creek (45.1166, –121.1968); White Creek (46.1084, –121.0730).

(v) Mosier Creek Watershed
1707010505. Outlet(s) = Mosier Creek (Lat 45.6950, Long –121.3996) upstream to endpoint(s) in: Mosier Creek (45.6826, –121.3896); Rock Creek (45.6649, –121.4352).

(vi) White Salmon River Watershed
1707010509. Outlet(s) = White Salmon River (Lat 45.7267, Long –121.5209) upstream to endpoint(s) in: Unnamed (45.7395, –121.5500); White Salmon River (45.7676, –121.5374).

(vii) Middle Columbia/Grays Creek Watershed
1707010512. Outlet(s) = Mosier Creek (Lat 45.6950, Long –121.3996) upstream to endpoint(s) in: Catherine Creek (45.7448, –121.4206); Columbia River (45.6920, –121.2937); Dog Creek (45.7200, –121.6804); East Fork Major Creek (45.8005, –121.3449); Hanson Creek (45.7472, –121.3143); Jewett Creek (45.7524, –121.4704); Rowena Creek (45.6940, –121.3122); Unnamed (45.7238, –121.7227); Unnamed (45.7248, –121.7322); Unnamed (45.7303, –121.3095); Unnamed (45.7316, –121.3094); Unnamed (45.7445, –121.3309); Unnamed (45.7486, –121.3203); Unnamed (45.7530, –121.4077); Unnamed (45.7632, –121.4795); Unnamed (45.7954, –121.3863); Unnamed (45.8003, –121.4062); West Fork Major Creek (45.8117, –121.3929).

(8) Klickitat Subbasin 17070106—(i) Upper Klickitat River Watershed
1707010601. Outlet(s) = Klickitat River (Lat 46.1263, Long –121.2881) upstream to endpoint(s) in: Cedar Creek (46.2122, –121.2042); Coyote Creek (46.4640, –121.1839); Cuitin Creek (46.4602, –121.1662); Diamond Fork (46.4794, –121.2273); Huckleberry Creek (46.4273, –121.3720); Klickitat River (46.4439, –121.3756); McCreedy Creek (46.3319, –121.2529); Piscoe Creek (46.3768, –121.1436); Surveyors Creek (46.2181, –121.1833); Unnamed (46.4476, –121.3575); Unnamed (46.4585, –121.2565); West Fork Klickitat River (46.2757, –121.3267).

(ii) Klickitat River Watershed
1707010602. Outlet(s) = Klickitat River (Lat 45.9858, Long –121.1233) upstream to endpoint(s) in: Bear Creek (46.0770, –121.2262); Klickitat River (45.6263, –121.2881); Outlet Creek (45.0178, –121.1740); Summit Creek (45.6003, –121.0918); Trout Creek (45.1166, –121.1968); White Creek (46.1084, –121.0730).

(iii) Little Klickitat River Watershed
1707010603. Outlet(s) = Little Klickitat River (Lat 45.8452, Long –121.0625) upstream to endpoint(s) in: Blockhouse Creek (45.8188, –120.9813); Butler Creek (45.9287, –120.7005); Canyon Creek (45.8833, –121.0504); East Prong Little Klickitat River (45.9279, –120.8832); Mill Creek (45.8374, –121.0001); Unnamed (45.8162, –120.9286); West Prong Little Klickitat River (45.9251, –120.7292).

(iv) Lower Klickitat River Watershed
1707010604. Outlet(s) = Klickitat River (Lat 45.6920, Long –121.2937) upstream to endpoint(s) in: Dead Canyon (45.9473, –121.1754); Dillacort Canyon (45.7349, –121.1904); Klickitat River (45.9858, –121.1233); Logging Camp Canyon (45.7872, –121.2260); Snyder Canyon (45.8431, –121.2152); Swale Creek (45.7218, –121.0475); Wheeler Canyon (45.7946, –121.1615).

(9) Upper John Day Subbasin 17070201—(i) Middle South Fork John Day Watershed
1707020103. Outlet(s) = South Fork John Day River (Lat 44.1918, Long –119.5261) upstream to endpoint(s) in: Blue Creek (44.2183, –119.3679); Corral Creek (44.1698, –119.3573); North Fork Deer Creek (44.2034, –119.3009); South Fork Deer Creek (44.1550, –119.3457); South Fork John Day River (44.1822, –119.5243) Unnamed (44.1824, –119.4210); Vester Creek (44.1794, –119.3872).

(ii) Murderers Creek Watershed
1707020104. Outlet(s) = Murderers Creek (Lat 44.3146, Long –119.5383) upstream to endpoint(s) in: Bark Cabin Creek (44.2481, –119.3067); Basin Creek (44.2700, –119.1711); Cabin Creek (44.3420, –119.4403); Charlie Mack Creek (44.2708, –119.2344); Crazy Creek (44.2421, –119.4282); Dans Creek (44.2500, –119.4282).
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–119.2774; Duncan Creek (44.3219, –119.3555); Lemon Creek (44.3252, –119.2500); Miner Creek (44.3237, –119.2416); Orange Creek (44.3254, –119.2613); Oregon Mine Creek (44.2816, –119.2500); Tennessee Creek (44.3204, –119.3029); Thorn Creek (44.3131, –119.3157); Todd Creek (44.3291, –119.3976); Unnamed (44.3133, –119.3533); Unnamed (44.3250, –119.3476); White Creek (44.2747, –119.1866).

(iii) Lower South Fork John Day Watershed 1707020105. Outlet(s) = South Fork John Day River (Lat 44.4740, Long –119.5344) upstream to endpoint(s) in: Cougar Gulch (44.2279, –119.4896); Frazier Creek (44.2200, –119.5745); Jackass Creek (44.3564, –119.4958); North Fork Wind Creek (44.5019, –119.3632); Payten Creek (44.3692, –119.6185); Smoky Creek (44.3893, –119.4791); South Fork Black Canyon Creek (44.3789, –119.7293); South Fork John Day River (44.1918, –119.5261); South Fork Wind Creek (44.2169, –119.6192); South Prong Creek (44.3093, –119.6558); Squaw Creek (44.3000, –119.6143); Unnamed (44.2306, –119.6095); Unnamed (44.2358, –119.6013); Unnamed (44.2302, –119.6332); Wind Creek (44.2793, –119.6515).

(iv) Upper John Day River Watershed 1707020106. Outlet(s) = John Day River (Lat 44.4534, Long –118.6711) upstream to endpoint(s) in: Bogue Gulch (44.3697, –118.5200); Call Creek (44.2973, –118.5169); Crescent Creek (44.2721, –118.5473); Dads Creek (44.5140, –118.6463); Dans Creek (44.9989, –118.5920); Deardorff Creek (44.3695, –118.4596); Eureka Gulch (44.4801, –119.5912); Graham Creek (44.3611, –118.6084); Isham Creek (44.3649, –118.5629); Jeff Davis Creek (44.4813, –118.5670); John Day River (44.4503, –118.5256); Mossy Gulch (44.3641, –118.5211); North Reynolds Creek (44.4525, –118.4880); Rail Creek #2 (44.3413, –118.5017); Reynolds Creek (44.4185, –118.5407); Roberts Creek (44.3060, –118.5915); Thompson Creek (44.3981, –118.5895); Unnamed (44.2710, –118.5412).

(v) Canyon Creek Watershed 1707020107. Outlet(s) = Canyon Creek (Lat 44.4225, Long –118.9584) upstream to endpoint(s) in: Birch Creek (44.4353, –119.2148); Crazy Creek #2 (44.2165, –118.7751); East Fork Canyon Creek (44.2865, –118.7939); Middle Fork Canyon Creek (44.3086, –118.8488); Tamarack Creek #2 (44.2965, –118.6011); Unnamed (44.2717, –118.7500); Unnamed (44.2814, –118.7620); Vance Creek (44.2929, –118.9880); Wall Creek (44.2543, –118.8308).

(vi) Strawberry Creek Watershed 1707020108. Outlet(s) = Strawberry Creek (Lat 44.4225, Long –118.9584) upstream to endpoint(s) in: Bear Creek (44.5298, –118.1002); Beech Creek (44.5682, –119.1170); Clear Creek (44.5522, –119.9942); Cottonwood Creek (44.5758, –119.0694); East Fork Beech Creek (44.5248, –119.9023); Ennis Creek (44.5490, –119.0207); Hog Creek (44.5484, –119.0379); Little Beech Creek (44.4676, –118.9733); McClellan Creek #2 (44.5570, –119.4940); Tinker Creek (44.5550, –118.8892); Unnamed (44.5349, –119.0827).

(vii) Beech Creek Watershed 1707020109. Outlet(s) = Beech Creek (Lat 44.4116, Long –119.1151) upstream to endpoint(s) in: Bear Creek (44.5298, –119.1002); Beech Creek (44.5682, –119.1170); Clear Creek (44.5522, –119.9942); Cottonwood Creek (44.5758, –119.0694); East Fork Beech Creek (44.5248, –119.9023); Ennis Creek (44.5490, –119.0207); Hog Creek (44.5484, –119.0379); Little Beech Creek (44.4676, –118.9733); McClellan Creek #2 (44.5570, –119.4940); Tinker Creek (44.5550, –118.8892); Unnamed (44.5349, –119.0827).

(viii) Laycock Creek Watershed 1707020110. Outlet(s) = Laycock Creek (Lat 44.4156, Long –119.1002) upstream to endpoint(s) in: Birch Creek #2 (44.4353, –119.2148); East Fork Dry Creek (44.4896, –119.1817); Fall Creek #2 (44.3551, –119.0420); Hanscombe Creek (44.3040, –119.0513); Harper Creek (44.3485, –119.1259); Ingle Creek (44.3154, –119.1153); John Day River (44.4225, –118.9584); Laycock Creek (44.3118, –119.0842); McClellan Creek (44.3510, –119.2004); Moon Creek (44.3483, –119.2389); Riley Creek (44.3450, –119.1664).

(ix) Fields Creek Watershed 1707020111. Outlet(s) = John Day River (Lat 44.4740, Long –119.1002) upstream to endpoint(s) in: Birch Creek #2 (44.4353, –119.2148); East Fork Dry Creek (44.4896, –119.1817); Fall Creek #2 (44.3551, –119.0420); Hanscombe Creek (44.3040, –119.0513); Harper Creek (44.3485, –119.1259); Ingle Creek (44.3154, –119.1153); John Day River (44.4225, –118.9584); Laycock Creek (44.3118, –119.0842); McClellan Creek (44.3510, –119.2004); Moon Creek (44.3483, –119.2389); Riley Creek (44.3450, –119.1664).
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Long –119.5344) upstream to endpoint(s) in: Belshaw Creek (44.5460, –119.2025); Bridge Creek (44.4062, –119.4180); Buck Cabin Creek (44.3412, –119.3313); Cummings Creek (44.5043, –119.3250); Fields Creek (44.3260, –119.2828); Flat Creek (44.3930, –119.4386); John Day River (44.4155, –119.2220); Marks Creek (44.5162, –119.3868); Wickipoo Creek (44.3713, –119.3239); Widows Creek (44.3752, –119.3819); Wiley Creek (44.4752, –119.3784).

(x) Upper Middle John Day Watershed 1707020112.
Outlet(s) = John Day River (Lat 44.5289, Long –119.6320) upstream to endpoint(s) in: Back Creek (44.4164, –119.6858); Battle Creek (44.4658, –119.5863); Cottonwood Creek (44.3863, –119.7370); Cougar Creek (44.4331, –119.7056); East Fork Cottonwood Creek (44.3846, –119.6177); Ferris Creek (44.5446, –119.5250); Franks Creek (44.5067, –119.4903); John Day River (44.4740, –119.5344); Rattlesnake Creek (44.4673, –119.6953); Unnamed (44.3827, –119.6479); Unnamed (44.3961, –119.7493); Unnamed (44.4082, –119.6916).

(xi) Mountain Creek Watershed 1707020113.
Outlet(s) = Mountain Creek (Lat 44.5214, Long –119.7138) upstream to endpoint(s) in: Badger Creek (44.4164, –120.1180); Fopiano Creek (44.5899, –119.9242); Fort Creek (44.4656, –119.9233); Fry Creek (44.4647, –119.9940); Keeton Creek (44.4632, –120.0195); Mac Creek (44.4739, –119.9359); Milk Creek (44.3649, –120.1526); Unnamed (44.4700, –119.9427); Unnamed (44.4703, –120.0328); Unnamed (44.4827, –119.8970); Willow Creek (44.6027, –119.8746).

(xii) Rock Creek Watershed 1707020114.
Outlet(s) = Rock Creek (Lat 44.5289, Long –119.6320) upstream to endpoint(s) in: Baldy Creek (44.3906, –119.7651); Bear Creek (44.3676, –119.8401); Fir Tree Creek (44.3902, –119.7893); First Creek (44.4086, –119.8120); Fred Creek (44.4602, –119.8549); Little Windy Creek (44.3751, –119.7595); Pine Hollow #2 (44.5007, –119.6557); Rock Creek (44.3309, –119.7636); Second Creek (44.3984, –119.8075); Unnamed (44.4000, –119.8501); Unnamed (44.4232, –119.7271); West Fork Birch Creek (44.4365, –119.7500).

(xiii) John Day River/Johnson Creek Watershed 1707020115.
Outlet(s) = John Day River (Lat 44.7554, Long –119.6382) upstream to endpoint(s) in: Buckhorn Creek (44.6137, –119.7382); Burnt Corral Creek (44.6987, –119.5733); Frank Creek (44.6262, –119.7177); Indian Creek (44.5925, –119.7636); John Day River (44.5289, –119.6320); Johnny Creek (44.6126, –119.5534); Johnson Creek (44.6766, –119.7363).

Outlet(s) = North Fork John Day River (Lat 44.8661, Long –118.5605) upstream to endpoint(s) in: Baldy Creek (44.8687, –118.3172); Bear Gulch (44.8978, –118.5400); Bull Creek (44.8790, –118.2753); Crane Creek (44.8715, –118.3539); Crawfish Creek (44.9424, –118.2608); Cunningham Creek (44.9172, –118.2478); Davis Creek (44.9645, –118.4156); First Gulch (44.8831, –118.5588); Hoodoo Creek (44.9763, –118.3673); Long Meadow Creek (44.9490, –118.2932); McCarty Gulch (44.9131, –118.5114); Middle Trail Creek (44.9513, –118.3185); North Fork John Day River (44.8691, –118.2392); North Trail Creek (44.9675, –118.3219); South Trail Creek (44.9494, –118.2930); Trout Creek (44.9066, –118.4656); Unnamed (44.8576, –118.3169); Unnamed (44.8045, –118.3421); Unnamed (44.9221, –118.9000); Unnamed (44.9405, –118.4903); Unnamed (44.9471, –118.4797); Wagner Gulch (44.9390, –118.5148).

(ii) Granite Creek Watershed 1707020202.
Outlet(s) = Granite Creek (Lat 44.8661, Long –118.5605) upstream to endpoint(s) in: Beaver Creek (44.7425, –118.3940); Boulder Creek (44.8368, –118.3631); Boundary Creek (44.8106, –118.3420); Bull Run Creek (44.7534, –118.3154); Corral Creek #2 (44.8186, –118.3565); Deep Creek #2 (44.8017, –118.3200); East Ten Cent Creek (44.8384, –118.4253); Granite Creek (44.8578, –118.3730); Lake Creek (44.7975, –118.5929); Lick Creek (44.8503, –118.5605); Lightning Creek (44.7256, –118.5011); Lost Creek (44.7620, –118.5822); North Fork Ruby Creek (44.7898, –118.5073); Olive Creek (44.7191, –118.4677); Rabbit Creek (44.7819, –118.5616); Ruby Creek (44.7797, –118.5237); South Fork Beaver Creek (44.7432, –118.4272); Squaw Creek #5 (44.8552, –118.4705); Unnamed (44.8427, –118.4233); West Fork Clear Creek (44.7490, –118.5440); West Ten Cent Creek (44.8709, –118.4377); Wolesy Creek (44.7687, –118.5540).
(iii) North Fork John Day River/Big Creek Watershed 1707020203. Outlet(s) = North Fork John Day River (Lat 44.9976, Long –118.9444) upstream to endpoint(s) in: Backout Creek (44.8560, –118.0289); Basin Creek (44.9061, –118.6671); Big Creek (45.0115, –118.6041); Bismarck Creek (45.9454, –118.7020); Coral Creek (44.9592, –118.6368); Cougar Creek (44.9288, –118.6653); Meadow Creek (44.9636, –118.4664); Oregon Gulch (44.8994, –118.6119); Oriental Creek (44.9592, –118.6368); Paradise Creek (44.9288, –118.6653); White Creek (45.0000, –118.5617); Warm Spring Creek (45.0979, –118.6561).

(iv) Desolation Creek Watershed 1707020204. Outlet(s) = Desolation Creek (Lat 44.9977, Long –118.9352) upstream to endpoint(s) in: Battle Creek (44.8895, –118.7010); Beeman Creek (44.9830, –118.7489); Bruin Creek (44.9396, –118.7600); Howard Creek (44.8513, –118.7004); Junkens Creek (44.8482, –118.7994); Kelsay Creek (44.9203, –118.6899); Little Kelsay Creek (44.9127, –118.7124); North Fork Desolation Creek (44.7791, –118.6231); Park Creek (44.9109, –118.7839); Peep Creek (44.9488, –118.8069); South Fork Desolation Creek (44.7890, –118.6732); Sponge Creek (44.8577, –118.7165); Starvout Creek (44.8994, –118.8220); Unnamed (44.8709, –118.7130); Unnamed (44.9058, –118.7689); Unnamed (44.9163, –118.8384); Unnamed (44.9203, –118.8315); Unnamed (44.9521, –118.8141); Unnamed (44.9735, –118.8707).

(v) Upper Camas Creek Watershed 1707020205. Outlet(s) = Camas Creek (Lat 45.1576, Long –118.8411) upstream to endpoint(s) in: Bear Wallow Creek (45.2501, –118.7502); Bowman Creek (45.2281, –118.7028); Butcherknife Creek (45.1495, –118.6913); Camas Creek (45.1576, –118.5848); Dry Creek (45.1582, –118.5846); Frazier Creek (45.1196, –118.6152); Hidaway Creek (45.0807, –118.5788); Lane Creek (45.2429, –118.7749); Line Creek (45.1067, –118.6562); North Fork Cable Creek (45.0535, –118.6569); Rancheria Creek (45.2144, –118.6652); Salsbury Creek (45.2022, –118.6206); South Fork Cable Creek (45.0077, –118.6942); Unnamed (45.0508, –118.6536); Unnamed (45.0579, –118.6705); Unnamed (45.0636, –118.6198); Unnamed (45.0638, –118.5908); Unnamed (45.0823, –118.6579); Unnamed (45.1369, –118.6771); Unnamed (45.1513, –118.5986); Unnamed (45.1851, –118.6842); Unnamed (45.1891, –118.6110); Unnamed (45.2429, –118.7575); Warm Spring Creek (45.1386, –118.6561).

(vi) Lower Camas Creek Watershed 1707020206. Outlet(s) = Camas Creek (Lat 45.0101, Long –118.9950) upstream to endpoint(s) in: Bridge Creek (45.0395, –118.8411); Camas Creek (45.1576, –118.8411); Cooper Creek (45.2133, –118.8411); Deereck Creek (45.1489, –119.2259); Dry Fivemile Creek (45.1313, –119.2259); Middle Fork Wilkins Creek (45.1193, –119.0439); North Fork Owens Creek (45.1872, –119.9705); Owens Creek (45.2562, –118.8305); Silver Creek (45.1066, –118.9268); Snipe Creek (45.2502, –119.9707); South Fork Wilkins Creek (45.1078, –119.0312); Sugarbowl Creek (45.1986, –119.1268); Taylor Creek (45.1482, –119.1268); Tribble Creek (45.1713, –119.1617); Unnamed (45.0797, –118.7878); Unnamed (45.1198, –118.8514); Unnamed (45.1993, –118.9602); Unnamed (45.2000, –118.8236); Unnamed (45.2141, –118.8079); Unnamed (45.1773, –119.0753); Unnamed (45.2062, –119.0717); Wilkins Creek (45.1239, –119.0094).

(vii) North Fork John Day River/ Potamus Creek Watershed 1707020207. Outlet(s) = North Fork John Day River (Lat 44.8832, Long –118.4090) upstream to endpoint(s) in: Buckaroo Creek (45.0245, –119.1187); Butcher Bill Creek (45.1290, –119.3197); Cabin Creek (44.9650, –119.3628); Deep Creek (45.0977, –119.2021); Deerhorn Creek (45.0513, –119.0542); Ditch Creek (45.1589, –119.0513); East Fork Meadow Brook Creek (44.9634, –118.9575); Ellis Creek (45.1197, –119.2167); Graves Creek (44.9927, –119.3171); Hinton Creek (44.9650, –119.0025); Hunter Creek (45.0114, –119.0896); Jericho Creek (45.0361, –119.0829); Little Potamus Creek (45.0462, –119.2579); Mallory Creek (45.0807, –118.5788).
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(45.1030, –119.3112); Martin Creek
(45.1217, –119.3538); Matlock Creek
(45.0762, –119.1387); No Name Creek
(45.0730, –119.1459); North Fork John
Day River (44.9796, –118.9444); Pole
Creek (45.1666, –119.2533); Rush Creek
(45.0498, –119.1219); Skull Creek (44.9726,
–118.9687); Smith Creek (44.9443,
–119.2844); Stony Creek (45.0424,
–119.1489); West Fork Meadow Brook
(44.9428, –119.2776); Wickiup Creek
(45.0256, –119.2776); Wilson Creek
(45.1372, –119.2673).

(viii) Wall Creek Watershed 1707020208.
Outlet(s) = Big Wall Creek (Lat 44.8832,
Long –119.4090) upstream to endpoint(s)
in: Alder Creek (45.1037, –119.4170);
Bacon Creek (45.0533, –119.4170); Big Wall
Creek (44.9369, –119.6055); Bull Prairie
Creek (44.9835, –119.6911); East Fork Alder
Creek (45.1028, –119.3929); East Fork In-
dian Creek (44.9009, –119.4918); Happy
Jack Creek (44.8997, –119.5730); Hog
Creek (45.0507, –119.4621); Indian Creek
(44.8810, –119.5260); Johnson Creek
(45.0097, –119.6282); Little Bear Creek
(45.0433, –119.4084); Little Wall Creek
(45.0271, –119.5235); Little Wilson Creek
(44.9797, –119.5551); Lovell Creek
(44.9673, –119.5305); Skookum Creek
(45.0894, –119.4725); South Fork Big Wall
Creek (44.9315, –119.6167); Swale Creek
(45.1162, –119.3836); Three Trough Creek
(44.9927, –119.5318); Two Spring Creek
(45.0251, –119.3938); Unnamed (44.9006,
–119.6213); Unnamed (44.9830, –119.7394);
Unnamed (44.9883, –119.7248); Unnamed
(45.0922, –119.4374); Unnamed (45.1079,
–119.4359); Willow Spring Creek (44.9467,
–119.5921); Wilson Creek (44.9861,
–119.6623).

(ix) Cottonwood Creek Watershed
1707020209. Outlet(s) = Cottonwood
Creek (Lat 44.8141, Long –119.4183) up-
stream to endpoint(s) in: Beck Creek
(44.5795, –119.2664); Board Creek (44.5841,
–119.3763); Boulder Creek (44.5876,
–119.1373); Camp Creek #3 (44.6606,
–119.3263); Cougar Creek #2 (44.6630,
–119.4138); Day Creek (44.5946, –119.0235);
Donaldson Creek (44.5919, –119.3480);
Dunning Creek (44.6161, –119.0628); Fox
Creek (44.6163, –119.0078); Indian Creek
(45.0794, –119.2196); McHaley Creek
(44.5845, –119.2234); Mill Creek (44.6800,
–119.0878); Mine Creek (44.5938,
(iii) Big Creek Watershed 1707020303. Outlet(s) = Middle Fork John Day River (Lat 44.8363, Long –119.0396) upstream to endpoint(s) in: Barnes Creek (44.8911, –119.0974); Bear Creek (44.7068, –118.9672); Big Creek (44.7726, –118.6831); Deadwood Creek (44.7645, –118.7499); Deep Creek (44.7448, –118.7591); East Fork Big Creek (44.7923, –118.7783); Elk Creek (44.7167, –118.7721); Granite Creek (44.8893, –119.0103); Huckleberry Creek (44.8045, –118.8605); Indian Creek (44.8037, –118.7498); Lick Creek (44.8302, –118.9613); Little Indian Creek (44.8743, –118.8892); Lost Creek (44.7906, –118.7970); Middle Fork John Day River (44.6934, –118.7947); Mosquito Creek (44.7504, –118.6021); North Fork Elk Creek (44.7281, –118.7624); Onion Gulch (44.7622, –118.7840); Pizer Creek (44.7805, –118.8100); Slide Creek (44.6950, –118.9214); Swamp Gulch (44.7606, –118.7641); Unnamed (44.8249, –118.8718); Unnamed (44.8594, –119.9018).

(iv) Long Creek Watershed 1707020304. Outlet(s) = Long Creek (Lat 44.8878, Long –119.2338) upstream to endpoint(s) in: Bear Creek (44.5585, –120.4198); Bridge Creek (44.4721, –120.2009); Carroll Creek (44.5460, –120.3222); Dodds Creek (44.5329, –120.3867); Gable Creek (44.5186, –120.2384); Johnson Creek #2 (44.5193, –120.0949); Slide Creek (44.4956, –120.3023); Thompson Creek (44.5270, –120.2489); West Branch Bridge Creek (44.4911, –120.3098).

(v) Lower Middle Fork John Day River Watershed 1707020305. Outlet(s) = Middle Fork John Day River (Lat 44.9436, –119.3064) upstream to endpoint(s) in: Middle Fork John Day River (44.8363, –119.0306).

(12) Lower John Day Subbasin 17070204—(i) Lower John Day River/Kahler Creek 1707020401. Outlet(s) = John Day River (Lat 44.8080, Long –119.9585) upstream to endpoint(s) in: Alder Creek (44.9575, –119.8621); Camp Creek (44.9005, –119.9505); East Bologna Canyon (44.9484, –119.5842); Henry Creek (44.9609, –119.7683); Horseshoe Creek (44.7076, –119.9465); John Day River (44.7554, –119.6382); Kahler Creek (44.9109, –119.7030); Lake Creek (44.9012, –119.9806); Left Hand Creek (44.7693, –119.7613); Parrish Creek (44.7207, –119.8369); Tamarack Butte #2 (44.6867, –119.7898); Tamarack Creek (44.9483, –119.8447); William Creek (44.7458, –119.9267).

(ii) Lower John Day River/Service Creek Watershed 1707020402. Outlet(s) = John Day River (Lat 44.7368, Long –120.3054) upstream to endpoint(s) in: Big Service Creek (44.9286, –120.0428); Girds Creek (44.6681, –120.1234); John Day River (44.8080, –119.9585); Rowe Creek (44.8043, –120.1751); Service Creek (44.8951, –120.0892); Shoofly Creek (44.6510, –120.0207).

(iii) Bridge Creek Watershed 1707020403. Outlet(s) = Bridge Creek (Lat 44.7368, Long –120.3054) upstream to endpoint(s) in: Bear Creek (44.5585, –120.4198); Bridge Creek (44.4721, –120.2009); Carroll Creek (44.5460, –120.3222); Dodds Creek (44.5329, –120.3867); Gable Creek (44.5186, –120.2384); Johnson Creek #2 (44.5193, –120.0949); Slide Creek (44.4956, –120.3023); Thompson Creek (44.5270, –120.2489); West Branch Bridge Creek (44.4911, –120.3098).

(iv) Lower John Day River/Muddy Creek Watershed 1707020404. Outlet(s) = John Day River (Lat 44.9062, Long –120.3054) upstream to endpoint(s) in: Bear Creek (44.5585, –120.4198); Bridge Creek (44.4721, –120.2009); Carroll Creek (44.5460, –120.3222); Dodds Creek (44.5329, –120.3867); Gable Creek (44.5186, –120.2384); Johnson Creek #2 (44.5193, –120.0949); Slide Creek (44.4956, –120.3023); Thompson Creek (44.5270, –120.2489); West Branch Bridge Creek (44.4911, –120.3098).
Steers Canyon (44.9247, -120.2013).

(v) Lower John Day River/Clarno Watershed 1707020405. Outlet(s) = John Day River (Lat 45.1626, Long -120.4681) upstream to endpoint(s) in: Pine Creek (44.9062, -120.4460); Sorefoot Creek (44.9426, -120.5484).

(vi) Butte Creek Watershed 1707020406. Outlet(s) = Butte Creek (Lat 45.0574, Long -120.4831) upstream to endpoint(s) in: Butte Creek (44.9266, -120.1142); Cottonwood Creek (44.9536, -120.1024); Unnamed (44.9952, -120.2928); West Fork Butte Creek (44.9883, -120.2928); Pine Hollow Watershed 1707020407. Outlet(s) = Pine Hollow (Lat 45.1531, Long -120.4757) upstream to endpoint(s) in: Big Pine Hollow (44.9968, -120.7342); Hannafin Canyon (45.1608, -120.5863); Long Hollow Creek (44.9922, -120.5565); West Little Pine Hollow (44.9921, -120.7324).

(viii) Thirtymile Creek Watershed 1707020408. Outlet(s) = Thirtymile Creek (Lat 45.1870, Long -120.1829); Dry Fork Thirtymile Creek (45.1575, -120.6556); Lost Valley Creek (45.1062, -119.9916); Patill Canyon (45.1252, -120.1970); Thirtymile Creek (44.9852, -120.0375); Unnamed (44.9753, -120.0499); Wehrli Canyon (45.1539, -120.2137).

(ix) Lower John Day River/Ferry Canyon Watershed 1707020409. Outlet(s) = John Day River (Lat 45.3801, Long -120.517) upstream to endpoint(s) in: Ferry Canyon (45.3421, -120.3388); Jackknife Creek (45.2490, -120.6106); John Day River (45.1626, -120.4681); Lamberson Canyon (45.3099, -120.4147); Little Ferry Canyon (45.3827, -120.5913).

(x) Lower John Day River/Scott Canyon Watershed 1707020410. Outlet(s) = John Day River (Lat 45.5769, Long -120.4041) upstream to endpoint(s) in: Cottonwood Canyon (45.4143, -120.4490); Cottonwood Canyon (45.4898, -120.5118); Dry Fork Hay Creek (45.3093, -120.1612); John Day River (45.3801, -120.517); Scott Canyon (45.4124, -120.197); Unnamed (45.3407, -120.2299).

(xi) Upper Rock Creek Watershed 1707020411. Outlet(s) = Rock Creek (Lat 45.2190, Long -119.5957) upstream to endpoint(s) in: Allen Canyon (45.1902, -119.5976); Allen Spring Canyon (45.0471, -119.6468); Board Creek (45.1120, -119.5390); Brown Creek (45.0965, -119.8296); Buckhorn Creek (45.0272, -119.9186); Chapin Creek (45.0538, -119.6727); Davidson Canyon (45.0515, -119.5952); Hahn Canyon (45.1491, -119.8320); Harris Canyon (45.0762, -119.5856); Hollywood Creek (45.0964, -119.5174); Indian Creek (45.0481, -119.6476); John Z Canyon (45.0829, -119.6058); Juniper Creek (45.0504, -119.7730); Middle Fork Rock Creek (45.0618, -119.7404); Rock Creek (45.0361, -119.5989); Stahl Canyon (45.0071, -119.9683); Tree Root Canyon (45.0626, -119.6314); Tupper Creek (45.0903, -119.4999); Unnamed (45.0293, -119.5907); Unnamed (45.0698, -119.5329); Unnamed (45.0714, -119.5227); West Fork Juniper Creek (45.0192, -119.7766).

(xii) Lower Rock Creek Watershed 1707020412. Outlet(s) = Rock Creek (Lat 45.5769, Long -120.4041) upstream to endpoint(s) in: Dry Creek (45.3238, -119.9709); Rock Creek (45.2190, -119.9597); Sixmile Canyon (45.2448, -120.0283); South Fork Rock Creek (45.2770, -120.1292).

(xiii) Grass Valley Canyon Watershed 1707020413. Outlet(s) = Grass Valley Canyon (Lat 45.5794, Long -120.4232) upstream to endpoint(s) in: Grass Valley Canyon (45.4071, -120.7220); Hay Canyon (45.5104, -120.6085); Rosebush Creek (45.3835, -120.7159).

(xiv) Lower John Day River/McDonald Ferry Watershed 1707020414. Outlet(s) = John Day River (Lat 45.7389, Long -120.6520) upstream to endpoint(s) in: John Day River (45.5769, -120.4041).

(13) Lower Deschutes Subbasin 17070306—(i) Upper Deschutes River Watershed 1707030603. Outlet(s) = Deschutes River (Lat 44.8579, Long -121.0668) upstream to endpoint(s) in: Deschutes River (44.7243, -121.2465); Shitike Creek (44.7655, -121.9935); Unnamed (44.7934, -121.3715).

(ii) Mill Creek Watershed 1707030604. Outlet(s) = Mill Creek (Lat 44.8792, Long -121.3711) upstream to endpoint(s) in: Boulder Creek (44.8261, -121.4292); Mill Creek (44.8343, -121.6737); Unnamed (44.8330, -121.6756).
(iii) **Beaver Creek Watershed**

1707030605. Outlet(s) = Beaver Creek (Lat 44.8730, Long −121.3405) upstream to endpoint(s) in: Beaver Butte Creek (45.0786, −121.5746); Beaver Creek (45.1306, −121.6468); Indian Creek (45.9635, −121.5113).

(iv) **Warm Springs River Watershed**

1707030606. Outlet(s) = Warm Springs River (Lat 44.8579, Long −121.0668) upstream to endpoint(s) in: Badger Creek (44.9352, −121.5569); South Fork Warm Springs River (44.9268, −121.6995); Warm Springs River (44.9812, −121.7976).

(v) **Middle Deschutes River Watershed**

1707030607. Outlet(s) = Deschutes River (Lat 45.2642, Long −121.0232) upstream to endpoint(s) in: Cove Creek (44.9673, −121.0490); Deschutes River (44.8579, −121.0668); Eagle Creek (44.9990, −121.1688); Nena Creek (45.1030, −121.1653); Oak Creek (44.9336, −121.0981); Paquet Gulch (45.0676, −121.2911); Skookum Creek (44.9171, −121.1251); Stag Canyon (45.1029, −121.0563); Unnamed (45.0186, −121.0464); Unnamed (45.0930, −121.1511); Wapinitia Creek (45.1177, −121.3025).

(vi) **Bakeoven Creek Watershed**

1707030608. Outlet(s) = Bakeoven Creek (Lat 45.1748, Long −121.0728) upstream to endpoint(s) in: Bakeoven Creek (45.1261, −120.9398); Booten Creek (45.1434, −121.0131); Cottonwood Creek (45.0036, −120.8720); Deep Creek (45.9723, −120.9480); Robin Creek (45.1289, −120.9652); Trail Hollow Creek (45.1481, −121.0423).

(vii) **Buck Hollow Creek Watershed**

1707030611. Outlet(s) = Buck Hollow Creek (Lat 45.2642, Long −121.0232) upstream to endpoint(s) in: Buck Hollow Creek (45.0663, −120.7095); Finnegans Creek (45.2231, −120.8472); Macken Canyon (45.1093, −120.7011); Thorn Hollow (45.0450, −120.7386).

(viii) **Lower Deschutes River Watershed**

1707030612. Outlet(s) = Deschutes River (Lat 45.6426, Long −120.9142) upstream to endpoint(s) in: Bull Run Canyon (45.4480, −120.8655); Deschutes River (45.2642, −120.0232); Fall Canyon (45.5222, −120.8538); Ferry Canyon (45.3854, −120.9373); Jones Canyon (45.3011, −120.9404); Macks Canyon (45.3659, −120.8524); Oak Canyon (45.3460, −120.9960); Sixteen Canyon (45.4050, −120.8529).

(14) **Trout Subbasin 17070307**

(i) **Upper Trout Creek Watershed**

1707030701. Outlet(s) = Trout Creek (Lat 44.8229, Long −120.9193) upstream to endpoint(s) in: Amity Creek (44.6447, −120.5854); Auger Creek (44.5539, −120.5381); Beaver Creek (44.6390, −120.7034); Big Log Creek (44.5436, −120.6997); Big Whetstone Creek (44.6761, −120.7645); Board Hollow (44.6064, −120.7405); Cartwright Creek (44.5404, −120.6533); Clover Creek (44.6523, −120.7358); Dutchman Creek (44.5320, −120.6704); Foley Creek (44.5861, −120.6801); Little Trout Creek (44.7816, −120.7237); Opal Creek (44.5792, −120.5446); Potlid Creek (44.5566, −120.6207); Trout Creek (44.5286, −120.5805); Tub Springs Canyon (44.8155, −120.7888); Unnamed (44.5428, −120.5848); Unnamed (44.6043, −120.7403); Unnamed (44.6510, −120.7397).

(ii) **Antelope Creek Watershed**

1707030702. Outlet(s) = Antelope Creek (Lat 44.8229, Long −120.9193) upstream to endpoint(s) in: Antelope Creek (44.8564, −120.8574); Boot Creek (44.9086, −120.8864); Pole Creek (44.9023, −120.9108); Ward Creek (44.9513, −120.8341).

(iii) **Lower Trout Creek Watershed**

1707030705. Outlet(s) = Trout Creek (Lat 44.8214, Long −121.0876) upstream to endpoint(s) in: Brocher Creek (44.8357, −121.0330); Hay Creek (44.7824, −120.9652); Trout Creek (44.8229, −120.9193).

(15) **Upper Columbia/Priest Rapids Subbasin 17020016**

(Columbia River/Zintel Canyon Watershed 1702001606. Outlet(s) = Columbia River (Lat 46.1776, Long −119.0183) upstream to endpoint(s) in: Columbia River (46.2534, −119.2268).

(16) **Columbia River Corridor—Columbia River Corridor**

Outlet(s) = Columbia River (Lat 46.2485, Long −124.0782) upstream to endpoint(s) in: Columbia River (46.2354, −119.2268).

(17) Maps of critical habitat for the Middle Columbia River Steelhead ESU follow:
§ 226.212

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Final Critical Habitat for the Middle Columbia River Steelhead ESU

KLICKITAT SUBBASIN 17070106

Legend
- Cities / Towns
- State Boundary
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 04 = Watershed code - last 2 digits of 17070106xx

Area of Detail
(s) **Lower Columbia River Steelhead** (*Oncorhynchus mykiss*). Critical habitat is designated to include the areas defined in the following subbasins:

1. **Middle Columbia/Hood Subbasin**
   17070105—(i) East Fork Hood River Watershed 1707010506. Outlet(s) = Hood River (Lat 45.6050, Long –121.6323) upstream to endpoint(s) in: Baldwin Creek (45.5618, –121.5585); Bear Creek (45.4894, –121.6516); Cat Creek (45.4708, –121.6420); Coe Branch (45.4342, –121.6673); Cold Spring Creek (45.4020, –121.5873); Culvert Creek...
(45.3770, -121.5660); Dog River (45.4404, -121.5623); East Fork Hood River (45.3172, -121.6390); Eliot Branch, Middle Fork Hood River (45.4534, -121.6362); Emil Creek (45.5233, -121.5886); Evans Creek (45.4872, -121.5894); Graham Creek (45.5463, -121.5854); Meadows Creek (45.3195, -121.6279); Newton Creek (45.3370, -121.6261); Pinnacle Creek (45.4595, -121.6568); Pocket Creek (45.3025, -121.5969); Polallie Creek (45.4132, -121.5826); Tony Creek (45.5254, -121.6584); Unnamed (45.3470, -121.5843); Unnamed (45.4661, -121.5627); Unnamed (45.5208, -121.6198); Unnamed (45.5445, -121.5738).

(ii) West Fork Hood River Watershed 1707010507.
Outlet(s) = West Fork Hood River (Lat 45.6050, Long –121.6323) upstream to endpoint(s) in: Divers Creek (45.5457, -121.7447); Elk Creek (45.4294, -121.7884); Green Point Creek (45.5915, -121.6981); Indian Creek (45.5375, -121.7857); Jones Creek (45.4673, -121.8020); Lake Branch (45.5083, -121.8485); McGee Creek (45.4120, -121.7588); No Name Creek (45.5347, -121.7929); Red Hill Creek (45.4720, -121.7705); Unnamed (45.5502, -121.7014).

(iii) Hood River Watershed 1707010508.
Outlet(s) = Hood River (Lat 45.7237, Long –121.5049) upstream to endpoint(s) in: Hood River (45.6050, -121.6323); Lenz Creek (45.6291, -121.5220); Neal Creek (45.5787, -121.4875); West Fork Neal Creek (45.5751, -121.5215); Whiskey Creek (45.6827, -121.5064).

(iv) Wind River Watershed 1707010511.
Outlet(s) = Wind River (Lat 45.7067, Long –121.7929) upstream to endpoint(s) in: Bear Creek (45.7619, -121.8295); Big Hollow Creek (45.9408, -122.0075); Bourbon Creek (45.9246, -121.9982); Brush Creek (45.7720, -121.7528); Cedar Creek (45.8388, -121.9025); Compass Creek (45.8372, -122.0633); Crater Creek (45.8637, -122.0639); Dry Creek (45.9551, -121.9924); East Fork Trout Creek (45.8503, -122.0966); Eightmile Creek (45.8616, -121.9866); Falls Creek (45.9107, -121.9511); Hollis Creek (45.8524, -121.9304); Jimmy Creek (45.7894, -121.8409); Layout Creek (45.8096, -121.4075); Little Wind River (45.7763, -121.7222); Martha Creek (45.7846, -121.9482); Mouse Creek (45.8115, -121.9428); Ninemile Creek (45.8942, -121.9632); Oldman Creek (45.9856, -121.9369); Panther Creek (45.8605, -121.8422); Pass Creek (45.8555, -122.0138); Planting Creek (45.8071, -122.0010); Proverbial Creek (45.9816, -121.9654); Tenmile Creek (45.8670, -121.8694); Trapper Creek (45.9113, -122.0470); Trout Creek (45.8679, -122.0477); Unnamed (45.7862, -121.9097); Unnamed (45.8908, -121.9881); Unnamed (45.8055, -121.9676); Unnamed (45.8142, -122.0204); Unnamed (45.8149, -122.0532); Unnamed (45.8161, -121.8437); Unnamed (45.8206, -121.8111); Unnamed (45.8218, -121.9470); Unnamed (45.8242, -122.0295); Unnamed (45.8427, -121.9180); Unnamed (45.8509, -121.9190); Unnamed (45.8529, -122.0406); Unnamed (45.8551, -122.0638); Unnamed (45.8610, -121.9635); Unnamed (45.8637, -122.0625); Unnamed (45.8640, -121.9764); Unnamed (45.8682, -121.9714); Unnamed (45.8940, -122.0348); Unnamed (45.8955, -121.9055); Unnamed (45.9562, -121.9517); Unnamed (45.9798, -121.8873); Unnamed (45.9844, -121.9171); Wind River (45.9964, -121.9000).

(v) Middle Columbia/Grays Creek Watershed 1707010512.
Outlet(s) = Columbia River (Lat 45.7070, Long –121.7943) upstream to endpoint(s) in: Columbia River (45.7237, -121.5049).

(vi) Middle Columbia/Eagle Creek Watershed 1707010513.
Outlet(s) = Columbia River (Lat 45.6453, Long –121.9395) upstream to endpoint(s) in: Columbia River (45.7070, -121.7943).

(2) Lower Columbia/Sandy Subbasin 17080001—(i) Salmon River Watershed 17080001.
Outlet(s) = Salmon River (Lat 45.3768, Long –122.0293) upstream to endpoint(s) in: Bighorn Creek (45.2582, -121.9204); Boulder Creek (45.3027, -122.0209); Cheeney Creek (45.2919, -121.9710); Copper Creek (45.2454, -121.9051); Mack Hall Creek (45.2391, -121.9508); Salmon River (45.2511, -121.9025); South Fork Salmon River (45.2500, -121.9770); Unnamed (45.2576, -121.9068); Unnamed (45.2600, -121.9093); Unnamed (45.2633, -121.9153); Unnamed (45.2646, -121.9175); Unnamed (45.2708, -121.9246); Unnamed (45.2946, -121.9388); Unnamed (45.3161, -121.9656); Unnamed (45.3225, -121.9609); Unnamed (45.3254, -121.9582); Unnamed (45.3277, -121.9635); Unnamed (45.3336, -121.9538); Unnamed (45.3383, -121.9768); Unnamed (45.3398, -121.9954).

(ii) Zigzag River Watershed 1708000102.
Outlet(s) = Zigzag River (Lat 45.3488, Long –121.9442) upstream to endpoint(s)
in: Camp Creek (45.3070, –121.7921); Cool Creek (45.2867, –121.8849); Devil Canyon (45.3186, –121.8587); Henry Creek (45.3241, –121.8699); Lady Creek (45.3199, –121.8225); Little Zigzag Canyon (45.3138, –121.8035); Still Creek (45.3167, –121.7228); Unnamed (45.2706, –121.8194); Unnamed (45.2793, –121.8529); Unnamed (45.2801, –121.8537); Wind Creek (45.2961, –121.8515); Zigzag River (45.3270, –121.7786).

(iii) Upper Sandy River Watershed

Outlet(s) = Sandy River (Lat 45.3489, Long –121.9442) upstream to endpoint(s) in: Cast Creek (45.3794, –121.8538); Clear Creek (45.3998, –121.8936); Clear Fork (45.4256, –121.8006); Horseshoe Creek (45.3664, –121.8680); Little Clear Creek (45.3854, –121.9190); Lost Creek (45.3920, –121.7560); Unnamed (45.3813, –121.7979); Unnamed (45.4090, –121.8056); Unnamed (45.4164, –121.8342).

(iv) Middle Sandy River Watershed

Outlet(s) = Sandy River (Lat 45.4464, Long –122.2459) upstream to endpoint(s) in: Alder Creek (45.3459, –122.0675); Bear Creek #2 (45.3508, –122.5265); Cedar Creek (45.3584, –122.5215); Hackett Creek (45.3525, –122.9504); North Boulder Creek (45.3554, –122.1037); Sandy River (45.3670, –121.5891); Muddy Fork (45.3719, –121.7560); Unnamed (45.3813, –121.8954); Unnamed (45.3904, –121.7979); Unnamed (45.4090, –121.8056); Unnamed (45.4164, –121.8342).

(v) Washougal River Watershed

Outlet(s) = Unnamed (Lat 45.5812, Long –122.4077); Washougal River (45.5785, –122.4023) upstream to endpoint(s) in: Bear Creek (45.7322, –122.1468); Bluebird Creek (45.7486, –122.1717); Cougar Creek (45.6514, –122.2677); Dougan Creek (45.7080, –122.1817); East Fork Little Washougal River (45.6722, –122.3827); Grouse Creek (45.7590, –122.0890); Holy Creek (45.7154, –122.2518); Jackson Creek (45.6755, –122.2530); Jones Creek (45.6913, –122.2870); Lacamas Creek (45.5972, –122.3933); Little Washougal River (45.7006, –122.3212); Lookout Creek (45.7080, –122.1006); Meander Creek (45.7790, –122.0848); Prospect Creek (45.7590, –122.0890); Silver Creek (45.7343, –122.1694); Stebbins Creek (45.7285, –122.0683); Texas Creek (45.6946, –122.1873); Timber Creek (45.7236, –122.1001); Unnamed (45.5873, –122.4121); Unnamed (45.6002, –122.3312); Unnamed (45.6132, –122.3288); Unnamed (45.6177, –122.2425); Unnamed (45.6206, –122.3448); Unnamed (45.6243, –122.2299); Unnamed (45.6251, –122.3419); Unnamed (45.6279, –122.5549); Unnamed (45.6297, –122.2463); Unnamed (45.6321, –122.2753); Unnamed (45.6328, –122.2574); Unnamed (45.6352, –122.2915); Unnamed (45.6477, –122.3668); Unnamed (45.6487, –122.3336); Unnamed (45.6607, –122.1562); Unnamed (45.6541, –122.2799); Unnamed (45.6594, –122.2062); Unnamed (45.6622, –122.3015); Unnamed (45.6625, –122.3346); Unnamed (45.6675, –122.3415); Unnamed (45.6694, –122.1553); Unnamed (45.6703, –122.3399); Unnamed (45.6721, –122.1725); Unnamed (45.6749, –122.3707); Unnamed (45.6798, –122.2903); Unnamed (45.6835, –122.3336); Unnamed (45.6836, –122.1146); Unnamed (45.6871, –122.2996); Unnamed (45.6934, –122.1063); Unnamed (45.6949, –122.3305); Unnamed (45.6959, –122.3149); Unnamed (45.6965, –122.0837); Unnamed (45.7074, –122.1366); Unnamed (45.7080, –122.2600); Unnamed (45.7092, –122.2510); Unnamed (45.7179, –122.0744); Unnamed (45.7201, –122.1360); Unnamed (45.7249, –122.1067); Unnamed (45.7285, –122.1965); Unnamed (45.7305, –122.1126); Unnamed (45.7458, –122.1328); Unnamed (45.7476, –122.0518); Unnamed (45.7492, –122.1594); Unnamed (45.7624, –122.1308); Unnamed (45.7814, –122.1211); Washougal River (45.7798, –122.1403); West Fork Washougal River (45.7382, –122.2173); Wildboy Creek (45.6712, –122.2172); Winkler Creek (45.6797, –122.2588).

(vi) Columbia Gorge Tributaries Watershed

Outlet(s) = Columbia River (Lat 45.5710, Long –122.4021) upstream to endpoint(s) in: Columbia River (45.6453, –122.3985).

(vii) Lower Sandy River Watershed

Outlet(s) = Sandy River (Lat 45.5710, Long –122.4021) upstream to endpoint(s) in: Beaver Creek (45.4595, –122.3643); Big Creek (45.5068, –122.2966); Buck Creek (45.4985, –122.2671); Gordon Creek (45.5021, –122.1805); Kelly Creek (45.5134, –122.3953); Sandy River (45.4464, –122.2459); Smith Creek (45.5136, –122.3339); Trout Creek (45.4819, –122.2769); Unnamed (45.4888, –122.3513);
(3) Lewis Subbasin 17080002—(1) East Fork Lewis River Watershed 1708000205. Outlet(s) = Allen Creek (Lat 45.8641, Long –122.7499); East Fork Lewis River (45.8064, –122.7189); Gee Creek (45.8462, –122.7803) upstream to endpoint(s) in: Allen Creek (45.8279, –122.6968); Anaconda Creek (45.8208, –122.2652); Basket Creek (45.8327, –122.4579); Big Tree Creek (45.8572, –122.3728); Brezee Creek (45.8625, –122.6637); Cedar Creek (45.7226, –122.3290); Cold Creek (45.7489, –122.3252); Copper Creek (45.8177, –122.2637); Coyote Creek (45.7554, –122.2641); East Fork Lewis River (45.8380, –122.0948); Gee Creek (45.7920, –122.6679); Green Fork (45.8462, –122.1274); Grouse Creek (45.7214, –122.2709); King Creek (45.7902, –122.2552); Little Creek (45.8417, –122.1779); Lockwood Creek (45.8986, –122.5953); Mason Creek (45.8661, –122.5340); McCormick Creek (45.8521, –122.6907); McKinley Creek (45.8026, –122.1797); Nicolls Creek (45.8148, –122.3093); Poison Gulch (45.7898, –122.1617); Riley Creek (45.8936, –122.6175); Rock Creek (45.7375, –122.2571); Roger Creek (45.8183, –122.3426); Slide Creek (45.8477, –122.2950); Unnamed (45.7212, –122.3389); Unnamed (45.7623, –122.2727); Unnamed (45.7697, –122.3157); Unnamed (45.7726, –122.6651); Unnamed (45.7770, –122.3539); Unnamed (45.7802, –122.6068); Unnamed (45.7858, –122.3283); Unnamed (45.7916, –122.3780); Unnamed (45.7919, –122.2780); Unnamed (45.7961, –122.1312); Unnamed (45.7980, –122.5650); Unnamed (45.8033, –122.6667); Unnamed (45.8038, –122.3545); Unnamed (45.8075, –122.1120); Unnamed (45.8076, –122.6285); Unnamed (45.8079, –122.2942); Unnamed (45.8146, –122.4618); Unnamed (45.8147, –122.3144); Unnamed (45.8149, –122.5653); Unnamed (45.8172, –122.5742); Unnamed (45.8207, –122.4916); Unnamed (45.8230, –122.7069); Unnamed (45.8242, –122.6390); Unnamed (45.8292, –122.6040); Unnamed (45.8306, –122.3769); Unnamed (45.8363, –122.4942); Unnamed (45.8363, –122.1253); Unnamed (45.8368, –122.6498); Unnamed (45.8381, –122.4685); Unnamed (45.8427, –122.3708); Unnamed (45.8432, –122.1480); Unnamed (45.8434, –122.2292); Unnamed (45.8439, –122.6478); Unnamed (45.8471, –122.7486); Unnamed (45.8473, –122.3494, –122.4401); Unnamed (45.8498, –122.7300); Unnamed (45.8502, –122.5228); Unnamed (45.8513, –122.1323); Unnamed (45.8537, –122.5973); Unnamed (45.8600, –122.6112); Unnamed (45.8604, –122.3831); Unnamed (45.8606, –122.3981); Unnamed (45.8662, –122.5772); Unnamed (45.8667, –122.5744); Unnamed (45.8689, –122.4227); Unnamed (45.8696, –122.6777); Unnamed (45.8756, –122.4795); Unnamed (45.8813, –122.4772); Unnamed (45.8899, –122.6256); Unnamed (45.8986, –122.5742); Unnamed (45.8988, –122.6123); Unnamed (45.9055, –122.5187); Yaocot Creek (45.8761, –122.4220).

(1) Lower Lewis River Watershed 1708000206. Outlet(s) = Lewis River (Lat 45.8519, Long –122.7806) upstream to endpoint(s) in: Bitter Creek (45.9133, –122.4593); Brush Creek (45.9280, –122.4674); Cedar Creek (45.9019, –122.3635); Chehalis Creek (45.9357, –122.3784); Colvin Creek (45.9400, –122.6081); Houghton Creek (45.9559, –122.6348); John Creek (45.9291, –122.4964); Johnson Creek (45.9536, –122.6183); Lewis River (45.9570, –122.5550); Pup Creek (45.9486, –122.5245); Robinson Creek (45.9423, –122.6665); Unnamed (45.8928, –122.4209); Unnamed (45.8940, –122.4371); Unnamed (45.9001, –122.7226); Unnamed (45.9136, –122.6936); Unnamed (45.9141, –122.5565); Unnamed (45.9172, –122.3591); Unnamed (45.9202, –122.5339); Unnamed (45.9203, –122.4557); Unnamed (45.9245, –122.3731); Unnamed (45.9294, –122.5984); Unnamed (45.9294, –122.6225); Unnamed (45.9396, –122.4097); Unnamed (45.9417, –122.7035); Unnamed (45.9436, –122.6417); Unnamed (45.9438, –122.6190); Unnamed (45.9446, –122.6437); Unnamed (45.9457, –122.3926); Unnamed (45.9474, –122.6695); Unnamed (45.9549, –122.6967).

(4) Lower Columbia/Clatskanie Subbasin 17080003—Kalama River Watershed 1708000301. Outlet(s) = Burris Creek (Lat 45.8926, Long –122.7892); Bybee Creek (45.9667, –122.8150); Kalama River (46.0340, –122.8085); Mill Creek (45.9579, –122.8030); Schoolhouse Creek (45.9785, –122.8282); Unnamed (46.0001, –122.8438); Unnamed (46.0075, –122.8455) upstream to endpoint(s) in: Arnold Creek (46.0206, –122.5638); Bear Creek (46.0651, –122.5772); Burris Creek (45.9606, –122.7428); Bush Creek (46.0828, –122.4611); Bybee Creek (45.9695, –122.6967).
(5) Upper Cowlitz Subbasin 17080004—

(i) Headwaters Cowlitz River Watershed 1708000401. Outlet(s) = Cowlitz River (Lat 46.5742, Long –121.7059) upstream to endpoint(s) in: Clear Fork Cowlitz River (46.6451, –121.6749); Coal Creek (46.6438, –121.6108); Cowlitz River (46.6580, –121.6032); Hall Creek (46.6044, –121.6609); Johnson Creek (46.5546, –121.6373); Lake Creek (46.6227, –121.6093); Skate Creek (46.6850, –121.8052); Unnamed (46.6930, –121.8024).

(ii) Upper Cowlitz River Watershed 1708000402. Outlet(s) = Cowlitz River (Lat 46.5742, Long –121.7059) upstream to endpoint(s) in: Butter Creek (46.6451, –121.6749); Coal Creek (46.6438, –121.6108); Cowlitz River (46.6580, –121.6032); Hall Creek (46.6044, –121.6609); Johnson Creek (46.5546, –121.6373); Lake Creek (46.6227, –121.6093); Skate Creek (46.6850, –121.8052); Unnamed (46.6930, –121.8024).

(iii) Cowlitz Valley Frontal Watershed 1708000403. Outlet(s) = Cowlitz River (Lat 46.5742, Long –121.7059) upstream to endpoint(s) in: Burton Creek (46.5423, –121.7505); Davis Creek (46.5410, –121.0804); Kilborn Creek (46.5081, –121.0007); Oliver Creek (46.5450, –121.9928); Peters Creek (46.5386, –121.9830); Silver Creek (46.4931, –121.9253); Smith Creek (46.5620, –121.6923); Unnamed (46.4913, –122.0820); William Creek (46.5805, –121.7319).

(iv) Upper Cispus River Watershed 1708000404. Outlet(s) = Cispus River (Lat 46.4449, Long –121.7954) upstream to endpoint(s) in: Cispus River (46.3450, –121.6833); East Canyon Creek (46.3472, –121.7028); North Fork Cispus River (46.4362, –121.6479); Timonium Creek (46.4318, –121.6548); Twin Creek (46.3748, –121.7297); Yozoo Creek (46.4638, –121.6637).

(v) Lower Cispus River Watershed 1708000405. Outlet(s) = Cispus River (Lat 46.4765, Long –122.0952) upstream to endpoint(s) in: Ames Creek (46.4654, –121.9233); Camp Creek (46.4513, –121.8301); Cispus River (46.4449, –121.7954); Covell Creek (46.4381, –121.8516); Crystal Creek (46.4454, –122.0234); Greenhorn Creek (46.4217, –121.9042); Iron Creek (46.3887, –121.9702); McCoy Creek (46.3891, –121.8190); Quartz Creek (46.4250, –122.0519); Unnamed (46.4633, –121.9548); Woods Creek (46.4741, –121.9473); Yellowjacket Creek (46.3669, –121.8342).

(iv) Upper Cowlitz Subbasin 17080005—(i) Riffe Reservoir Watershed 1708000501. Outlet(s) = Cowlitz River (Lat 46.5033, Long –121.6749) upstream to endpoint(s) in: Cowlitz River (46.4765, –122.0952).

(ii) Jackson Prairie Watershed 1708000502. Outlet(s) = Cowlitz River (Lat 46.3678, Long –122.0952) upstream to endpoint(s) in: Bear Creek (46.4538,
Miners Creek (46.3483, –122.7316); Shultz
Cascade Creek (46.3924, –122.3529); Dev-
in: Beaver Creek (46.4056, –122.5671);
Long –122.5847) upstream to endpoint(s)
–122.1815); Jim Creek (46.3885, –122.5256);
Green River (46.3857, –122.1815); Jim Creek (46.3885, –122.5256);
Unnamed (46.3035, –122.5952); Unnamed (46.3128,
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Outlet(s) = Cowlitz River (Lat 46.2660, Long –122.9154) upstream to endpoint(s) in: Arkansas Creek (46.3454, –123.0567); Baxter Creek (46.3367, –122.9841); Brim Creek (46.4446, –123.0396); Campbell Creek (46.3436, –123.0700); Cline Creek (46.3397, –122.8550); Cowlitz River (46.3678, –122.9337); Delameter Creek (46.2705, –123.0143); Ferrier Creek (46.4046, –122.9374); Hemlock Creek (46.3886, –122.7270); Hill Creek (46.3861, –122.8864); King Creek (46.3304, –123.0203); McMurphy Creek (46.4113, –122.9490); Monahan Creek (46.3401, –123.0614); North Fork Brim Creek (46.4027, –123.0222); North Fork Toutle River (46.3669, –122.5859); Owens Creek (46.3994, –123.0475); Rock Creek (46.3479, –122.8144); Rock Creek (46.3531, –122.9368); Snow Creek (46.4486, –122.9805); Stankey Creek (46.3259, –122.8260); Stillwater Creek (46.3383, –123.1144); Sucker Creek (46.2600, –122.7684); Tucker Creek (46.2566, –123.0162); Unnamed (46.2413, –122.9887); Unnamed (46.2480, –123.0169); Unnamed (46.2480, –122.7759); Unnamed (46.2517, –123.0173); Unnamed (46.2606, –122.9549); Unnamed (46.2629, –123.0186); Unnamed (46.2683, –122.9804); Unnamed (46.2709, –123.0767); Unnamed (46.2711, –122.8159); Unnamed (46.2840, –122.8128); Unnamed (46.2878, –123.0286); Unnamed (46.2883, –123.0951); Unnamed (46.2892, –122.9625); Unnamed (46.2900, –122.8124); Unnamed (46.3030, –123.0645); Unnamed (46.3092, –122.9326); Unnamed (46.3160, –122.7783); Unnamed (46.3161, –123.0123); Unnamed (46.3173, –122.8950); Unnamed (46.3229, –122.8152); Unnamed (46.3248, –122.8609); Unnamed (46.3248, –123.0292); Unnamed (46.3252, –122.9238); Unnamed (46.3294, –122.9084); Unnamed (46.3306, –123.0046); Unnamed (46.3316, –122.8257); Unnamed (46.3346, –123.0167); Unnamed (46.3378, –122.9388); Unnamed (46.3393, –122.9402); Unnamed (46.3415, –122.9208); Unnamed (46.3432, –122.9405); Unnamed (46.3472, –122.9457); Unnamed (46.3488, –123.0519); Unnamed (46.3510, –123.0079); Unnamed (46.3511, –122.7678); Unnamed (46.3584, –122.7902); Unnamed (46.3585, –123.0369); Unnamed (46.3586, –122.7477); Unnamed (46.3599, –123.0992); Unnamed (46.3623, –122.6910); Unnamed (46.3665, –122.6334); Unnamed (46.3667, –122.8953); Unnamed (46.3683, –122.8930); Unnamed (46.3683, –122.7502); Unnamed (46.3718, –122.6202); Unnamed (46.3720, –123.0933); Unnamed (46.3748, –123.6167); Unnamed (46.3818, –122.8822); Unnamed (46.3824, –122.6909); Unnamed (46.3842, –122.9794); Unnamed (46.4015, –123.0272); Unnamed (46.4045, –123.0194); Unnamed (46.4177, –122.9611); Unnamed (46.4200, –123.0403); Unnamed (46.4286, –123.0467); Unnamed (46.4362, –123.0451); Unnamed (46.4379, –122.9865); Unnamed (46.4571, –122.9664); Unnamed (46.4606, –123.0166); Unnamed (46.4724, –122.9989); Unnamed (46.4907, –122.9333); Unnamed (46.5074, –122.8877); Unnamed (46.5089, –122.9291); Unnamed (46.5228, –122.8539); Unnamed (46.5336, –122.9793); Unnamed (46.5371, –122.8214); Unnamed (46.5439, –122.8538); Whittle Creek (46.3122, –122.9501); Wyant Creek (46.3381, –122.6117).  

Outlet(s) = Cowlitz River (Lat 46.0977, Long –122.9141); Owl Creek (46.0771, –122.8676) upstream to endpoint(s) in: Baird Creek (46.1942, –122.5483); Coweeman River (46.1505, –122.5172); Cowlitz River (46.2660, –122.9154); Goble Creek (46.1103, –122.6799); Hill Creek (46.1784, –122.5990); Leckler Creek (46.2317, –122.9470); Little Baird Creek (46.1905, –122.5709); Martin Creek (46.1394, –122.5539); Mulholland Creek (46.2013, –122.6450); Nineteen Creek (46.1437, –122.6146); North Fork Goble Creek (46.1363, –122.6769); Nye Creek (46.1219, –122.8040); O’Neill Creek (46.1769, –122.5422); Ostrander Creek (46.2103, –122.7623); Owl Creek (46.0913, –122.8644); Salmon Creek (46.2547, –122.8839); Sandy Bend Creek (46.2319, –122.9140); Skipper Creek (46.1639, –122.5867); South Fork Ostrander Creek (46.1875, –122.8240); Turner Creek (46.1167, –122.8149); Unnamed (46.0719, –122.8607); Unnamed (46.0767, –122.8605); Unnamed (46.0824, –122.7200); Unnamed (46.0843, –122.7195); Unnamed (46.1185, –122.7253); Unnamed (46.1289, –122.8968); Unnamed (46.1390, –122.5709); Unnamed (46.1430, –122.8125); Unnamed (46.1433, –122.8884); Unnamed (46.1546, –122.6376); Unnamed (46.1562, –122.7808); Unnamed (46.1579, –122.6476); Unnamed (46.1582, –122.5322); Unnamed (46.1605, –122.6681); Unnamed (46.1630, –122.5885); Unnamed (46.1671, –122.6284); Unnamed (46.1688, –122.9215); Unnamed (46.1724, –122.6118); Unnamed
(iv) Middle Clackamas River Watershed 1709001104. Outlet(s) = Clackamas River (Lat 45.2440, Long –122.2798) upstream to endpoint(s) in: Big Creek (45.0694, –122.0848); Calico Creek (45.0682, –122.1672); Clackamas River (45.0321, –122.0600); Cripple Creek (45.1149, –122.0618); Fish Creek (45.0684, –122.1597); Mag Creek (45.0587, –122.0488); North Fork Clackamas River (45.2371, –122.2181); Pick Creek (45.0736, –122.1994); Pin Creek (45.1451, –122.0150); Roaring River (45.1773, –122.0650); Sandstone Creek (45.0862, –122.0845); Second Creek (45.1081, –122.1601); South Fork Clackamas River (45.1912, –122.2261); Tag Creek (45.0605, –122.0475); Tar Creek (45.0494, –122.0569); Third Creek (45.0977, –122.1649); Trout Creek (45.0379, –122.0720); Wash Creek (45.0473, –122.1893); Whale Creek (45.1102, –122.0849).

(v) Eagle Creek Watershed 1709001105. Outlet(s) = Eagle Creek (Lat 45.3535, Long –122.3823) upstream to endpoint(s) in: Bear Creek (45.3369, –122.2331); Currin Creek (45.3369, –122.3555); Delph Creek (45.2587, –122.2098); Eagle Creek (45.2766, –122.1998); Little Eagle Creek (45.2603, –122.1682); North Fork Eagle Creek (45.3142, –122.1135); Trout Creek (45.3305, –122.1187).

(vi) Lower Clackamas River 1709001106. Outlet(s) = Clackamas River (Lat 45.3719, Long –122.6071) upstream to endpoint(s) in: Bargfeld Creek (45.3195, –122.4398); Clackamas River (45.2440, –122.2798); Clear Creek (45.2022, –122.3212); Deep Creek (45.3421, –122.2799); Foster Creek (45.3512, –122.4082); Goose Creek (45.3621, –122.3549); Little Clear Creek (45.2803, –122.4055); Mosier Creek (45.2683, –122.4516); North Fork Deep Creek (45.4271, –122.3094); Richardson Creek (45.4097, –122.4484); Rock Creek (45.4157, –122.5013); Tickle Creek (45.3932, –122.2775); Unnamed (45.3502, –122.4681); Clackamas River (45.3626, –122.0585); Unnamed (45.3816, –122.3721); Unnamed (45.4057, –122.3223); Unnamed (45.4102, –122.2987); Wade Creek (45.2922, –122.3237).

(8) Lower Willamette Subbasin 17090012—(i) Johnson Creek Watershed 1709001201. Outlet(s) = Willamette River (Lat 45.4323, Long –122.6453) upstream to endpoint(s) in: Crystal Springs
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Creek (45.4811, –122.6381); Crystal Springs Lake (45.4799, –122.6361); Johnson Creek (45.4610, –122.3432); Kellogg Creek (45.4083, –122.5925); Kelly Creek (45.4661, –122.4655); Mount Scott Creek (45.4006, –122.5556); Oswego Creek (45.4105, –122.6666); Phillips Creek (45.4328, –122.5763); Tryon Creek (45.4472, –122.6863); Unnamed (45.4793, –122.4165); Willamette River (45.3719, –122.6071).

(ii) Scappoose Creek Watershed 1709001202. Outlet(s) = Multnomah Channel (Lat 45.8577, Long –122.7919) upstream to endpoint(s) in: Multnomah Channel (45.6188, –122.7921).

(iii) Columbia Slough/Willamette River Watershed 1709001203. Outlet(s) = Willamette River (Lat 45.6530, Long –122.7646) upstream to endpoint(s) in: Bybee Lake (45.6266, –122.7523); Bybee/Smith Lakes (45.6105, –122.7285); Columbia Slough #1 (45.6078, –122.7447); Swan Island Basin (45.5652, –122.7120); Unnamed (45.6253, –122.7568); Willamette River (45.4423, –122.6453).

(9) Lower Columbia River Corridor—Lower Columbia River Corridor Outlet(s) = Columbia River (Lat 46.2485, Long –124.0782) upstream to endpoint(s) in: Columbia River (45.5710, –122.4021).

(10) Maps of critical habitat for the Lower Columbia River Steelhead ESU follow:
Final Critical Habitat for the Lower Columbia River Steelhead ESU

LOWER COLUMBIA / CLATSKANIE SUBBASIN

17080003

Legend
- Cities / Towns
- State Boundary
- *Critical Habitat*
- Water Bodies
- Subbasin Boundary
- Watershed Boundaries

01 - 06 = Watershed code - last 2 digits of 17080003xx

Columbia River reaches shown are in the Lower Columbia River corridor map.
(t) Upper Willamette River Steelhead (Oncorhynchus mykiss). Critical habitat is designated to include the areas defined in the following subbasins:

1. Upper Willamette Subbasin 17090003—(i) Calapooia River Watershed

Outlet(s) = Calapooia River (Lat 44.5088, Long –123.1101) upstream to endpoint(s) in: Bigs Creek (44.2883, –122.6133); Butte Creek (44.4684, –123.0488); Calapooia River (44.2361, –122.3664); Hands Creek (44.2559, –122.3664); Outlet(s) = Washougal River (Lat 46.1008, Long –122.1041) upstream to endpoint(s) in: Gervais (44.6847, –122.6155); Oregon City (44.6143, –122.0498); Confluence of the Washougal and Columbia rivers.

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(i) Oak Creek Watershed 1709000304. Outlet(s) = Willamette River (Lat 44.7504, Long –123.1421) upstream to endpoint(s) in: Calapooia River (44.5088, –123.1101); Cox Creek (44.6417, –123.0680); Periwinkle Creek (44.6250, –123.0814); Truax Creek (44.7970, –123.5270); North Fork Pedee Creek (44.7866, –123.4511); Unnamed (44.7562, –123.5293); Unnamed (44.7734, –123.2027); Unnamed (44.7902, –123.6211); Vincent Creek (44.6380, –123.4011); Price Creek (44.6677, –123.3732); Sheythe Creek (44.7683, –123.5027); Soap Creek (44.6943, –123.2488); South Fork Pedee Creek (44.7798, –123.4667); Teal Creek (44.8329, –123.4582); Unnamed (44.7562, –123.5293); Unnamed (44.7798, –123.2027); Unnamed (44.7092, –123.6521); Vincent Creek (44.6380, –123.4327); Waymiere Creek (44.8725, –123.4128); Woods Creek (44.6654, –123.3905).

(ii) Southern Oregon Subbasin 17090002—(i) Tidal Waters of the Columbia River Outlet(s) = Columbia River (Lat 46.3367, Long –122.9400) upstream to endpoint(s) in: Columbia River (46.3367, –122.9400); Cowlitz River (46.3574, –122.4740); Skagit River (48.4067, –122.0720); Snohomish River (47.6924, –122.3730); Stillaguamish River (47.8500, –122.5100); Middle Fork Skagit River (48.4291, –122.0940); Nooksack River (48.5924, –122.5770); Skokomish River (47.6512, –122.6860); Quispam River (48.2400, –123.0860); Chehalis River (46.4700, –122.8260); Skookum River (48.4600, –122.5740); North Santiam River (44.7852, –122.6079); Middle Fork Santiam River (44.7852, –122.6079); South Santiam River (44.4163, –122.6693).

(iii) Lower North Santiam Watershed 1709000506. Outlet(s) = Santiam River (Lat 44.6869, Long –123.0052) upstream to endpoint(s) in: Albany—Santiam Canal (44.5512, –122.9032); Hamilton Creek (44.5392, –122.7018); Johnson Creek (44.4548, –122.7080); McDowell Creek (44.4640, –122.6803); Mill Creek (44.6628, –122.9575); Morgan Creek (44.4575, –122.7038); Noble Creek (44.4513, –122.7974); South Santiam River (44.4163, –122.6693).

(iv) Sand Creek Watershed 1709000607. Outlet(s) = South Santiam River (Lat 44.6869, Long –123.0052) upstream to endpoint(s) in: Albany—Santiam Canal (44.5512, –122.9032); Hamilton Creek (44.5392, –122.7018); Johnson Creek (44.4548, –122.7080); McDowell Creek (44.4640, –122.6803); Mill Creek (44.6628, –122.9575); Morgan Creek (44.4575, –122.7038); Noble Creek (44.4513, –122.7974); South Santiam River (44.4163, –122.6693).

(v) Cowlitz River Outlet(s) = Cowlitz River (Lat 46.3367, Long –122.9400) upstream to endpoint(s) in: Columbia River (46.3367, –122.9400); Cowlitz River (46.3574, –122.4740); Skagit River (48.4067, –122.0720); Snohomish River (47.6924, –122.3730); Stillaguamish River (47.8500, –122.5100); Middle Fork Skagit River (48.4291, –122.0940); Nooksack River (48.5924, –122.5770); Skokomish River (47.6512, –122.6860); Quispam River (48.2400, –123.0860); Chehalis River (46.4700, –122.8260); Skookum River (48.4600, –122.5740); North Santiam River (44.7852, –122.6079); Middle Fork Santiam River (44.7852, –122.6079); South Santiam River (44.4163, –122.6693).

(vi) Cowlitz River Outlet(s) = Cowlitz River (Lat 46.3367, Long –122.9400) upstream to endpoint(s) in: Columbia River (46.3367, –122.9400); Cowlitz River (46.3574, –122.4740); Skagit River (48.4067, –122.0720); Snohomish River (47.6924, –122.3730); Stillaguamish River (47.8500, –122.5100); Middle Fork Skagit River (48.4291, –122.0940); Nooksack River (48.5924, –122.5770); Skokomish River (47.6512, –122.6860); Quispam River (48.2400, –123.0860); Chehalis River (46.4700, –122.8260); Skookum River (48.4600, –122.5740); North Santiam River (44.7852, –122.6079); Middle Fork Santiam River (44.7852, –122.6079); South Santiam River (44.4163, –122.6693).
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(iv) South Santiam River Watershed 1709000606. Outlet(s) = South Santiam River (Lat 44.3977, Long –122.4473) upstream to endpoint(s) in: Canyon Creek (44.3074, –122.3300); Falls Creek (44.4007, –122.3288); Harter Creek (44.4106, –122.3605); Keith Creek (44.4093, –122.3247); Moose Creek (44.3384, –122.3671); Owl Creek (44.2999, –122.3686); Shuttle Camp Creek (44.4336, –122.2597); Soda Fork South Santiam River (44.410, –122.2466); South Santiam River (44.3980, –122.2610); Trout Creek (44.3993, –122.3464); Two Girls Creek (44.3248, –122.3346).

(v) South Santiam River/Foster Reservoir Watershed 1709000607. Outlet(s) = South Santiam River (Lat 44.4163, Long –122.6693) upstream to endpoint(s) in: Lewis Creek (44.4387, –122.6223); Middle Santiam River (44.4498, –122.5479); South Santiam River (44.3977, –122.4473).

(vi) Wiley Creek Watershed 1709000608. Outlet(s) = Wiley Creek (Lat 44.4140, Long –122.6752) upstream to endpoint(s) in: Farmers Creek (44.3933, –122.5812); Jackson Creek (44.3669, –122.6344); Little Wiley Creek (44.3633, –122.5228); Unnamed (44.3121, –122.5197); Unnamed (44.3455, –122.6941); Unnamed (44.3565, –122.6051); Wiley Creek (44.2961, –122.4318).

(4) Middle Willamette Subbasin 17090007—(i) Mill Creek/Willamette River Watershed 1709000701. Outlet(s) = Mill Creek (Lat 44.0908, Long –123.4434) upstream to endpoint(s) in: Mill Creek (45.0048, –123.4184).

(ii) Rickreall Creek Watershed 1709000702. Outlet(s) = Willamette River (Lat 44.9288, Long –123.1124) upstream to endpoint(s) in: Willamette River (44.7504, –123.4473).

(iii) Willamette River/Chehalis Creek Watershed 1709000703. Outlet(s) = Willamette River (Lat 45.1799, –123.6976); Cedar Creek (45.0892, –123.6969); Cocke Creek (45.0584, –123.5077); Cosper Creek (45.1497, –123.6178); Cow Creek (45.0410, –123.6165); Crooked Creek (45.0964, –123.6611); Doane Creek (45.0449, –123.6047); Ead Creek (45.0481, –123.8663); Fair Creek (45.0794, –123.6714); Gold Creek (45.0108, –123.5496); Jackass Creek (45.0589, –123.6495); Joe Creek (45.1216, –123.6216); Joe Day Creek (45.0286, –123.6660); Kitten Creek (45.1110, –123.2766); Klees Creek (45.0784, –123.5496); Lady Creek (45.0404, –123.5290); Little Rowell Creek (45.0235, –123.5699); Unnamed (45.0318, –123.5421); Unnamed (45.0390, –123.4620); Unnamed (45.0416, –123.5213); Unnamed (45.0493, –123.4721); Unnamed (45.0493, –123.6044); Unnamed (45.0599, –123.4661); Unnamed (45.0945, –123.6110); Unnamed (45.0994, –123.6110); Unnamed (45.1151, –123.6566); Unnamed (45.1164, –123.6717); Unnamed (45.1412, –123.6705); West Fork Agency Creek (45.1575, –123.7032); Wind River (45.1367, –123.6392); Yoncalla Creek (45.1345, –123.6614).

(5) Yamhill Subbasin 17090008—(i) Upper South Yamhill River Watershed 1709000801. Outlet(s) = South Yamhill River (Lat 44.3977, Long –122.4473) upstream to endpoint(s) in: Agency Creek (45.1799, –123.6976); Cedar Creek (45.0892, –123.6969); Cocke Creek (45.0584, –123.5077); Cosper Creek (45.1497, –123.6178); Cow Creek (45.0410, –123.6165); Crooked Creek (45.0964, –123.6611); Doane Creek (45.0449, –123.6047); Ead Creek (45.0481, –123.8663); Fair Creek (45.0794, –123.6714); Gold Creek (45.0108, –123.5496); Jackass Creek (45.0589, –123.6495); Joe Creek (45.1216, –123.6216); Joe Day Creek (45.0286, –123.6660); Kitten Creek (45.1110, –123.2766); Klees Creek (45.0784, –123.5496); Lady Creek (45.0404, –123.5290); Little Rowell Creek (45.0235, –123.5699); Unnamed (45.0318, –123.5421); Unnamed (45.0390, –123.4620); Unnamed (45.0416, –123.5213); Unnamed (45.0493, –123.4721); Unnamed (45.0493, –123.6044); Unnamed (45.0599, –123.4661); Unnamed (45.0945, –123.6110); Unnamed (45.0994, –123.6110); Unnamed (45.1151, –123.6566); Unnamed (45.1164, –123.6717); Unnamed (45.1412, –123.6705); West Fork Agency Creek (45.1575, –123.7032); Wind River (45.1367, –123.6392); Yoncalla Creek (45.1345, –123.6614).

(ii) Mill Creek/South Yamhill River Watershed 1709000803. Outlet(s) = Mill Creek (Lat 45.0908, Long –123.4434) upstream to endpoint(s) in: Mill Creek (45.0048, –123.4184).

(iii) Lower South Yamhill River Watershed 1709000804. Outlet(s) = South Yamhill River (Lat 45.1616, Long –123.2190) upstream to endpoint(s) in: South Yamhill River (45.0784, –123.4753).

(iv) Yamhill River Watershed 1709000807. Outlet(s) = Yamhill River (Lat 45.2301, Long –122.9950) upstream to endpoint(s) in: South Yamhill River (45.1616, –123.2190).

(6) Molalla/Pudding Subbasin 17090009—(i) Abiqua Creek/Pudding River Watershed 1709000901. Outlet(s) = Pudding River (Lat 45.0740, Long –122.8806) upstream to endpoint(s) in: Abiqua Creek (44.9264, –122.5066); Little Abiqua Creek (44.9253, –122.6204); Little Pudding River (45.0433, –122.8635); Powers Creek (44.9552, –122.6796); Pudding (44.9998, –122.8412); Silver Creek (44.8981, –122.6796).

(ii) Butte Creek/Pudding River Watershed 1709000902. Outlet(s) = Pudding River (Lat 45.0740, Long –122.8806) upstream to endpoint(s) in: Abiqua Creek (44.9264, –122.5066); Little Abiqua Creek (44.9253, –122.6204); Little Pudding River (45.0433, –122.8635); Powers Creek (44.9552, –122.6796); Pudding (44.9998, –122.8412); Silver Creek (44.8981, –122.6796).
River (Lat 45.1907, Long –122.7527) upstream to endpoint(s) in: Pudding River (45.0740, –122.8525).

(iii) Rock Creek/Pudding River Watershed 1709000903. Outlet(s) = Rock Creek (Lat 45.1907, Long –122.7527) upstream to endpoint(s) in: Rock Creek (45.0876, –122.5916).

(iv) Senecal Creek/Mill Creek Watershed 1709000904. Outlet(s) = Pudding River (Lat 45.2843, Long –122.7149) upstream to endpoint(s) in: Pudding River (45.1907, –122.7527).

(v) Upper Molalla River Watershed 1709000905. Outlet(s) = Molalla River (Lat 45.1196, Long –122.5342) upstream to endpoint(s) in: Camp Creek (44.9630, –122.2928); Cedar Creek (45.0957, –122.2527); Copper Creek (44.8977, –122.3704); Cougar Creek (45.0421, –122.3145); Dead Horse Canyon Creek (45.0852, –122.3146); Gawley Creek (44.9320, –122.4304); Lost Creek (44.9913, –122.2444); Lukens Creek (45.0498, –122.2421); Molalla River (45.9124, –122.3228); North Fork Molalla River (45.0131, –122.2986); Pine Creek (45.0153, –122.4560); Table Rock Fork Molalla River (44.9731, –122.2629); Trout Creek (45.0577, –122.4657).

(vi) Lower Molalla River Watershed 1709000906. Outlet(s) = Molalla River (Lat 45.2979, Long –122.7141) upstream to endpoint(s) in: Buckner Creek (45.2382, –122.5399); Canyon Creek (45.1317, –122.3858); Cedar Creek (45.2037, –122.5327); Gribble Creek (45.2041, –122.6867); Jackson Creek (45.1822, –122.3898); Milk Creek (45.2036, –122.3761); Molalla River (45.1196, –122.5342); Woodcock Creek (45.1508, –122.5075).

(7) Tualatin Subbasin 17090010—Gales Creek Watershed 1709001002. Outlet(s) = Tualatin River (Lat 45.5019, Long –122.9946) upstream to endpoint(s) in: Bateman Creek (45.6350, –123.2966); Beaver Creek (45.6902, –123.2899); Clear Creek (45.5705, –123.2567); Gales Creek (45.6428, –123.3576); Iler Creek (45.5900, –123.2582); North Fork Gales Creek (45.6680, –123.3394); Roaring Creek (45.5620, –123.2574); Roderick Creek (45.5382, –123.2013); South Fork Gales Creek (45.6059, –123.2978); Tualatin River (45.4917, –123.1012).

(8) Lower Willamette/Columbia River Corridor—Lower Willamette/Columbia River Corridor. Outlet(s) = Columbia River (Lat 46.2485, Long –124.0782) upstream to endpoint(s) in: Willamette River (45.3540, –122.6186).

(9) Maps of critical habitat for the Upper Willamette River Steelhead ESU follow:
Final Critical Habitat for the
Upper Willamette River Steelhead ESU

YAMHILL SUBBASIN
17090008

Legend

Cities / Towns

Critical Habitat

Subbasin Boundary

Watershed Boundaries

01 - 07 = Watershed code - last 2 digits of 17090008xx
Final Critical Habitat for the Upper Willamette River Steelhead ESU

MOLALLA / PUDDING SUBBASIN
17090009

Legend

Cities / Towns

Critical Habitat
Subbasin Boundary
Watershed Boundaries

01 - 06 = Watershed code - last 2 digits of 17090009xx
(u) Oregon Coast Coho Salmon (*Oncorhynchus kisutch*). Critical habitat is designated to include the areas defined in the following subbasins:

1. Necanicum Subbasin 17100201—Necanicum River Watershed 1710020101. Outlet(s) = Arch Cape Creek (Lat 45.8035, Long – 123.9656); Asbury Creek (45.815, – 123.9624); Ecola Creek (45.8959, – 123.9649); Necanicum River (46.0113, – 123.9264); Short Sand Creek (45.7595, – 123.9641) upstream to endpoint(s) in: Arch Cape Creek (45.8044, – 123.9404); Asbury Creek
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(45.8150,–123.9584); Beerman Creek to endpoint(s) in: Bear Creek
(45.9557,–123.8749); Bergsvik Creek (45.7781, –123.4252); Bear Creek
(45.8704,–123.7650); Brandis Creek (45.8556, –123.2205); Beaver Creek
(45.8894,–123.8529); Charlie Creek (45.7624, –123.2973); Beaver Creek Trib A
(45.9164,–123.7606); Circle Creek (45.8071, –123.2143); Beaver Creek Trib B
(45.9238,–123.9436); Circle Creek Trib A (45.7711, –123.2318); Carlson Creek
(45.9335,–123.9457); North Fork Ecola Creek (45.7173, –123.3425); Castor Creek
(45.8705,–123.9070); West Fork Ecola Creek (45.8565, –123.9424); Grindy Creek
(45.9197, –123.7390); Hawley Creek (45.9259, –123.8864); Joe Creek
(45.8747,–123.7503); Johnson Creek Trib B (45.8149, –123.1174); Coal Creek
(45.8885,–123.8816); Klootchie Creek (45.7976, –123.1293); Coon Creek
(45.9450,–123.8413); Klootchie Creek (45.8211, –123.2436); Dell Creek
(45.9245,–123.9157); Neawanna Creek (45.7626, –123.2507); Lousignont Creek
(45.9610,–123.8899); Necnicanium River (45.7424, –123.3722); Lousignont Creek,
(45.9197,–123.7106); North Fork Necnicanium River (45.7463, –123.3576); Martin
Necnicanium River (45.9308, –123.7986); Creek (45.8474, –123.4025); Maynard
North Fork Necnicanium River Trib A Creek (45.8556, –123.3038); Military
Necnicanium River (45.9398, –123.8109); South Fork
Necnicanium River (45.8760, –123.8122); River (45.7269, –123.4159); Nehalem
Shangrilia Creek (45.9706, –123.8778); River, East Fork (45.6324, –123.0502);
Short Sand Creek (45.7763, –123.9406); Olson Creek (45.8128, –123.3853); Pebble
Thompson Creek (46.0108, –123.8951); Creek (45.7661, –123.1357); Pebble Creek,
Tolovana Creek (45.8581, –123.9370); West Fork (45.7664, –123.1899); Robinson
Unnamed (45.8648, –123.9371); Unnamed
(45.8821,–123.9318); Unnamed
(45.8881,–123.7436); Unnamed
(45.8883,–123.9506); Unnamed
(45.8906,–123.7460); Unnamed
(45.8912,–123.9433); Unnamed
(45.8950,–123.8715); Unnamed
(45.9026,–123.9540); Unnamed
(45.9046,–123.9578); Unnamed
(45.9050,–123.9585); Unnamed
(45.9143,–123.8656); Unnamed
(45.9161,–123.9000); Unnamed
(45.9210,–123.8668); Unnamed
(45.9273,–123.8499); Unnamed
(45.9292,–123.8900); Unnamed
(45.9443,–123.9038); Unnamed
(45.9500,–123.8989); Unnamed
(46.0018,–123.8998); Volmer Creek
(45.7398,–123.3847); Unnamed
(45.9049,–123.9139); Warner Creek
(45.7943,–123.4059); Unnamed
(45.8887,–123.7801); Williamson Creek
(45.8197,–123.0679); Unnamed
(45.9222,–123.9060); Unnamed
(45.8477,–123.0734); Unnamed

(2) Nehalem Subbasin 17100202—(i)
Upper Nehalem River Watershed
17100220 Outlet(s) in: Nehalem River
(45.9019, Long = –123.1442) upstream

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Fork (45.7989, −123.4028); Wolf Creek (45.8949, −123.6764); Big Creek
(45.7768, −123.3556).

(ii) Middle Nehalem River Watershed 17100202. Outlet(s) = Nehalem River (45.9306, −123.4165); Cedar Creek
(Lat 45.9838, Long −123.4214) upstream to endpoint(s) in: Adamas Creek (45.8587, −123.3206); Crawford Creek
(45.9699, −123.4725); Cronin Creek, Middle Fork (45.7719, −123.5747); Cronin Creek, South Fork
(46.0544, −123.2965); Boxler Creek Creek, North Fork (45.7795, −123.6064);
(46.0486, −123.3521); Calvin Creek Cronin Creek, South Fork
(45.9514, −123.2976); Cedar Creek (45.7456, −123.5596); Destruction Creek
(45.9752, −123.1143); Cook Creek (45.8750, −123.6571); East Humburg Creek
(45.9212, −123.1087); Cow Creek (45.9454, −123.6358); Fishhawk Creek
(46.0590, −123.3426); Crooked Creek (45.9666, −123.5895); Fishhawk Creek
(45.9043, −123.2689); Deep Creek (46.0224, −123.5374); George Creek
(45.9461, −123.3719); Deep Creek Trib A (45.8461, −123.6226); George Creek
(45.9127, −123.3794); Deep Creek Trib B (45.9118, −123.5766); Gilmore Creek
(45.9314, −123.3809); Deer Creek (45.9609, −123.5372); Hamilton Creek
(45.9033, −123.3142); Eastman Creek (46.0034, −123.5881); Klines Creek
(46.0100, −123.2202); Fall Creek (45.8703, −123.9406); Larsen Creek
(45.9438, −123.2012); Fishhawk Creek (45.8757, −123.5847); Little Fishhawk
(46.0596, −123.3857); Fishhawk Creek, North Fork (46.0907, −123.3675);
Fishhawk Creek, Trib C (46.0608, −123.3692); Ford Creek (45.8801, −123.5178); Nehalem River
(46.0570, −123.2872); Gus Creek (45.9368, −123.4214); Quartz Creek
(45.9828, −123.1453); Johnson Creek (45.8414, −123.5184); Spruce Run Creek
(46.0021, −123.2133); Lane Creek (45.8103, −123.6028); Squaw Creek
(45.9448, −123.3253); Little Deer Creek (45.9814, −123.4529); Stanley Creek
(45.9578, −123.2780); Louisigont Creek (45.8861, −123.4352); Strum Creek
(46.0342, −123.4166); Lundgren Creek (45.9321, −123.4275); Trailover Creek
(46.0240, −123.2092); McCoon Creek (46.0129, −123.4976); Unnamed
(46.0065, −123.3043); Messing Creek (45.8083, −123.6290); Unnamed
(46.0393, −123.2290); Nehalem River (45.8682, −123.6168); Unnamed
(45.9019, −123.1442); Northrup Creek (45.9078, −123.6630); Unnamed
(46.0672, −123.4377); Oak Ranch Creek (45.9207, −123.4534); Unnamed
(45.9085, −123.0834); Sager Creek (45.9405, −123.6338); Unnamed
(45.9388, −123.4020); Unnamed (45.9725, −123.3544); West Humburg Creek
(45.9039, −123.2044); Unnamed (45.9402, −123.6726); Walker Creek
(45.9067, −123.0595); Unnamed (45.9266, −123.4423); Walker Creek
(45.9498, −123.2220); Unnamed (45.0391, −123.5142); West Brook
(45.9629, −123.3845); Unnamed (45.9757, −123.4638).

(iii) Lower Nehalem River Watershed 17100202. Outlet(s) = Nehalem River (45.7567, Long −123.6590) upstream to endpoint(s) in: Alder Creek (45.9069, −123.5907); Beaver Creek
(45.7989, −123.4028); Wolf Creek (45.8949, −123.6764); Big Creek
(45.7768, −123.3556).

(iv) Salmonberry River Watershed 171002064. Outlet(s) = Salmonberry River (Lat 45.7567, Long −123.6590) upstream to endpoint(s) in: Pennoyer Creek (45.7190, −123.4366); Salmonberry River (45.7248, −123.4436); Salmonberry River, North Fork (45.7181, −123.5204); Wolf Creek (45.6956, −123.4485).

(v) North Fork of Nehalem River Watershed 17100206. Outlet(s) = Nehalem River, North Fork (Lat 45.7317, Long −123.8765) upstream to endpoint(s) in: Acey Creek (45.7823, −123.8292); Anderson Creek (45.7643, −123.9073); Big Rackheap Creek (45.7546, −123.8148); Boykin Creek (45.8030, −123.8956); Buchanan Creek (45.8270, −123.7901); Coal
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Creek (45.7897, −123.8676); Coal Creek, (45.7489, −123.7778); Foley Creek
West Fork (45.7753, −123.8871); Cougar (45.6436, −123.8933); Gallagher Slough
Creek (45.8064, −123.8090); Fall Creek (45.7140, −123.8657); Hanson Creek
(45.7842, −123.8547); Fall Creek (45.6611, −123.7179); Harliss Creek
(45.8226, −123.7054); Gods Valley Creek (45.6851, −123.7249); Hellow Creek
(45.7689, −123.7793); Grassy Lake Creek (45.7545, −123.7603); Hoevett Creek
(45.7986, −123.8193); Gravel Creek (45.6894, −123.6276); Jetty Creek
(45.7361, −123.8126); Henderson Creek (45.6615, −123.9103); Lost Creek
(45.7932, −123.8548); Jack Horner Creek (45.7216, −123.7164); Neahkahnie Creek
(45.8531, −123.7837); Lost Creek (45.7197, −123.9247); Nehalem River
(45.7909, −123.7156); Nehalem River, Little North Fork (45.9101, −123.6972); Nehalem River, North Fork (45.8623, −123.7493); Nehalem River, North Fork, Trib R (45.8287, −123.6625);
Unnamed Nehalem River, North Fork, Trib T (45.8492, −123.6796); Rackheap Creek (45.6454, −123.8663); Unnamed
(45.7677, −123.8006); Sally Creek (45.6483, −123.8605); Unnamed
(45.8294, −123.7406); Soapstone Creek (45.6814, −123.8786); Unnamed
(45.8498, −123.7499); Soapstone Creek, Trib A (45.8591, −123.7616); Sweenhome Creek (45.7699, −123.6616); Unnamed
(45.7457, −123.8490); Unnamed Nestucca River (Lat 45.1827, Long −123.9543) upstream to endpoint(s) in: Austin Creek (45.1080, −123.8748); Austin
(45.7716, −123.7691); Unnamed Nestucca River, Lit - (45.1149, −123.7098); Snark Creek
(45.7730, −123.7789); Unnamed (45.2359, −123.8042); Kautz Creek
(45.7736, −123.7697); Unnamed Creek, West Fork (45.1074, −123.8894);
(45.7738, −123.7534); Unnamed Baxter Creek (45.1149, −123.7705); Bear
(45.7780, −123.7434); Unnamed Creek (45.1310, −123.8500); Bowers Creek
(45.7784, −123.7742); Unnamed (45.1393, −123.9196); Cedar Creek
(45.7794, −123.7315); Unnamed (45.0971, −123.8094); Fall Creek
(45.7824, −123.7396); Unnamed (45.1474, −123.8767); Hiack Creek
(45.7833, −123.7680); Unnamed (45.0759, −123.8042); Kautz Creek
(45.7841, −123.7299); Unnamed (45.0776, −123.8317); Kellow Creek
(45.7858, −123.7660); Unnamed (45.1271, −123.9072); Little Nestucca
(45.7898, −123.7424); Unnamed River (45.0730, −123.7825); Little
(45.7946, −123.7365); Unnamed Nestucca River, South Fork
(45.7966, −123.7953); Unnamed Nestucca River, South Fork
(45.8009, −123.7349); Unnamed (45.0754, −123.8339); Louie Creek
(45.8193, −123.7436); Unnamed (45.1277, −123.7869); McKnight Creek
(45.8222, −123.7789); Unnamed (45.1124, −123.8363); Small Creek
(45.8359, −123.7766); Unnamed (45.1151, −123.8227); Sourgrass Creek
(45.8569, −123.7235); Unnamed (45.0917, −123.7623); Sourgrass Creek,
(45.8609, −123.7347); Unnamed Trib A (45.1109, −123.7064); Squaw Creek
(45.8602, −123.7444); Unnamed (45.1169, −123.8938); Stillwell Creek
(45.8962, −123.7189); Unnamed (45.1169, −123.7974).

(vi) Lower Nehalem River/Cook Creek Watershed 17100209. Outlet(s) = Nehalem River (Lat 45.6577, Long −123.9355) upstream to endpoint(s) in: Alder Creek (45.7286, −123.9091); Anderson Creek (45.1436, −123.7490); Bastard Creek (45.7667, −123.8943); Bob's Creek (45.2346, −123.7364); Bays Creek
(45.7444, −123.9038); Cook Creek (45.3197, −123.7240); Bear Creek
(45.6939, −123.6146); Cook Creek, East Fork (45.6705, −123.6440); Daniels Creek (45.3345, −123.7898); Beulah Creek
(45.6716, −123.8600); Dry Creek (45.2074, −123.6747); Bible Creek
(45.6449, −123.8507); Dry Creek (45.2331, −123.5868); Boulder Creek
(45.6635, −123.7422); East Foley Creek (45.2530, −123.7525); Buck Creek
(45.6621, −123.8068); Fall Creek (45.1455, −123.7734); Cedar Creek

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(45.3288, – 123.4531); Clarence Creek (45.3824, – 123.7210); Joe Creek
(45.2649, – 123.6395); Clear Creek (45.3754, – 123.8257); Killam Creek
(45.1725, – 123.8660); Crazy Creek (45.4087, – 123.7276); Mills Creek
(45.1636, – 123.7595); Dahl Fork (45.3461, – 123.7915); Munson Creek
(45.2306, – 123.7076); East Beaver Creek (45.3626, – 123.7681); Simmons Creek
(45.3579, – 123.6877); East Creek (45.3605, – 123.7364); Sutton Creek
(45.3134, – 123.6348); Elk Creek (45.4049, – 123.8568); Tillamook River
(45.3134, – 123.5645); Elk Creek, Trib A (45.3595, – 123.9115); Tomlinson Creek
(45.2926, – 123.5381); Elk Creek, Trib B (45.4587, – 123.8868); Unnamed
(45.2981, – 123.5471); Fan Creek (45.3660, – 123.8313); Unnamed
(45.2975, – 123.4994); Farmer Creek (45.3602, – 123.8466); Unnamed
(45.2593, – 123.9074); Poland Creek (45.3654, – 123.9650); Unnamed
(45.2586, – 123.7890); Poland Creek, West Fork (45.3987, – 123.7105); Unnamed
Fork (45.2519, – 123.8029); George Creek (45.4083, – 123.8160); Unnamed
(45.2229, – 123.8291); Ginger Creek (45.4478, – 123.8670); Unnamed
(45.3283, – 123.4680); Hartney Creek (45.3850, – 123.7348).
(45.2192, – 123.8632); Horn Creek (iv) Trask River Watershed 1710020304.
(45.2506, – 123.9212); Lawrence Creek Outlet(s) = Trask River (Lat 45.4622
(45.1661, – 123.7832); Limestone Creek Long – 123.8802) upstream to end-
point(s) in: Bales Creek
(45.2444, – 123.6197); Moon Creek (45.3712, – 123.5786); Bark Shanty Creek
(45.3293, – 123.6762); North Beaver Creek (45.4232, – 123.5550); Bear Creek
(45.3497, – 123.8961); Nestucca River (45.4192, – 123.7408); Bill Creek
(45.3093, – 123.4077); Niagara Creek (45.3713, – 123.6386); Blue Bus Creek
(45.1898, – 123.6637); Pheasant Creek (45.4148, – 123.5949); Boundry Creek
(45.2121, – 123.6396); Pollard Creek (45.3493, – 123.5470); Clear Creek #1
(45.1951, – 123.7958); Powder Creek (45.4638, – 123.5571); Clear Creek #2
(45.2305, – 123.6974); Saling Creek (45.5025, – 123.4683); Cruiser Creek
(45.2691, – 123.8474); Sanders Creek (45.4201, – 123.4753); Dougherty Slough
(45.2254, – 123.8959); Slick Rock Creek (45.4684, – 123.7888); East Fork of South
(45.2683, – 123.6106); Swab Creek Fork Trask River (45.3563, – 123.4752);
(45.2689, – 123.7656); Testament Creek Edwards Creek (45.3852, – 123.6676); Elk-
(45.2213, – 123.5488); Three Rivers horn Creek, Trib C (45.4080, – 123.4440);
(45.1785, – 123.7557); Tiger Creek Elkhorn Creek (45.3928, – 123.4709); Gold
(45.3405, – 123.8029); Tiger Creek, Trib A Creek (45.4326, – 123.7218); Green Creek
(45.3346, – 123.8547); Tony Creek (45.4510, – 123.7361); Hatchery Creek
(45.2975, – 123.7735); Turpy Creek (45.4485, – 123.6623); Headquarters Camp
(45.2537, – 123.7620); Unnamed Creek (45.3317, – 123.5672); Hoquarten
(45.1924, – 123.8292); Unnamed Slough (45.4597, – 123.8490); Joyce Creek
(45.2290, – 123.9398); Unnamed (45.3881, – 123.6386); Michael Creek
(45.3018, – 123.4636); Unnamed (45.4799, – 123.5119); Mill Creek
(45.3102, – 123.6628); Unnamed (45.4100, – 123.7450); Miller Creek
(45.3148, – 123.6616); Unnamed (45.3582, – 123.5666); Pigeon Creek
(45.3158, – 123.8679); Unnamed (45.3910, – 123.5656); Rave Creek
(45.3292, – 123.8872); Walker Creek (45.4395, – 123.6351); Rock Creek
(45.2914, – 123.4297); West Beaver Creek (45.3515, – 123.5074); Samson Creek
(45.3109, – 123.8840); West Creek (45.4662, – 123.6439); Scotch Creek
(45.2899, – 123.8514); Wildcat Creek (45.4015, – 123.5873); Steampot Creek
(45.3164, – 123.8187); Wolfe Creek (45.3875, – 123.5425); Stretch Creek
(45.3133, – 123.7658); Woods Creek (45.3483, – 123.5382); Summit Creek
(45.1691, – 123.8307); Summit Creek (45.3481, – 123.6054); Summit Creek.
(ii) Tillamook River Watershed 1710020303. Outlet(s) = Tillamook River
River, North Fork, Middle Fork
(Lat 45.4682, Long – 123.8802) upstream to endpoint(s) in: Bear Creek
Fork, North Fork (45.5275, – 123.4177);
(45.4213, – 123.8885); Beaver Creek Trask River, South Fork
(45.4032, – 123.8861); Bewley Creek (45.3538, – 123.6445); Trib A
(45.3637, – 123.8965); Esther Creek (45.3766, – 123.5191); Trib B
(45.4464, – 123.9017); Fawcett Creek (45.3776, – 123.4988); Unnamed

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\((45.3639, -123.6054); \) Unnamed \((45.5533, -123.7144); \) Schroeder Creek
\((45.4105, -123.7441); \) Unnamed \((45.6469, -123.7064); \) Unnamed
\((45.4201, -123.6320); \) Unnamed \((45.5625, -123.7593). \)

\((45.4220, -123.7654). \)

\((v) \) Wilson River Watershed 1710020305. Outlet(s) = Wilson River (Lat 45.4816,
Long -123.8788) upstream to endpoint(s) in: Beaver Creek (45.4894, -123.7933); Ben Smith Creek (45.5772, -123.5072); Cedar Creek (45.5869, -123.6228); Cedar Creek, North Fork (45.6066, -123.6151); Deo Creek (45.6000, -123.3716); Drift Creek (45.6466, -123.7314); Elk Creek (45.6550, -123.4620); Elk Creek, West Fork (45.6208, -123.4717); Elliott Creek (45.5997, -123.3925); Fall Creek (45.6304, -123.8435); Stuart Creek (45.4936, -123.5616); Fox Creek (45.6042, -123.8442); Unnamed (45.5004, -123.5809); Hatchery Creek (45.6317, -123.7906); Unnamed (45.4935, -123.7074); Hughey Creek (45.6341, -123.7900); Waldron Creek (45.4540, -123.7526); Idiot Creek (45.5856, -123.8483).

\((vii) \) Miami River Watershed 1710020307. Outlet(s) = Miami River (Lat 45.5597,
Long -123.8904) upstream to endpoint(s) in: Diamond Creek (45.6158, -123.8184); Holcomb Creek (45.5783, -123.8753); Illingsworth Creek (45.5547, -123.8693); Miami River Fork (45.6362, -123.7533); Miami River, Trib S (45.6182, -123.8004); Miami River, Trib T (45.6456, -123.7463); Minich Creek (45.5809, -123.8963); Kilchis Creek (45.6268, -123.8319); Peterson Creek (45.6123, -123.8996); Prouty Creek (45.6304, -123.8435); Stuart Creek (45.4936, -123.5616); Fox Creek (45.6042, -123.8442); Unnamed (45.5004, -123.5809); Hatchery Creek (45.6317, -123.7906); Unnamed (45.4935, -123.7074); Hughey Creek (45.6341, -123.7900); Waldron Creek (45.4540, -123.7526); Idiot Creek (45.5856, -123.8483).

\((viii) \) Tillamook Bay Watershed 1710020308. Outlet(s) = Tillamook Bay (Lat 45.5600, Long -123.9366) upstream to endpoint(s) in: Douthy Creek (45.5579, -123.8925); Hall Slough (45.5473, -123.8637); Jacoby Creek (45.5297, -123.8665); Kilchis River (45.4927, -123.8615); Larson Creek (45.5386, -123.8849); Miami River (45.5597, -123.8996); Patterson Creek (45.5359, -123.8732); Tillamook Bay (45.4682, -123.8802); Vaughn Creek (45.5170, -123.8516); Wilson River (45.4816, -123.8708).

\((ix) \) Spring Creek/Sand Lake/Neskowin Creek Frontal Watershed 1710020309. Outlet(s) = Crescent Lake (45.6360, -123.9405); Neskowin Creek (45.1001, -123.9859); Netarts Bay (45.4339, -123.9512); Rover Creek (45.3290, -123.9670); Sand Creek (45.2748, -123.9589); Watesco Creek (45.5892, -123.9477) upstream to endpoint(s) in: Andy Creek (45.2905, -123.8744); Butte Creek (45.1159, -123.9360); Crescent Lake (45.6320, -123.9376); Davis Creek (45.3220, -123.9254); Fall Creek (45.0699, -123.9670); Hoes Creek (45.1104, -123.9436); Jackson Creek (45.3568, -123.9611); Jewel Creek (45.2865, -123.8905); Jim Creek (45.0896, -123.9224); Lewis Creek (45.0635, -123.9879); Meadow Creek (45.0623, -123.9821); Nesikowin Creek (45.0574, -123.8812); Prospect Creek (45.0585, -123.8316); Sam Downs Creek (45.0585, -123.9321); Reneke Creek (45.0585, -123.9321).
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(45.2594, −123.9434); Rover Creek (44.6715, −123.6907); Unnamed
(45.3284, −123.9438); Sand Creek (44.6881, −123.6089); Unnamed
(45.3448, −123.9156); Sloan Creek (44.6908, −123.7298); Wakefield Creek
(45.0718, −123.8998); Watesco Creek (44.6336, −123.6963); Yaquina River
(45.5909, −123.9353); Whiskey Creek (44.6894, −123.5907); Young Creek
(45.3839, −123.9193).

(25) Siletz Yaquina Subbasin 17100204–

(i) Upper Yaquina River Watershed 1710020401. Outlet(s) = Yaquina River
(Lat 44.6219, Long −123.8741) upstream to endpoint(s) in: Bales Creek
(44.6893, −123.7563); Bales Creek, East Fork (44.6927, −123.7363); Bales Creek,
East Fork, Trib A (44.6627, −123.7257); Bales Creek (44.6610, −123.8749); Bones
Creek (44.6647, −123.6762); Bryant Creek (44.5408, −123.8162); Bull Creek
(44.6746, −123.7139); Buckhorn Creek (44.5431, −123.8142); Bull Creek, Trib A
(44.6766, −123.6677); Buttermilk Creek, Trib A (44.6518, −123.7173); Carlisle
Creek (44.6451, −123.8847); Cline Creek (44.6020, −123.7667); Devils Well Creek
(44.6084, −123.6844); Cook Creek (44.6324, −123.8438); Dixon Creek
(44.6909, −123.8583); Crystal Creek (44.6041, −123.8659); Elk Creek
(44.6500, −123.8132); Davis Creek (44.5075, −123.6022); Feagles Creek
(44.6500, −123.6587); Eddy Creek (44.4880, −123.7180); Feagles Creek, Trib
(44.6588, −123.7951); Pelton Creek B (44.5079, −123.6909); Feagles Creek,
(44.6626, −123.6502); Hazel Creek West Fork (44.5083, −123.7117); Grant
(44.6781, −123.8046); Hayes Creek Creek (44.5010, −123.7363); Harve Creek
(44.6749, −123.7749); Humphrey Creek (44.5725, −123.8025); Jackass Creek
(44.6697, −123.6329); Klamath Creek (44.5443, −123.7790); Johnson Creek
(44.6827, −123.8431); Little Elk Creek (44.5466, −123.6336); Lake Creek
(44.6294, −123.6628); Little Elk Creek (44.5387, −123.6829); Leverage Creek
Creek, Trib A (44.6196, −123.7583); Little Creek (44.5536, −123.6343); Little Creek
Yaquina River (44.6822, −123.6123); Lytle Creek (44.5548, −123.6980); Little Wolf Creek
Creek (44.6440, −123.5979); Miller Creek (44.5590, −123.7165); Peterson Creek
(44.6055, −123.7030); Oglesby Creek Creek (44.5576, −123.6450); Rall Creek
(44.6421, −123.7271); Oglesby Creek, Trib A (44.5315, −123.6639); Spout Creek
(44.6559, −123.7808); Randall Creek (44.5301, −123.5995); Unnamed
(44.6721, −123.6570); Salmon Creek (44.5048, −123.7566); Unnamed
(44.6087, −123.7379); Simpson Creek (44.5085, −123.6309); Unnamed
(44.6775, −123.8780); Sloop Creek (44.5108, −123.6249); Unnamed
(44.6654, −123.8595); Spilde Creek (44.5144, −123.6554); Unnamed
(44.6636, −123.5856); Stony Creek (44.5204, −123.6148); Unnamed
(44.6753, −123.7020); Thornton Creek (44.5231, −123.6714); Unnamed
(44.6923, −123.8208); Trapp Creek (44.5256, −123.6804); Unnamed
(44.6455, −123.8307); Twentythree Creek (44.5325, −123.7244); Unnamed
(44.6887, −123.8751); Unnamed (44.5332, −123.7211); Unnamed
(44.6074, −123.6738); Unnamed (44.5361, −123.7139); Unnamed
(44.6076, −123.7067); Unnamed (44.5370, −123.7643); Unnamed
(44.6077, −123.6635); Unnamed (44.5376, −123.6176); Unnamed
(44.6123, −123.6646); Unnamed (44.5410, −123.8213); Unnamed
(44.6188, −123.7237); Unnamed (44.5504, −123.8290); Unnamed
(44.6202, −123.7201); Unnamed (44.5530, −123.8282); Unnamed
(44.6367, −123.7444); Unnamed (44.5618, −123.8431); Unnamed
(44.6415, −123.6237); Unnamed (44.5687, −123.8563); Unnamed
(44.6472, −123.7795); Unnamed (44.5718, −123.7256); Unnamed
(44.6493, −123.6788); Unnamed (44.5734, −123.6996); Unnamed
(44.6707, −123.7908); Unnamed (44.5737, −123.6566); Unnamed
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(44.5771, -123.7027); Unnamed Fork (44.8233, -123.8095); Buck Creek, (44.5821, -123.8123); Unnamed West Fork (44.8332, -123.8084); Cerine (44.5840, -123.6678); Unnamed Creek (44.7478, -123.7198); Deer Creek (44.5906, -123.7871); Unnamed Deer Creek, Trib A (44.8245, -123.7268); Deer Creek, Trib A (44.5990, -123.7808); Unnamed (44.8178, -123.7397); Elk Creek (44.5865, -123.8521); Wolf Creek (44.8704, -123.7668); Fourth of July Creek (44.8203, -123.6810); Gunn Creek (44.5862, -123.7188); Wolf Creek, Trib B (44.7816, -123.7679); Holman River (44.5847, -123.7062).

(iii) Lower Yaquina River Watershed
1770020403. Outlet(s) = Yaquina River
(Lat 44.6098, Long -124.0618) upstream to endpoint(s) in: Abbey Creek (44.6889, -124.0618); Deer Creek (44.5873, -123.6939); Wolf Creek, Trib A (44.5662, -123.7188); Wolf Creek, Trib B (44.5847, -123.7062).

1770020403. Outlet(s) = Yaquina River
(Lat 44.6098, Long -124.0618) upstream to endpoint(s) in: Abbey Creek (44.6889, -124.0618); Deer Creek (44.5873, -123.6939); Wolf Creek, Trib A (44.5662, -123.7188); Wolf Creek, Trib B (44.5847, -123.7062).

1770020403. Outlet(s) = Yaquina River
(Lat 44.6098, Long -124.0618) upstream to endpoint(s) in: Abbey Creek (44.6889, -124.0618); Deer Creek (44.5873, -123.6939); Wolf Creek, Trib A (44.5662, -123.7188); Wolf Creek, Trib B (44.5847, -123.7062).

1770020403. Outlet(s) = Yaquina River
(Lat 44.6098, Long -124.0618) upstream to endpoint(s) in: Abbey Creek (44.6889, -124.0618); Deer Creek (44.5873, -123.6939); Wolf Creek, Trib A (44.5662, -123.7188); Wolf Creek, Trib B (44.5847, -123.7062).

1770020403. Outlet(s) = Yaquina River
(Lat 44.6098, Long -124.0618) upstream to endpoint(s) in: Abbey Creek (44.6889, -124.0618); Deer Creek (44.5873, -123.6939); Wolf Creek, Trib A (44.5662, -123.7188); Wolf Creek, Trib B (44.5847, -123.7062).

(iv) Middle Siletz River Watershed
1770020405. Outlet(s) = Siletz River (Lat 44.7375, Long -123.7917) upstream to endpoint(s) in: Buck Creek, East Fork (44.8410, -123.7970); Buck Creek, South (44.6987, -123.8025); Mill Creek

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(44.6949, −123.8967); Miller Creek (44.9903, −123.8158); Sulphur Creek
(44.7487, −123.9733); North Creek (45.0403, −123.8216); Telephone Creek
(44.9279, −123.8908); North Roy Creek (45.0467, −123.9348); Toketa Creek
(44.7916, −123.9897); Ojalla Creek (45.0482, −123.9088); Trout Creek
(44.7489, −123.9427); Quarry Creek (44.9693, −123.8337); Unnamed
(44.8899, −123.9360); Reed Creek (44.9912, −123.8789); Unnamed
(44.8020, −123.8835); Reed Creek (45.0370, −123.7333); Unnamed
(44.8475, −123.9267); Roots Creek (45.0433, −123.7650); Widow Creek
(44.8300, −123.9351); South Roy Creek (45.0373, −123.8530); Widow Creek, West
(44.7773, −123.9847); Sam Creek Fork (45.0320, −123.8643); Willis Creek
(44.7086, −123.7312); Sampson Creek (45.0059, −123.9391).
(44.9089, −123.8173); Savage Creek (vii) Devils Lake/Moosack Frontwat-
(44.8021, −123.8666); Scare Creek Watershed 171062069; Outlet(s) = Big Creek
(44.8336, −123.9954); Schooner Creek. (Lat 44.6590, Long −124.0871); Coal
North Fork (44.9661, −123.8793); Schoon-
(44.9401, −123.8689); Scott Creek (44.8395, −124.0520); Moolack Creek
(44.7414, −123.8268); Sjota Creek (44.7033, −124.0622); North Depoe Bay
(44.8883, −124.0257); Siletz River Creek (44.8098, −124.0617); Schoolhouse Creek
(44.7375, −123.7917); Skunk Creek Creek (44.8734, −124.0461); Spencer Creek
(44.8780, −123.9073); Smith Creek (44.7292, −124.0582); Wade Creek
(44.9294, −123.8056); Stemple Creek (44.7159, −124.0600) upstream to end-
(44.8405, −123.9492); Tangerman Creek point(s) in: Big Creek
(44.7278, −123.8944); Thayer Creek (44.6558, −124.0427); Coal Creek
(44.7023, −123.8256); Thompson Creek (44.7047, −124.0099); Devils Lake
(44.7520, −123.8893); Unnamed (45.0997, −123.9773); Fogarty Creek
(44.7003, −123.7669); Unnamed (44.8563, −124.0153); Jeffries Creek
(44.8904, −123.8034); Unnamed (44.6425, −124.0315); Moolack Creek
(44.8927, −123.8400); Unnamed (44.6931, −124.0150); North Depoe Bay
(44.7034, −123.7754); Unnamed Creek (44.8157, −124.0510); Rock Creek
(44.7145, −123.8423); Unnamed (44.9689, −123.9317); South Depoe Bay
(44.7410, −123.8800); Unnamed Creek (44.7038, −124.0126); Salmon Creek
(44.7923, −123.9212); Unnamed (44.8400, −124.0184); Schoolhouse Creek
(44.8396, −123.8896); Unnamed (44.8634, −124.0151); South Fork Spencer
(44.9035, −123.8635); Unnamed Creek (44.7323, −123.9974); Spencer
(44.9240, −123.7913); West Fork Mill Creek (44.7119, −123.9073); Wildcat Creek
(44.8915, −123.8842); —(vii) Salmon River/Siletz/Vaquina Bay Watershed 1710020408. Outlet(s) = Salmo-
(unnamed (44.5428, −123.7817); Calkins Creek
(44.5068, −123.9615); Crowley Creek upstream to endpoint(s) in: Alder Creek
(44.5040, −123.9819); Curl Creek (44.5473, −123.5188); Alsea River, South
(44.5150, −123.9198); Deer Creek Fork (44.3261, −123.4891); Baker Creek
(44.0196, −123.8091); Frazer Creek (44.4329, −123.5522); Bantown Creek
(44.0096, −123.9576); Gardner Creek (44.3317, −123.6020); Brown Creek
(44.3926, −124.0350); Indian Creek Creek (44.3151, −124.2050); Bummer Creek
(44.0495, −123.8010); Little Salmon River (44.3020, −123.7565); Cabin Creek
(44.0546, −123.7473); McMullen Creek (44.4431, −123.5328); Crooked Creek
(44.9829, −123.8682); Panther Creek (44.4579, −123.5099); Dubuque Creek
(44.0208, −123.8878); Panther Creek, North Fork (45.0305, −123.9810); Prairie
Creek (45.0355, −123.8129); Rowdy Creek (44.3974, −124.0078); Honey Grove Creek
(45.0189, −123.9751); Salmon River (44.3974, −123.9783); North Fork Alsea
(45.0269, −123.7224); Slick Rock Creek (44.4527, −123.6102); Parker Creek

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(44.4386, –123.9200); Unnamed (44.4477, –124.0130); Sudan Creek
(44.4409, –123.8738); Unnamed (44.3817, –123.9717); Sulmon Creek
(44.4832, –123.9570); Unnamed (44.3328, –123.7008); Sulmon Creek,
(44.4868, –123.9340); Unnamed North Fork (44.3421, –123.6374); Sulmon
(44.4872, –123.9518); Unnamed Creek, South Fork (44.3339, –123.6709);
(44.4875, –123.9460); Unnamed Swede Fork (44.3852, –124.0295);
(44.4911, –123.9227); Unnamed Unnamed (44.3319, –123.9318); Unnamed
(44.5187, –123.7996); Unnamed (44.3556, –123.9484); Unnamed
(44.5260, –123.7848); Unnamed (44.3393, –123.9360); Unnamed
(44.5263, –123.8868); Unnamed (44.3413, –123.9294); Unnamed
(44.5326, –123.8453); Unnamed (44.3490, –123.9058); Unnamed
(44.5387, –123.8440); Unnamed (44.3548, –123.6574); Unnamed
(44.5486, –123.8694); Unnamed (44.3592, –123.6363); Unnamed
(44.5521, –123.8216); Unnamed (44.3597, –123.9042); Unnamed

(iv) Lower Alsea River Watershed

1710020504. Outlet(s) = Alsea River (Lat 44.4477, Long 123.8149); Unnamed
1710020505. Outlet(s) = Alsea River (Lat 44.4537, –123.7247); Walker Creek
Fork (44.3854, –123.9161); Carns Canyon (44.3683, –124.0271); West Creek
(44.4027, –123.7550); Cedar Creek (44.3967, –124.0256); West Creek
(44.3875, –123.7946); Cove Creek (44.3588, –124.9493).
(44.4403, –123.7107); Cow Creek
(44.3620, –123.7510); Darkey Creek
(44.3910, –123.9927); Digger Creek Creek (Lat 44.5233, Long –124.0734);
(44.3906, –123.6890); Fall Creek Deer Creek (44.5076, –124.0807); Thiel
(44.4272, –123.6841); Fall Creek Creek (44.5646, –124.0709) upstream to
(44.4661, –123.6933); George Creek endpoint(s) in: Beaver Creek, North
(44.3556, –123.8693); Grass Creek Fork, Trib G (44.5309, –123.9195); Beaver
(44.3577, –123.8798); Hatchery Creek Creek, South Fork (44.4816, –123.9853);
(44.3952, –123.7269); Hatchery Creek Beaver Creek, South Fork, Trib A
(44.4121, –123.8734); Hoover Creek (44.4644, –124.0332); Bowers Creek
(44.3618, –123.8583); Lake Creek (44.5312, –124.0117); Bunnel Creek
(44.3345, –123.8725); Lint Creek (44.5178, –124.0265); Deer Creek
(44.3850, –124.0490); Maltby Creek (44.5057, –124.0721); Elkorn Creek
(44.3933, –123.6770); Meadow Fork (44.5013, –123.9572); Elkorn Creek
(44.3764, –123.8879); Mill Creek (44.4976, –123.9685); Lewis Creek
(44.4046, –123.6436); Minotti Creek (44.5326, –123.9532); North Fork Beaver
(44.3750, –123.7718); Nye Creek Creek (44.5149, –123.8988); Oliver Creek
(44.4326, –123.7648); Oxtable Creek (44.4660, –124.0471); Peterson Creek
(44.3812, –123.9603); Phillips Creek (44.5419, –123.9738); Pumphouse Creek
(44.3624, –123.7730); Red Creek (44.5278, –124.0569); Simpson Creek
(44.3722, –123.9162); Risley Creek (44.5255, –124.0959); Thiel Creek
(44.4097, –123.9380); Schoolhouse Creek (44.5408, –124.0254); Tracy Creek
(44.3897, –123.6545); Scott Creek, East (44.5411, –124.0500); Unnamed
Fork (44.4252, –123.7897); Scott Creek, Unnamed
West Fork (44.4212, –123.8225); Skinner (44.5189, –124.0638); Unnamed
Creek (44.3585, –123.9373); Skunk Creek (44.5225, –123.9313); Unnamed
(44.3898, –123.6912); Slade Creek (44.5256, –123.9399); Unnamed
(44.3898, –123.8149); Starr Creek (44.5435, –124.0221); Unnamed
(44.5461, −124.0331); Unnamed Trib A (44.1601, −124.0231); Bob Creek
(44.5472, −124.0591); Unnamed (44.2346, −124.0235); Cape Creek
(44.5482, −124.0249); Unnamed (44.1351, −124.0174); Cape Creek, North
(44.5519, −124.0279); Unnamed Fork (44.1458, −124.0489); Cummins
(44.5592, −124.0531); Worth Creek (44.2557, −124.0104); Fryingpan
(44.5013, −124.0207), Yachats River Watershed (44.0745, −124.0588); Little Cummins
Outlet(s) = Yachats River (44.2187, −123.9965); Mercer Creek
(44.3081, Long −124.1070) upstream to endpoint(s) in: Axtell Creek
(44.5482, −124.0331); Bob Creek
(44.0712, −124.0796); Mill Creek
(44.2106, −124.0747); Quarry Creek
(44.0681, −124.1124); Rath Creek
(44.0747, −124.0901); Rock Creek
(44.1882, −124.0310); Tenmile Creek
(44.2143, −123.9351); Tenmile Creek,
(44.3935, −123.9631); Earley Creek South Fork (44.2095, −123.9607);
(44.3510, −123.9885); Fish Creek Unnamed (44.1771, −124.0908); Unnamed
(44.3259, −123.9592); Glines Creek (44.0606, −124.0805); Unnamed
(44.0624, −124.0532); Unnamed
(44.0658, −124.0802); Unnamed
(44.0690, −124.0490); Unnamed
(44.0748, −124.0478); Unnamed
(44.0814, −124.0464); Unnamed
(44.0958, −124.0559); Unnamed
(44.1283, −124.0242); Unnamed
(44.1352, −124.0941); Unnamed
(44.1712, −124.0558); Unnamed
(44.1715, −124.0636); Unnamed
(44.2011, −123.9634); Unnamed
(44.2048, −123.9971); Unnamed
(44.2146, −124.0358); Unnamed
(44.2185, −124.0270); Unnamed
(44.2229, −123.9938); Wapiti Creek
(44.2263, −123.9428); Unnamed (44.1216, −124.0448); Wildcat Creek
(44.2339, −123.9632).
(44.3259, −123.9578); Unnamed
(44.3431, −123.9711); West Fork
(44.3230, −124.0088); Yachats River (44.2468, −123.9329); Yachats River, North Fork
(44.3467, −123.9972); Yachats River, South Fork (44.3145, −123.9341).
(44.3467, −123.9972); Yachats River, South Fork
(44.3145, −123.9341).
(vii) Cummins Creek/Tenmile Creek/ Mercer Lake Frontal Watershed
Outlet(s) = Berry Creek (Lat 44.0949, Long −124.1221); Big Creek
Upper Siuslaw River Watershed (6) Siuslaw Subbasin 17100206—(i)
(44.1767, −124.1148); Bob Creek
(44.2248, −124.1118); Cape Creek
(44.1336, −124.1211); Cummins Creek
(44.1833, −124.1149); Sutton Creek
(44.0605, −124.1269); Tenmile Creek
(44.2245, −124.1083) upstream to endpoint(s) in: Bailey Creek
(43.9474, −123.6582); Bottle Creek
(44.1037, −124.0530); Berry Creek (43.8791, −123.3871); Bounds Creek
(44.0896, −124.0865); Big Creek (43.9733, −123.7108); Buck Creek, Trib B
(44.3196, −123.5753); South Big Creek, Trib E
(44.1692, −123.9688); Big Creek
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(43.9230, –123.5342); Cabin Creek (43.8159, –123.1604); Unnamed
(43.8970, –123.6754); Camp Creek (43.7796, –123.2019); Unnamed
(43.9154, –123.4904); Canyon Creek (43.7810, –123.2818); Unnamed
(43.9780, –123.6096); Clay Creek (43.8278, –123.2610); Unnamed
(43.8766, –123.5721); Collins Creek (43.8519, –123.2773); Unnamed
(43.8913, –123.6047); Conger Creek (43.8559, –123.5520); Unnamed
(43.8668, –123.4524); Doe Creek (43.8670, –123.6022); Unnamed
(43.8957, –123.3558); Doe Hollow Creek (43.8876, –123.5194); Unnamed
(43.8487, –123.4603); Dogwood Creek (43.8892, –123.5609); Unnamed
(43.8858, –123.3811); Douglas Creek (43.8863, –123.4171); Unnamed
(43.8705, –123.2836); Edris Creek (43.8968, –123.4731); Unnamed
(43.9224, –123.5531); Esmond Creek (43.8892, –123.4033); Unnamed
(43.8618, –123.5772); Esmond Creek, Trib 1 (43.9066, –123.4837); Unnamed
(43.9218, –123.6518); Esmond Creek, Trib B (43.9301, –123.6434); Unnamed
Trib A (43.8815, –123.6646); Farman Creek (43.8761, –123.2562); Fawn Creek (43.9519, –123.6886); Unnamed
Fawn Creek (43.9784, –123.6815); Unnamed
(43.8743, –123.2992); Fawn Creek (43.9784, –123.6815); Unnamed
(43.9436, –123.6088); Fryingpan Creek (43.9658, –123.7145); Whittaker Creek
(43.8329, –123.4241); Fryingpan Creek (43.9490, –123.7094); Whittaker Creek,
(43.8222, –123.4518); Gardner Creek (43.9545, –123.7121); Trib B (43.9545, –123.7121)
(43.8204, –123.2582); Haight Creek
(43.8406, –123.4862); Haskins Creek
Outlet(s) = Wolf Creek (Lat 43.9548).
(43.8785, –123.5851); Hawley Creek
Long –123.6205) upstream to end-
(43.8599, –123.1558); Hawley Creek, point(s) in: Bill Lewis Creek
North Fork (43.8717, –123.1751); Holland Creek (43.9357, –123.5708); Cabin Creek
(43.8775, –123.4156); Jeans Creek (43.9226, –123.6081); Eames Creek
(43.8616, –123.4714); Johnson Creek (43.9790, –123.4352); Eames Creek, Trib C
(43.8822, –123.5332); Kelly Creek (43.9506, –123.4371); Elkhorn Creek
(43.8338, –123.1739); Kline Creek (43.9513, –123.3934); Fish Creek
(43.9034, –123.6635); Leopold Creek (43.9238, –123.3872); Gall Creek
(43.9199, –123.6890); Leopold Creek, Trib A (43.9268, –123.5187); Gall Creek, Trib 1
(43.9263, –123.6850); Letz Creek, Trib B (43.9859, –123.5285); Grenshaw Creek
(43.7960, –123.3248); Lick Creek (43.9676, –123.6454); Lick Creek
(43.8366, –123.2695); Little Siuslaw Creek (43.9407, –123.5796); Oat Creek, Trib A
(43.8048, –123.3412); Lucas Creek (43.9566, –123.5052); Oat Creek, Trib C
(43.8202, –123.2233); Luyn Creek (43.9618, –123.4902); Oat Creek
(43.9175, –123.5068); Luyn Creek, Trib A (43.9780, –123.4761); Panther Creek
(43.9179, –123.5208); Michaels Creek (43.9529, –123.3744); Pittenger Creek
(43.8624, –123.5417); Mill Creek (43.9713, –123.5431); Saleratus Creek
(43.9028, –123.6228); Norris Creek (43.9796, –123.5675); Saleratus Creek
(43.8434, –123.2066); North Creek Trib A (43.9776, –123.5797); Swamp Creek
(43.9223, –123.5752); North Fork Siuslaw River (43.9777, –123.4197); Swing Log Creek
River (43.8513, –123.2302); Oxbow Creek (43.9351, –123.3339); Unnamed
(43.8384, –123.5433); Oxbow Creek, Trib C (43.9035, –123.3358); Unnamed
(43.8492, –123.5465); Pheasant Creek (43.9343, –123.3648); Unnamed
(43.9120, –123.4247); Pheasant Creek,
Trib 2 (43.9115, –123.4411); Pugh Creek (43.9668, –123.6041); Unnamed
(43.9480, –123.5940); Russell Creek (43.9693, –123.4846); Van Curen Creek
(43.8813, –123.3425); Russell Creek, Trib A (43.8619, –123.3498); Sandy Creek
(43.8814, –123.2411); Sandy Creek, Trib B (43.8619, –123.3498); Sandy Creek
(43.7826, –123.2538); Shaw Creek
(43.8817, –123.3289); Siuslaw River, East Trib (43.8723, –123.5378); Siuslaw River,
North Fork, Upper Trib (44.0099, –123.5206); Cattle Creek
(43.8483, –123.2275); Smith Creek (44.0099, –123.5475); Fish Creek
(43.8045, –123.3665); South Fork Siuslaw River (44.0470, –123.5363); Fowler Creek
(43.9142, –123.6241); Tucker Creek (44.1000, –123.5578); Kirk Creek
Outlet(s) = Lake Creek (Lat 44.0556, Long 123.7968) upstream to end-

(44.0556, 123.7968) Wildcat Creek, Trib ZH (44.9924, 123.4975); Wildcat Creek, Trib ZI (44.0055, 123.4681).

(v) Deadwood Creek Watershed 1710020605. Outlet(s) = Deadwood Creek (Lat 44.0949, Long 123.7594) upstream to endpoint(s) in: Alpha Creek (44.1679, 123.6951); Bear Creek (44.1685, 123.6627); Bear Creek, South Fork (44.1467, 123.6743); Buck Creek (44.1276, 123.5498); Deer Creek (44.1987, 123.5498); Fish Creek (44.1987, 123.5498); Fish Creek, South Fork (44.1467, 123.6743); Hula Creek (44.1776, 123.7133); Misery Creek (44.1776, 123.7133); Misery Creek, South Fork (44.1467, 123.6743); Wolf Creek (44.1987, 123.5498).
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to endpoint(s) in: Cremo Creek (44.0135, – 124.0690); Unnamed
(44.1424, – 123.8144); Elk Creek (44.0166, – 124.0371); Unnamed
(44.1253, – 123.8821); Gibson Creek (44.0194, – 124.0631); Unnamed
(44.1548, – 123.8132); Herman Creek (44.0211, – 124.0663); Unnamed
(44.2089, – 123.8220); Indian Creek (44.0258, – 124.0594); Unnamed
(44.2086, – 123.9171); Indian Creek, North Fork (44.0304, – 124.0129); Unnamed
West Fork (44.2204, – 123.9016); Indian Creek. (44.0327, – 124.0670); Unnamed
Fork (44.2014, – 123.9075); Long Creek (44.0337, – 124.0707); Unnamed
Creek (44.1395, – 123.8800); Maria Creek (44.0342, – 124.0056); Unnamed
(44.1954, – 123.9219); Pyle Creek (44.0370, – 124.0391); Unnamed
(44.1792, – 123.8623); Rogers Creek (44.0419, – 124.0013); Unnamed
(44.1851, – 123.9397); Smoot Creek (44.0441, – 124.0321); Unnamed
(44.1562, – 123.8449); Taylor Creek (44.0579, – 124.0077); Unnamed
(44.1864, – 123.8115); Unnamed (44.0896, – 124.0192); Unnamed
(44.1643, – 123.8993); Unnamed (44.0892, – 123.9925); Unnamed
(44.1727, – 123.8154); Unnamed (44.0941, – 123.9131); Unnamed
(44.1795, – 123.9180); Unnamed (44.0976, – 124.0033); Unnamed
(44.1868, – 123.9062); Unnamed (44.1045, – 123.9632); Unnamed
(44.1905, – 123.8633); Unnamed (44.1476, – 123.8959); Unnamed
(44.1967, – 123.8972); Unnamed (44.1396, – 123.9150); West Branch North
Fork (44.2088, – 123.8381); Unnamed Fork Siuslaw River (44.1616, – 123.9616);
(44.2146, – 123.8528); Unnamed Wilhelm Creek (44.1408, – 123.9774);
(44.2176, – 123.8462); Unnamed (viii) Lower Siuslaw River Watershed
(44.2257, – 123.8912); Velvert Creek 1710020601. Outlet(s) = Siuslaw River
(44.1295, – 123.8087).

(vii) North Fork Siuslaw River Watershed 1710020606. Outlet(s) = North Fork
Siuslaw River (Lat 43.9719, Long – 124.0783) upstream to endpoint(s) in:
Billie Creek (44.0971, – 124.0362); Cata-
ract Creek (44.0654, – 123.9497); Cedar Creek (44.1594, – 123.9045); Condon Creek
(44.1138, – 123.9984); Coon Creek (43.9696, – 123.9304); Cleveland Creek
(44.0864, – 124.0318); Deer Creek (44.0773, – 123.8343); Demming Creek
(44.1297, – 123.9475); Drew Creek (43.9643, – 124.0131); Dinner Creek
(44.1239, – 123.9801); Drew Creek (44.0108, – 123.8069); Divide Creek
(44.1113, – 123.9854); Elma Creek (44.0516, – 123.9421); Duncan Inlet
(44.1803, – 123.9434); Hanson Creek (44.0881, – 123.9921); Hadsall Creek
(44.0776, – 123.9528); Haring Creek (43.9466, – 123.8221); Hadsall Creek, Trib
(44.0307, – 124.0462); Lawrence Creek (43.9868, – 123.8500); Hadsall Creek,
(44.1710, – 123.9504); Lindsay Creek Trib E (43.9612, – 123.8359); Hanson Creek
(44.0389, – 124.0591); McLeod Creek (44.0364, – 123.9628); Hoffman Creek
(44.1050, – 123.8805); Morris Creek (43.9808, – 123.9412); Hollenberg Creek
(44.0711, – 124.0308); Porter Creek (44.0321, – 123.8672); Hood Creek
(44.1590, – 123.9641); Russell Creek (43.9966, – 123.7995); Karmowsky Creek
(44.0680, – 123.9848); Sam Creek (43.9847, – 123.9658); Knowles Creek
(44.1751, – 123.9527); Slover Creek (43.9492, – 123.7315); Knowles Creek, Trib
(44.0213, – 124.0531); South Russell Creek Lake (43.9717, – 123.7830); Lawson Creek,
(44.0515, – 123.9840); Taylor Creek Trib B (43.9612, – 123.9659); Meadow
(44.1279, – 123.9502); Uncle Creek Creek (44.0311, – 123.6490); Munsel Creek
(44.1080, – 124.0174); Unnamed (44.0277, – 124.0788); Old Man Creek
(43.9900, – 124.0784); Unnamed (44.0543, – 123.8022); Pat Creek
(43.9907, – 124.0759); Unnamed (44.0659, – 123.7245); Patterson Creek
(43.9953, – 124.0514); Unnamed (43.9984, – 124.0234); Rice Creek
(43.9958, – 124.0623); Unnamed (44.0075, – 123.8519); Rock Creek
(43.9999, – 124.0694); Unnamed (44.0169, – 123.6512); South Fork Waite
(44.0016, – 124.0596); Unnamed Creek (43.9929, – 123.7105); San Antoine
(44.0160, – 124.0556); Unnamed Creek (44.0564, – 123.6515); Shoemaker
(44.0106, – 124.0650); Unnamed Creek (44.0669, – 123.8977); Shuttle Creek

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(43.9939, – 124.0339); Siuslaw River (43.9198, – 123.9293); Bear Creek Trib
(44.0033, – 123.6545); Skunk Hollow (43.9030, – 123.9881); Bear Creek, South
(43.9830, – 124.0626); Smith Creek Fork (43.9017, – 123.9555); Bell Creek
(44.0393, – 123.6674); Spencer Creek (43.8541, – 123.9718); Billy Moore Creek
(44.0676, – 123.8809); Sulphur Creek (43.8876, – 123.9604); Carle Creek
(43.9822, – 123.8015); Sweet Creek (43.9015, – 124.0210); Carter Creek
(43.9463, – 123.9016); Sweet Creek, Trib A (43.9457, – 124.0123); Dismal Swamp
(44.0047, – 123.8907); Sweet Creek, Trib D (43.8096, – 124.0871); Elbow Lake Creek
(43.9860, – 123.8811); Thompson Creek (43.7886, – 124.1490); Fiddle Creek
(44.0974, – 123.8615); Turner Creek (43.9132, – 123.9164); Fivemile Creek
(44.0096, – 123.7607); Unnamed (43.8297, – 123.9776); Grant Creek
(43.9301, – 124.0434); Unnamed (43.9373, – 124.0278); Harry Creek
(43.9396, – 124.0337); Unnamed (43.8544, – 124.0220); Henderson Canyon
(43.9303, – 124.0487); Unnamed (43.8648, – 123.9654); Henderson Creek
(43.9340, – 124.0529); Unnamed (43.9427, – 123.9704); John Sims Creek
(43.9367, – 124.0632); Unnamed (43.8262, – 124.0792); King Creek
(43.9374, – 124.0442); Unnamed (43.8804, – 124.0300); Lane Creek
(43.9481, – 124.0530); Unnamed (43.8437, – 124.0765); Leitell Creek
(43.9507, – 124.0622); Unnamed (43.8181, – 124.0200); Mallard Creek
(43.9507, – 124.0553); Unnamed (43.7775, – 124.0852); Maple Creek
(43.9571, – 124.0658); Unnamed (43.9314, – 123.9516); Maple Creek, North
(43.9576, – 124.0491); Unnamed Prong (43.9483, – 123.9510); Miles Canyon
(43.9587, – 124.0598); Unnamed (43.8643, – 124.0097); Miller Creek
(43.9601, – 124.0927); Unnamed (43.9265, – 124.0663); Mills Creek
(43.9615, – 124.0527); Unnamed (43.8866, – 124.0397); Morris Creek
(43.9618, – 124.0875); Unnamed (43.8625, – 123.9541); Perkins Creek
(43.9624, – 123.7499); Unnamed (43.8257, – 124.0449); Rider Creek
(43.9662, – 123.7639); Unnamed (43.9210, – 123.9700); Roahe Creek
(43.9664, – 123.9252); Unnamed (43.9087, – 124.0049); Schrum Creek
(43.9718, – 124.0389); Unnamed (43.9194, – 124.0492); Schulitz Creek
(43.9720, – 124.0075); Unnamed (43.9245, – 123.9371); Stokes Creek
(43.9751, – 124.0090); Unnamed (43.9161, – 123.9984); Tensile Creek
(43.9784, – 124.0191); Unnamed (43.9419, – 123.9447); Unnamed
(43.9796, – 123.9150); Unnamed (43.8928, – 124.0461); Unnamed
(43.9852, – 123.9802); Unnamed (43.7726, – 124.1021); Unnamed
(43.9878, – 123.9845); Unnamed (43.7741, – 124.1313); Unnamed
(43.9915, – 123.9732); Unnamed (43.7756, – 124.1363); Unnamed
(43.9938, – 123.9930); Unnamed (43.7824, – 124.1342); Unnamed
(43.9942, – 123.8547); Unnamed (43.7829, – 124.0852); Unnamed
(43.9943, – 123.9891); Unnamed (43.7837, – 124.0812); Unnamed
(43.9954, – 124.1185); Unnamed (43.7849, – 124.0734); Unnamed
(43.9956, – 123.7074); Unnamed (43.7862, – 124.0711); Unnamed
(43.9995, – 123.9825); Unnamed (43.7865, – 124.1107); Unnamed
(44.0023, – 123.7317); Unnamed (43.7892, – 124.1163); Unnamed
(44.0210, – 123.7874); Unnamed (43.7897, – 124.0608); Unnamed
(44.0240, – 123.8589); Unnamed (43.7946, – 124.0477); Unnamed
(44.0366, – 123.7363); Unnamed (43.7964, – 124.0643); Unnamed
(44.0506, – 123.9068); Waite Creek (43.8015, – 124.0450); Unnamed
(43.9886, – 123.7220); Walker Creek (43.8078, – 124.0340); Unnamed
(44.0566, – 123.9129); Wilson Creek (43.8095, – 124.1362); Unnamed
(44.0616, – 123.8792); Unnamed (43.8112, – 124.0608); Unnamed
(7) Siltcoos Subbasin 17100207—(l) Waohink River/Siltcoos River/Tahkenitch
Lake Frontal Watershed 17100207. Outlet(s) = Siltcoos River (Lat 43.8766,
Long 124.1548); Tahkenitch Creek (43.8321, – 124.0128); Unnamed
(43.8013, – 124.1689) upstream to endpoint(s) in: Alder Creek
(43.8323, – 124.1016); Unnamed
(43.8967, – 124.0114); Bear Creek (43.8330, – 124.0217); Unnamed

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(43.8361, –124.1209); Unnamed
(43.8400, –123.9802); Unnamed
(43.8407, –124.1051); Unnamed
(43.8489, –124.0634); Unnamed
(43.8500, –123.9852); Unnamed
(43.8504, –124.1248); Unnamed
(43.8504, –124.0024); Unnamed
(43.8507, –124.0511); Unnamed
(43.8589, –124.1231); Unnamed
(43.8596, –124.0438); Unnamed
(43.8605, –124.1211); Unnamed
(43.8669, –124.0717); Unnamed
(43.8670, –124.0327); Unnamed
(43.8707, –124.0689); Unnamed
(43.8802, –124.0605); Unnamed
(43.8862, –124.0570); Unnamed
(43.8913, –123.9380); Unnamed
(43.8919, –124.0771); Unnamed
(43.8976, –124.0725); Unnamed
(43.9032, –124.0651); Unnamed
(43.9045, –124.0548); Unnamed
(43.9057, –124.0696); Unnamed
(43.9065, –124.0656); Unnamed
(43.9105, –124.0453); Unnamed
(43.9106, –124.0209); Unnamed
(43.9202, –124.0786); Unnamed
(43.9209, –124.0734); Unnamed
(43.9237, –124.0155); Unnamed
(43.9249, –124.0074); Unnamed
(43.9274, –124.0759); Unnamed
(43.9275, –124.0308); Unnamed
(43.9360, –124.0892); Unnamed
(43.9395, –124.0297); Unnamed
(43.9424, –124.0981); Unnamed
(43.9438, –124.0929); Unnamed
(43.9453, –124.0752); Unnamed
(43.9518, –123.9953); Unnamed

(8) North Fork Umpqua Subbasin

1710030110. Outlet(s) = Boulder Creek Watershed
1770030106. Outlet(s) = Boulder Creek Watershed
(Lat 43.3036, Long –122.5247 upstream to endpoint(s) in: Boulder Creek
(Lat 43.3138, Long –122.5247)

(iii) Rock Creek/North Umpqua River Watershed 1710030110. Outlet(s) = Rock Creek (Lat 43.3322, Long –123.0025) upstream to endpoint(s) in: Conley Creek
(Lat 43.3366, Long –122.5247)

(iv) Little River Watershed 1710030111. Outlet(s) = Little River (Lat 43.2978, Long –123.1012) upstream to endpoint(s) in: Buck Creek
(Lat 43.1762, Long –123.0479) upstream to endpoint(s) in: Buck Creek
(Lat 43.2592, Long –123.1072) upstream to endpoint(s) in: Buck Creek
(Lat 43.1626, Long –123.0595) upstream to endpoint(s) in: Buck Creek
(Lat 43.2541, Long –123.0849) upstream to endpoint(s) in: Buck Creek
(Lat 43.2097, Long –123.0133) upstream to endpoint(s) in: Buck Creek
(Lat 43.2257, Long –123.0592) upstream to endpoint(s) in: Buck Creek
(Lat 43.2065, Long –122.8231) upstream to endpoint(s) in: Buck Creek
(Lat 43.2092, Long –123.0356) upstream to endpoint(s) in: Buck Creek
(Lat 43.1440, Long –122.9813) upstream to endpoint(s) in: Buck Creek
(Lat 43.1549, Long –123.0379) upstream to endpoint(s) in: Buck Creek
(Lat 43.2179, Long –122.9461) upstream to endpoint(s) in: Buck Creek

(v) Lower North Umpqua River Watershed 1710030112. Outlet(s) = North Umpqua River (Lat 43.2962, Long –123.4448) upstream to endpoint(s) in: Bradley Creek
(Lat 43.3560, Long –123.1025) upstream to endpoint(s) in: Bradley Creek
(Lat 43.2490, Long –123.2694) upstream to endpoint(s) in: Bradley Creek
(Lat 43.3420, Long –123.1650) upstream to endpoint(s) in: Bradley Creek
(Lat 43.3797, Long –123.2807) upstream to endpoint(s) in: Bradley Creek
(Lat 43.2770, Long –123.2911) upstream to endpoint(s) in: Bradley Creek
(Lat 43.3349, Long –123.0801) upstream to endpoint(s) in: Bradley Creek
(Lat 43.3363, Long –123.1340) upstream to endpoint(s) in: Bradley Creek
(Lat 43.8112, Long –123.0025) upstream to endpoint(s) in: Bradley Creek
(Lat 43.3293, Long –123.0133) upstream to endpoint(s) in: Bradley Creek
(Lat 43.3204, Long –123.3815) upstream to endpoint(s) in: Bradley Creek
(Lat 43.3677, Long –123.2114) upstream to endpoint(s) in: Bradley Creek
(Lat 43.3285, Long –123.2016) upstream to endpoint(s) in: Bradley Creek

(9) South Fork Umpqua Subbasin

1710030210. Outlet(s) = Jackson Creek Watershed
1710030202. Outlet(s) = Jackson Creek Watershed
(Lat 42.9695, Long –122.8795) upstream to endpoint(s) in: Beaver Creek
(Lat 42.8984, Long –122.7924) upstream to endpoint(s) in: Beaver Creek
(Lat 42.9965, Long –122.6459) upstream to endpoint(s) in: Beaver Creek
(Lat 42.9744, Long –122.6976) upstream to endpoint(s) in: Beaver Creek
(Lat 42.9684, Long –122.6913) upstream to endpoint(s) in: Beaver Creek
(Lat 42.9814, Long –122.6965) upstream to endpoint(s) in: Beaver Creek

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(ii) **Middle South Umpqua River Watershed 1710030203. Outlet(s) = South Umpqua River (Lat 42.9272, Long –122.9504) upstream to endpoint(s) in: Boulder Creek (43.1856, –122.7379); Budd Creek (43.0506, –122.8185); Deadman Creek (43.0049, –122.8967); Dompier Creek (42.9553, –122.9166); Dumont Creek (43.0719, –122.8224); Francis Creek (43.0202, –122.8231); South Umpqua River (43.0481, –122.6998); Sam Creek (43.0037, –122.8141); Slick Creek (43.0986, –122.7867).

(iii) **Elk Creek/South Umpqua Watershed 1710030204. Outlet(s) = Elk Creek (Lat 42.9272, Long –122.9504) upstream to endpoint(s) in: Brownie Creek (Lat 42.9294, Long –122.8746); Callahan Creek (Lat 42.8778, Long –122.9609); Camp Creek (Lat 42.8667, Long –122.8958); Dixon Creek (Lat 42.8931, Long –122.9152); Drew Creek (Lat 42.8682, Long –122.9358); Flat Creek (Lat 42.8294, Long –122.8250); Joe Hall Creek (Lat 42.8756, Long –122.8202); Tom Creek (Lat 42.8389, Long –122.8959).

(iv) **South Umpqua River Watershed 1710030205. Outlet(s) = South Umpqua River (Lat 42.9476, Long –122.9368) upstream to endpoint(s) in: Alder Creek (42.9109, –122.2991); Canyon Creek (42.8798, –123.2410); Canyon Creek, West Fork (42.8757, –123.2734); Canyon Creek, West Fork, Trib A (42.8834, –123.2947); Coffee Creek (42.9416, –122.9993); Comer Brook (42.9082, –123.2908); Days Creek (43.0539, –123.0012); Days Creek, Trib 1 (43.0531, –123.0523); Doe Hollow (42.9865, –123.0812); Fage Creek (42.9943, –123.1028); Green Gulch (43.0040, –123.1276); Hatchet Creek (42.9251, –122.9757); Jordan Creek (42.9224, –123.3086); Lavadour Creek (42.9545, –123.1049); Lick Creek (42.9213, –123.0261); May Creek (43.0153, –123.0725); Morgan Creek (42.9635, –123.2409); O’Shea Creek (42.9556, –123.2489); Perdue Creek (43.0038, –123.1192); Poole Creek (42.9321, –123.1106); Poole Creek, East Fork (42.9147, –123.0966); South Umpqua River (42.9272, –122.9504); Shively Creek (42.8868, –123.1635); Shively Creek, East Fork (42.8765, –123.1194); Small Creek (42.9621, –123.0549); Stinger Gulch Creek (42.9590, –123.1851); Stouts Creek, East Fork (42.9090, –123.0424); Stouts Creek, West Fork (42.8531, –123.0167); Sweat Creek (42.9293, –123.1899); Wood Creek (43.0048, –123.1486).

(v) **Middle Cow Creek Watershed 1710030207. Outlet(s) = Cow Creek (Lat 42.8114, Long –123.5947) upstream to endpoint(s) in: Bear Creek (42.8045, –123.3635); Booth Gulch (42.7804, –123.2282); Bull Run Creek (42.7555, –123.2366); Clear Creek (42.8218, –123.2610); Cow Creek (42.8487, –123.1780); Dads Creek (42.7650, –123.5401); East Fork Whitehorse Creek (42.7925, –123.1448); Fortune Branch (42.8051, –123.2971); Hogum Creek (42.7574, –123.1833); Lawson Creek (42.7896, –123.3752); Little Bull Run Creek (42.7532, –123.2479); McCullough Creek (42.7951, –123.4221); Mynatt Creek (42.8034, –123.2828); Panther Creek (42.7409, –123.4990); Perkins Creek (42.7331, –123.4979); Quines Creek (42.7278, –123.2396); Rattlesnake Creek (42.7106, –123.4774); Riffle Creek (42.7575, –123.6269); Section Creek (42.7300, –123.4373); Skull Creek (42.7527, –123.5779); Starveout Creek (42.7541, –123.1953); Stevens Creek (42.7255, –123.4835); Susan Creek (42.8035, –123.5762); Swamp Creek (42.7616, –123.3518); Tennessee Gulch (42.7265, –123.2591); Totten Creek (42.7448, –123.4610); Unnamed (42.7964, –123.4200); Unnamed (42.8101, –123.3150); Whitehorse Creek (42.7772, –123.1532); Wildcat Creek (42.7738, –123.2378); Windy Creek (42.8221, –123.3296); Wood Creek (42.8141, –123.4111); Woodford Creek (42.7458, –123.3180).

(vi) **West Fork Cow Creek Watershed 1710030208. Outlet(s) = West Fork Cow Creek (Lat 42.8118, Long –123.6066) upstream to endpoint(s) in: Bear Creek (42.7662, –123.6741); Bobby Creek (42.8199, –123.7196); Elk Valley Creek (42.8881, –123.7133); Elk Valley Creek, East Fork (42.8698, –123.6812); Goat Trail Creek (42.8002, –123.6829); Gold Mountain Creek (42.8638, –123.7787); No Sweat Creek (42.8024, –123.7681); Panther Creek (42.8596, –123.7560); Slaughter Pen Creek (42.8224, –123.6565); Sweat Creek (42.8018, –123.6956); Walker Creek (42.8228, –123.7614); Wallace Creek (42.8311, –123.7696); West Fork Cow Creek (42.8329, –123.7733).
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(vii) **Lower Cow Creek Watershed** Myrtle Creek Watershed
1710030209. Outlet(s) = Cow Creek (Lat 43.1172, Long 123.1929); Frozen Creek, Left Fork (43.1157, 123.2360); Harrison Young Brook (43.0610, 123.2850); Lally Creek (43.0890, 123.0597); Lee Creek endpoint(s) in: Ash Creek (43.1333, 123.1477); Letitia Creek (43.0710, 123.0907); Little Lick Creek (43.0492, 123.2234); Long Wiley Creek (43.0584, 123.1667); Louis Creek (43.1165, 123.0783); North Myrtle Creek (43.1498, 123.1219); Riser Creek (43.1276, 123.0703); Rock Creek (43.0729, 123.2620); South Myrtle Creek Cow Creek (43.0850, 123.0103); School Hollow Creek, North Fork (43.0183, 123.5289); Byron Creek, East Fork (43.0192, 123.4089); Byron Creek, North Fork (43.0326, 123.4792); Coarse Gold Creek (43.0291, 123.5742); Coarse Gold Creek, South Fork (43.0902, 123.6069); Berry Creek (43.0372, 123.6382); Berry Creek (43.0902, 123.9894); Muns Creek (43.0880, 123.6393); Olalla Creek (42.9695, 123.5914); Perron Creek (43.0960, 123.4904); Porter Creek (43.1381, 123.5569); Sheilds Creek (43.0849, 123.6189); Tennille Creek (43.1482, 123.6537); Tennille Creek, North Fork (43.1260, 123.6099); Thompson Creek (42.9660, 123.5140); Willingham Creek (42.9600, 123.5814).

(viii) **Middle South Umpqua River Watershed**
1710030210. Outlet(s) = South Umpqua River (Lat 43.1172, Long 123.4273) upstream to endpoint(s) in: Adams Creek (43.0724, 123.4776); Barrett Creek (43.0145, 123.4451); Clark Brook (43.0989, 123.2897); East Willis Creek (43.0151, 123.3845); Judd Creek (42.9852, 123.4060); Kent Creek (43.0500, 123.4792); Lane Creek (43.0940, 123.4792); Lane Creek (43.0704, 123.4001); Porter Creek (43.0444, 123.4597); Rice Creek (43.0181, 123.4779); Richardson Creek (43.0766, 123.2881); South Umpqua River (42.9476, 123.3368); Squaw Creek (43.0815, 123.6488); Van Dine Creek (43.0326, 123.3473); West Willis Creek (43.0172, 123.4355).

(ix) **Myrtle Creek Watershed**
1710030211. Outlet(s) = North Myrtle Creek (Lat 43.0231, Long 123.2951) upstream to endpoint(s) in: Ben Branch Creek (43.0544, 123.1618); Big Lick Creek (43.0778, 123.2175); Bilger Creek (43.1118, 123.2372); Buck Fork Creek (43.1415, 123.0831); Cedar Hollow Creek (43.0096, 123.2297); Frozen Creek (43.1089, 123.1929); Frozen Creek, Left Fork (43.1157, 123.2360); Harrison Young Brook (43.0610, 123.2850); Lally Creek (43.0890, 123.0597); Lee Creek endpoint(s) in: Ash Creek (43.1333, 123.1477); Letitia Creek (43.0710, 123.0907); Little Lick Creek (43.0492, 123.2234); Long Wiley Creek (43.0584, 123.1667); Louis Creek (43.1165, 123.0783); North Myrtle Creek (43.1498, 123.1219); Riser Creek (43.1276, 123.0703); Rock Creek (43.0729, 123.2620); South Myrtle Creek Cow Creek (43.0850, 123.0103); School Hollow Creek, North Fork (43.0183, 123.5289); Byron Creek, East Fork (43.0192, 123.4089); Byron Creek, North Fork (43.0326, 123.4792); Coarse Gold Creek (43.0291, 123.5742); Coarse Gold Creek, South Fork (43.0902, 123.6069); Berry Creek (43.0372, 123.6382); Berry Creek (43.0902, 123.9894); Muns Creek (43.0880, 123.6393); Olalla Creek (42.9695, 123.5914); Perron Creek (43.0960, 123.4904); Porter Creek (43.1381, 123.5569); Sheilds Creek (43.0849, 123.6189); Tennille Creek (43.1482, 123.6537); Tennille Creek, North Fork (43.1260, 123.6099); Thompson Creek (42.9660, 123.5140); Willingham Creek (42.9600, 123.5814).
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Stockel Creek (43.2205, –123.4392); Tucker Creek (43.1238, –123.2378); Unnamed Creek (43.2184, –123.1709); Willow Creek (43.2543, –123.5143).

(10) Umpqua Subbasin 1710302, Outlet(s) = Umpqua River

Upper Umpqua River Watershed 1710303, Outlet(s) = Umpqua River (Lat 43.6329, Long –123.5662) upstream to endpoint(s) in: Bear Creek (43.3862, –123.1133), Gilbrath Creek (43.3202, –123.6118), Bear Creek (43.4218, –123.0931), Gossett Creek (43.5436, –123.4481), Bottle Creek (43.4970, –123.1045), Haney Creek (43.4060, –123.5043), Brads Creek (43.4763, –123.1086), Hinkle Creek (43.5652, –123.4651), Camp Creek (43.4239, –123.0932), Bog Creek (43.5369, –123.2516), Case Knife Creek (43.4767, –123.2516), Cedar Creek (43.4522, –123.1047), Long Valley Creek (43.5360, –123.5699), Cougar Creek (43.4474, –123.1460), Middle Fork South (43.3524, –123.6166), Doe Creek (43.4510, –123.1168), Slide Creek (43.4355, –123.4902), Martin Creek (43.3926, –123.0919), Timothy Creek (43.5539, –123.4633), McGee Creek (43.4862, –123.0896), Unnamed Creek (43.5125, –123.5632), Mehl Creek (43.4469, –123.4268), Unnamed (43.5491, –123.6541), Mill Creek (43.4481, –123.4283), Unnamed Creek (43.3178, –123.5095), Miner Creek (43.4848, –123.4134), Unnamed Creek (43.4518, –123.6764), Panther Canyon Creek (43.4658, –123.9899), Unnamed (43.5541, –123.3484), Porter Creek (43.4707, –122.9890), Unnamed Creek (43.4348, –123.5530), Rader Creek (43.4908, –123.0703), Unnamed Creek (43.5203, –123.6517), Rader Creek, Trib A (43.5173, –123.0564), Wheeler Canyon (43.4912, –123.5726), Umpqua River (43.4840, –123.3631), White Creek (43.4682, –123.4448), Unnamed Creek (43.4637, –123.0451), Williams Creek (43.5781, –123.6170), Unnamed Creek (43.4703, –123.4096), Unnamed Creek (43.5630, –123.6808), Unnamed Creek (43.4011, –123.6474), Unnamed Creek (43.4119, –123.6172), Unnamed Creek (43.4212, –123.6398), Unnamed Creek (43.4640, –123.6734), Unnamed Creek (43.4940, –123.6166), Unnamed Creek (43.5765, –123.4710), Waggoner Creek (43.6290, –123.9668), Bear Creek (43.5282, –123.6072), Whiskey Camp (43.6195, –123.3703), Bear Creek (43.4587, –123.6755), Williams Creek (43.7119, –123.1757), Bennet Creek (43.5952, –123.5222), Wolf Creek (43.4707, –123.6655),

(ii) Calapooya Creek Watershed 1710302, Outlet(s) = Calapooya Creek (Lat 43.3658, Long –123.4674) upstream to endpoint(s) in: Bachelor Creek (43.5480, –123.2062), Banks Creek (43.3631, –123.1755), Beaty Creek (43.5725, –123.3603), Blue Hole Creek (43.4406, –123.0392), Boyd Creek (43.5677, –123.4405), Brush Creek (43.4957, –123.1573), Brome Creek (43.5662, –123.4140), Buck Creek (43.5016, –123.0492), Burke Creek (43.6981, –123.1818), Cowan Creek (43.3987, –123.4463), Buzzard Roost Creek (43.5915, –123.2615),

675
(43.6356, -123.1794); Curtis Creek (43.6885, -123.6966); Umpqua River
(43.6839, -123.1734); Dodge Canyon (43.6329, -123.5662); Unnamed
(43.6225, -123.2509); Elk Creek (43.6011, -123.7084); Unnamed
(43.5097, -123.1620); Ellenburg Creek (43.5998, -123.6803); Unnamed
(43.7378, -123.3296); Fitch Creek (43.6143, -123.6674); Unnamed
(43.6084, -123.3152); Five Point Canyon (43.6453, -123.7619); Unnamed
(43.5707, -123.3526); Flagler Creek (43.6461, -123.8064); Unnamed
(43.5729, -123.3382); Green Creek (43.6923, -123.7534); Unnamed
(43.6851, -123.4688); Green Ridge Creek (43.7068, -123.6109); Unnamed
(43.5920, -123.3958); Halo Creek (43.7084, -123.7156); Unnamed
(43.5990, -123.2658); Hancock Creek (43.7098, -123.6300); Unnamed
(43.6314, -123.5186); Hanlon Creek (43.7274, -123.6026); Weatherly Creek
(43.6190, -123.2765); Hardscrabble Creek (43.7205, -123.6680); Wells Creek
(43.6357, -123.3517); Huntington Creek (43.6599, -123.7946); Unnamed
(43.5882, -123.2808); Jack Creek (v) Uppper Smith River Watershed
(43.7071, -123.3819); Johnny Creek 1710030306. Outlet(s) = Smith River (Lat
43.7083, -123.3972); Johnson Creek 43.7968, Long -123.7565 upstream to
(43.6830, -123.2715); Lancaster Creek endpoit(s) in: Ambersom Creek
(43.6442, -123.4501); Lane Creek (43.7787, -123.4944); Argue Creek
(43.5483, -123.1221); Loes Creek (43.7656, -123.6959); Beaver Creek
(43.6601, -123.1888); Little Sand Creek (43.7865, -123.6949); Beaver Creek
(43.7655, -123.2778); Little Tom Folley (43.8081, -123.4041); Big Creek
Creek (43.6959, -123.5393); McClinstock (43.7372, -123.7112); Blackwell Creek
Creek (43.6664, -123.2703); Parker Creek (43.8145, -123.7460); Blind Creek
(43.6823, -123.4178); Pass Creek (43.7518, -123.6551); Burn Creek
(43.7227, -123.1529); Pheasant Creek (43.8044, -123.5802); Carpenter Creek
(43.7758, -123.2099); Rock Creek (43.7947, -123.7258); Clabber Creek
(43.7759, -123.2730); Saddle Butte Creek (43.7919, -123.5878); Clearwater Creek
(43.7214, -123.5219); Salt Creek (43.8138, -123.7375); Cleghorn Creek
(43.6796, -123.2213); Sand Creek (43.7508, -123.4997); Clevenger Creek
(43.7709, -123.2912); Shingle Mill Creek (43.7626, -123.4987); Coldwater Creek
(43.5514, -123.1906); Simpson Creek (43.8016, -123.7232); Deer Creek
(43.6029, -123.2553); Smith Creek (43.8109, -123.5362); Devil's Club Creek
(43.6851, -123.3179); Squaw Creek (43.7916, -123.6148); Elk Creek
(43.6010, -123.4284); Taylor Creek (43.8004, -123.4347); Halfway Creek
(43.7642, -123.2712); Chief Creek (43.7412, -123.5112); Hall Creek
(43.6527, -123.1459); Thistlbutburn Creek (43.7732, -123.3836); Haney Creek
(43.6313, -123.4532); Unnamed (43.8555, -123.5006); Hardenbrook Creek
(43.5951, -123.3101); Walker Creek (43.7943, -123.5660); Hefty Creek
(43.5922, -123.1707); Ward Creek (43.7881, -123.3954); Herb Creek
(43.7486, -123.2023); Wehmeyer Creek (43.8661, -123.6782); Jeff Creek
(43.6823, -123.2404); Wilson Creek (43.8079, -123.6033); Marsh Creek
(43.5699, -123.2681); Wise Creek (43.7831, -123.6185); Mosetwon Creek
(43.6679, -123.2772); Yoncalla Creek (43.7326, -123.6613); Mosetwon Creek,
(43.5563, -123.2833); East Fork (43.7185, -123.6433); North Sister Creek (43.8492, -123.5771); Panther Creek (43.8295, -123.4464); Pearl Creek (43.8263, -123.5350); Peterson Creek (43.7575, -123.3947); Plank Creek
(43.6680, -123.7520); Butler Creek (43.7635, -123.3980); Redford Creek
(43.5858, -123.1685); Cedar Creek (43.7378, -123.3520); Rock Creek
(43.7027, -123.6451); House Creek (43.7733, -123.6222); Russell Creek
(43.7107, -123.6378); Little Mill Creek (43.8538, -123.6971); South Sister Creek
(43.6729, -123.8252); Little Paradise (43.8366, -123.5611); Salmonberry Creek
Creek (43.6981, -123.5630); Paradise (43.8085, -123.4482); Searc Creek
Creek (43.7301, -123.5738); Patterson (43.7631, -123.7260); Sleezer Creek
Creek (43.7076, -123.6977); Purdy Creek (43.7535, -123.3711); Slideout Creek
(43.6895, -123.7712); Sawyer Creek (43.7831, -123.5685); Smith River, Little
(43.6027, -123.6717); Scott Creek (43.7392, -123.4583); Smith
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River, South Fork (43.7345, −123.3843); Johnson Creek (43.7725, −124.0736); Johnson Creek (43.7750, −123.3276); Summit Creek (43.7985, −123.3487); Sweden Creek (43.7892, −124.0356); Joyce Creek, West Creek of North Fork Smith River (43.8148, −123.7168); Twin Sister Creek (43.7344, −123.6306); Unnamed Creek (43.8780, −123.7687); Moore Creek (43.7433, −123.4673); Unnamed Creek (43.8661, −123.7558); Murphy Creek (43.7492, −123.6911); Unnamed Creek (43.7449, −123.9527); Noel Creek (43.7495, −123.5832); Unnamed Creek (43.7789, −124.0199); Otter Creek (43.7527, −123.5210); Unnamed Creek (43.7216, −123.9626); Otter Creek, North Fork (43.7533, −123.5900); Unnamed Creek (43.7484, −123.9367); Paxton Creek (43.7541, −123.4805); Unnamed Creek (43.8847, −123.9004); Peach Creek (43.7708, −123.4819); Unnamed Creek (43.8963, −123.8599); Perkins Creek (43.7726, −123.5039); Unnamed Creek (43.7362, −123.9151); Railroad Creek (43.7748, −123.6044); Unnamed Creek (43.8086, −123.8998); Smith River, West Fork (43.7775, −123.6927); Unnamed Creek (43.9102, −123.7073); Smith River (43.7930, −123.5900); Unnamed Creek (43.7968, −123.7565); Spencer Creek (43.7921, −123.6335); Unnamed Creek (43.8429, −123.8321); Spencer Creek, West Fork of Smith River (43.7955, −123.7013); Unnamed Creek (43.8321, −123.8685); Sulphur Creek (43.7993, −123.6171); Unnamed Creek (43.8512, −123.9422); Unnamed Creek (43.8020, −123.6739); Unnamed Creek (43.7031, −123.7463); Unnamed Creek (43.8034, −123.6959); Unnamed Creek (43.7106, −123.7668); Unnamed Creek (43.8133, −123.5893); Unnamed Creek (43.7203, −123.7601); Unnamed Creek (43.8197, −123.4827); Unnamed Creek (43.7267, −123.7396); Unnamed Creek (43.8263, −123.5810); Unnamed Creek (43.7286, −123.7798); Unnamed Creek (43.8360, −123.6951); Unnamed Creek (43.7322, −124.0585); Unnamed Creek (43.8519, −123.5910); Unnamed Creek (43.7325, −123.7337); Unnamed Creek (43.8335, −123.6357); Unnamed Creek (43.7470, −123.7416); Unnamed Creek (43.8541, −123.6155); Unnamed Creek (43.7470, −123.7711); Unnamed Creek (43.8585, −123.6967); Unnamed Creek (43.7569, −124.0844); Unnamed Creek (43.8027, −123.5426); West Fork of Smith River (43.7606, −124.0853); Unnamed Creek (43.7623, −124.0753); Unnamed Creek (43.7669, −124.0766); Unnamed Creek (43.7734, −124.0674); Unnamed Creek (43.8193, −123.5545); Unnamed Creek (43.7655, −124.0076); Unnamed Creek (43.7737, −123.9936); Unnamed Creek (43.7590, −123.9990); Unnamed Creek (43.8857, −123.9894); Eslick Creek, East Fork (43.8883, −123.7157); Unnamed Creek (43.8087, −123.8202); Beaver Creek (43.8212, −123.8777); Unnamed Creek (43.8893, −123.7559); Black Creek (43.8258, −123.8192); Unnamed Creek (43.7544, −123.9667); Brainard Creek (43.8375, −123.9631); Unnamed Creek (43.7446, −124.0105); Buck Creek (43.8424, −123.7925); Unnamed Creek (43.7719, −123.7823); Cassidy Creek (43.8437, −123.7989); Unnamed Creek (43.7578, −123.9744); Cedar Creek (43.8601, −123.7630); Unnamed Creek (43.8241, −123.8562); Chapman Creek (43.8603, −123.8155); Unnamed Creek (43.8181, −123.9380); Coon Creek (43.8655, −123.8489); Unnamed Creek (43.8495, −123.7857); Crane Creek (43.8661, −123.9136); Unnamed Creek (43.8592, −123.7739); Edmonds Creek (43.8688, −123.7994); Unnamed Creek (43.8500, −123.9066); Eldick Creek (43.8831, −123.8534); Unnamed Creek (43.8153, −123.9894); Eslick Creek, East Fork (43.8883, −123.7157); Unnamed Creek (43.7692, −123.7470); Harlan Creek (43.8969, −123.7865); Unnamed Creek (43.8963, −123.6919); Holden Creek (43.8897, −123.7993); Unnamed Creek (43.7901, −124.0178); Hudson Slough (43.8998, −123.7197); Unnamed Creek

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(43.9015, -123.8386); Unnamed (43.3021, -123.8370); Hog Ranch Creek
(43.9015, -123.8949); Unnamed (43.2754, -123.8125); Lake Creek
(43.9023, -123.8241); Unnamed (43.2971, -123.6354); Little Cow Creek
(43.9048, -123.8316); Unnamed (43.1886, -123.6133); Lost Creek
(43.9075, -123.7208); Unnamed (43.2325, -123.5769); Lost Creek, Trib A
(43.9079, -123.8263); Vincent Creek (43.2224, -123.5961); Mink Creek
(43.7035, -123.7832); Wassen Creek (43.3068, -123.8515); Panther Creek
(43.7419, -123.8905); West Branch North Fork Smith River (43.9113, -123.8958).

(vii) Lower Umpqua River Watershed

1770030398. Outlet(s) = Umpqua River (43.2110, -123.7786); Unnamed
(Lat 43.669, Long -124.2025) upstream to endpoint(s) in: Alder Creek
(43.6319, -124.0843); Bear Creek; Unnamed
(43.7053, -123.9529); Butler Creek (43.2548, -123.8569); Unnamed
(43.7157, -124.0059); Charlotte Creek (43.2713, -123.8320); Unnamed
(43.6320, -123.9307); Dean Creek (43.2902, -123.6662); Unnamed
(43.6214, -123.9740); Dry Creek (43.3168, -123.6491); Unnamed
(43.6369, -124.0555); Franklin Creek (43.3692, -123.8320); Unnamed
(43.6850, -123.8659); Hakki Creek (43.3698, -123.8321); Unnamed
(43.6711, -124.0161); Indian Charlie Creek (43.3806, -123.8327); Unnamed
(43.6611, -123.9404); Johnson Creek (43.3846, -123.8058); Unnamed
(43.6711, -123.9760); Koepe Slough (43.3887, -123.7927); Unnamed
(43.6909, -124.0294); Little Franklin (43.3651, -123.7073); Wilson Creek
Creek (43.6853, -123.8863); Luder Creek (43.2063, -123.6691).

(43.6423, -123.9046); Miller Creek (ii) Millicoma River Watershed
(43.6528, -124.0140); Oar Creek 1710030402. Outlet(s) = West Fork
(43.6620, -124.0289); Providence Mill Millinoma River (Lat 43.4242, Long
(43.7083, -124.1289); Schofield Creek -124.0288) upstream to endpoint(s) in:
(43.6253, -124.0112); Umpqua River Bealoh Creek (43.4271, -123.8445); Buck
(43.6556, -123.8752); Unnamed Creek (43.5659, -123.9765); Cougar Creek
(43.6559, -123.9572); Unnamed (43.5983, -123.8788); Crane Creek
(43.6605, -124.1146); Unnamed (43.5545, -123.9297); Dagget Creek
(43.6904, -124.0506); Unnamed (43.4862, -124.0557); Darius Creek
(43.6940, -124.0340); Unnamed (43.4741, -123.9407); Deer Creek
(43.7069, -123.9824); Unnamed (43.6207, -123.9616); Deer Creek, Trib A
(43.7242, -123.9369); Winchester Creek (43.6100, -123.9761); Deer Creek, Trib B
(45.6657, -124.1247); Wind Creek, South Fork (43.6191, -123.9482); Devils Elbow
Fork (43.6348, -124.0897); East Fork Millicoma River (43.4204, -123.8330); Elk
Creek (43.5441, -123.9175); Fish Creek

(11) Coos Subbasin 1710030401. Outlet(s) = South Fork Coos (Lat 43.3905,
Long -123.9634) upstream to endpoint(s) in: Beaver Slide Creek
(43.2728, -123.8472); Bottom Creek (43.5646, -123.9355); Hodges Creek
(43.3751, -123.7065); Bottom Creek, (43.4348, -123.9889); Joes Creek
North Fork (43.3896, -123.7264); Buck Creek (43.5838, -123.9787); Kelly Creek
(Creek (43.2476, -123.8023); Burnt Creek (43.5948, -123.9036); Knife Creek
(43.2567, -123.7834); Cedar Creek (43.6163, -123.9310); Little Matson Creek
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(43.3330, -123.6523); Coal Creek (43.4489, -123.9191); Otter Creek
(43.3426, -123.8685); Eight River Creek (43.5935, -123.9729); Panther Creek
(43.2638, -123.8568); Fall Creek (43.5619, -123.9038); Rainy Creek
(43.2535, -123.7106); Fall Creek (43.4293, -124.0400); Rodine Creek
(43.4106, -123.7512); Fivemile Creek (43.4443, -123.9789); Schumacher Creek
(43.2411, -123.6307); Gods Thumb Creek (43.4642, -124.0380); Totten Creek
(43.3440, -123.7013); Gooseberry Creek (43.4849, -124.0457); Trout Creek
(43.2452, -123.7061); Hatcher Creek (43.5398, -123.9814); Unnamed

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Middle Fork Coquille Watershed

(43.3149, –124.1358); Unnamed (ii) Middle Main Coquille Watershed

(43.3169, –124.0638); Unnamed 1710030503. Outlet(s) = South Fork

(43.3224, –124.2390); Unnamed Coquille River (Lat 43.0805, Long –124.1405) upstream to endpoint(s) in:

(43.3356, –124.1542); Unnamed Baker Creek (42.8913, –124.1297); Beaver

(43.3356, –124.1526); Unnamed Creek (42.9429, –124.0783); Catching

(43.3357, –124.1510); Unnamed Creek, Middle Fork (42.9913, –124.2331);

(43.3968, –124.1509); Unnamed Catching Creek, South Fork

(43.3430, –124.2352); Unnamed (42.9587, –124.2348); Coquille River,

(43.3571, –124.2372); Unnamed South Fork (42.8778, –124.0743); Cove

(43.3643, –124.0474); Unnamed Creek (43.0437, –124.2088); Dement Creek

(43.3741, –124.0577); Unnamed (42.9422, –124.2086); Gettys Creek

(43.4126, –124.0599); Unnamed (43.0028, –124.1988); Grants Creek

(43.4303, –124.0998); Unnamed (42.9736, –124.1041); Horse Hollow

(43.4314, –124.1093); Unnamed (43.0382, –124.1984); Knight Creek

(43.4516, –124.1023); Unnamed (43.0022, –124.2663); Koontz Creek

(43.4521, –124.1110); Unnamed (43.0111, –124.2505); Long Tom Creek

(43.5345, –124.1946); Vogel Creek (42.9342, –124.0992); Mathey Creek

(43.5311, –124.1206); Wasson Creek (43.0495, –124.1892); Mill Creek

(43.2086, –124.3308); Willanch Creek (42.9777, –124.1663); Rhoda Creek

(43.4233, –124.1061); Willanch Creek, (43.0007, –124.1032); Roberts Creek

Trîb A (43.4032, –124.1169); Wilson Creek (42.9748, –124.2385); Rowland Creek

(43.2652, –124.1281); Winchester Creek (42.9045, –124.1845); Russell Creek

(43.2145, –124.3116); Winchester Creek, (42.9495, –124.1611); Unnamed

Trîb E (43.2463, –124.3067); Woodruff Creek (42.9684, –124.1033); Ward Creek

(43.1206, –123.9746); Wren Smith Creek (43.0429, –); 124.2358); Warner Creek

(43.3313, –124.0649). (iv) Coquille Subbasin 17100305—(i)

Middle Fork Coquille Watershed 1710030502. Outlet(s) = Middle Fork

Coquille River (Lat 43.0340, Long –124.1161) upstream to endpoint(s) in: Anderson Creek (43.0887, –124.9445); Axe Creek (43.0516, –123.9468); Bear Creek

(43.0657, –123.9284); Bellieu Creek

(43.0293, –123.9470); Big Creek

(43.0981, –123.8963); Brownson Creek

(43.0879, –123.9583); Endicott Creek

(43.0401, –124.0710); Fall Creek

(43.0514, –123.9910); Indian Creek

(43.0203, –124.0842); Little Rock Creek

(43.0196, –123.9354); Unnamed

(43.9913, –123.8335); McMullen Creek (43.0908, –124.0361); Unnamed

(43.0220, –124.0366); Middle Fork (43.0925, –124.0495); Unnamed

Coquille River (42.9701, –123.7621); Myrtle Creek (42.9642, –124.0170); Rasler Unnamed

(43.9518, –123.9643); Rock Creek

(43.1071, –123.9163); Unnamed

(42.9200, –123.9073); Rock Creek

(43.1655, –123.9078); Unnamed

(43.0029, –123.8440); Salmon Creek (43.1725, –123.9881); Weekly Creek

(43.0075, –124.0273); Sandy Creek (43.0944, –124.0271); Yankee Run

(43.0796, –123.8517); Sandy Creek, Trîb F

(43.1517, –124.0483); Yankee Run, Trîb C

(43.0706, –124.0774); Sheilds Creek (43.1626, –124.0162).

(42.9184, –123.9219); Slater Creek

(42.9358, –123.7958); Slide Creek

(42.9957, –123.9040); Smith Creek

Coquille River (Lat 43.0805, Long –124.1405) upstream to endpoint(s) in:

(43.0566, –124.0337); Swamp Creek

(43.0834, –123.9000); Unnamed

(43.0016, –123.9550); Unnamed

(43.0081, –123.9812); Unnamed

(43.0810, –123.9892).
Coak Creek (43.2270, – 124.0324); Coquille River, Little North Fork (43.2988, – 123.9410); Coquille River, North Fork (43.2974, – 123.8791); Coquille River, North Fork, Trib E (43.1881, – 124.0764); Coquille River, North Fork, Trib I (43.2032, – 123.8920); Coquille River, North Fork, Trib Y (43.3428, – 123.9678); Evans Creek (43.2866, – 124.0561); Fruin Creek (43.3016, – 123.9186); Garage Creek (43.2274, – 124.1569); Giles Creek (43.1508, – 124.1020); Honcho Creek (43.3129, – 124.0357); Hudson Creek (43.2938, – 123.8954); Israel Creek (43.2755, – 123.9604); Jerusalem Creek (43.0841, – 123.2544); John Creek (43.7944, – 124.1497); Grady Creek (43.0760, – 124.0498); Little Cherry Creek (43.1032, – 124.1381); Gray Creek (43.2007, – 123.9594); Llewellyn Creek (43.2122, – 124.1286); Hall Creek (43.1094, – 124.1063); Llewellyn Creek, Trib A (43.0853, – 124.2318); Hall Creek, Trib A (43.0842, – 124.1745); Harlin Creek (43.1768, – 124.1047); Lost Creek (43.1326, – 124.1633); Hatchet Slough (43.2451, – 123.9745); Mast Creek (43.2264, – 124.0207); Middle Creek Slough (43.1879, – 124.3003); Lamp Creek (43.2332, – 124.8726); Moon Creek (43.0531, – 124.2655); Little Bear Creek (43.2902, – 123.9493); Moon Creek, Trib A (43.9407, – 124.2783); Little Bear Creek (43.2976, – 123.9637); Moon Creek, Trib A (43.1291, – 124.2298); Neely Creek (43.2960, – 124.0380); Park Creek (43.0604, – 124.3306); Monroe Creek (43.2508, – 123.8661); Park Creek, Trib B (43.0705, – 124.2905); Offfield Creek (43.2702, – 123.8782); Schoolhouse Creek (43.1587, – 124.3273); Pulaski Creek (43.1637, – 124.0949); Steele Creek (43.1386, – 124.2184); Randleman Creek (43.2203, – 124.1018); Steinmon Creek (43.0618, – 124.3039); Rich Creek (43.2334, – 124.1076); Unnamed (43.0576, – 124.2067); Rink Creek (43.1905, – 124.0759); Unnamed (43.1764, – 124.1369); Rock Robinson (43.2047, – 124.0314); Unnamed (43.0860, – 124.2306); Rollan Creek (43.2127, – 124.1101); Unnamed (43.1266, – 124.2563); Sevenmile Creek (43.2165, – 123.9144); Unnamed (43.2157, – 124.3350); Sevenmile Creek, Trib A (43.1833, – 124.3187); Sevenmile Creek, Trib C (43.2081, – 124.3340); Sixes Creek, Trib A (43.2030, – 124.0848); Unnamed (43.1084, – 124.2727); Unnamed (43.2530, – 124.0794); Unnamed (43.1731, – 124.1852); Unnamed (43.2582, – 124.8846); Unnamed (43.1924, – 124.1378); Unnamed (43.3625, – 124.0474); Unnamed (43.1997, – 124.3346); Unnamed (43.2355, – 123.9289); Unnamed (43.2281, – 124.2190); Unnamed (43.2301, – 124.0936); Vaughns Creek (43.2434, – 124.2737); Waddington Creek (43.2378, – 123.9106); Whitley Creek (43.1105, – 124.2915); Whitley (43.2899, – 124.0115); Wilmer Creek (36) Sixes Subbasin 17100306(i) Sixes River Watershed 171003063. Outlet(s) = Sixes River (Lat 42.8543, Long 124.5427) upstream to endpoint(s) in: Beaver Creek (42.7867, – 124.3377); Coquille River Watershed 17100306; Outlet(s) = Coquille River (Lat 43.1237, Long – 124.4261) upstream to endpoint(s) in: Alder Creek (42.8044, – 124.4501); Dry Creek (43.1385, – 124.2697); Bear Creek (42.7673, – 124.3726); Eden Creek (43.0411, – 124.2893); Beaver Creek (42.8253, – 124.3782); Hays Creek (43.2249, – 124.1923); Beaver Creek (42.8455, – 124.1796); Little Dry Creek (43.2593, – 124.2418); Beaver Slough, Trib A (43.2154, – 124.2731); Bill Creek (42.8516, – 124.1541); Sixes River
§ 226.212

(42.8232, –124.1704); Sixes River, Middle Fork (42.7651, –124.1782); Sixes River, North Fork (42.8878, –124.2320); South Fork Sixes River (42.8028, –124.3022); Sugar Creek (42.8217, –124.2035); Unnamed (42.8189, –124.3567); Unnamed (42.7952, –124.3918); Unnamed (42.8276, –124.4629).

(ii) New River Frontal Watershed 1710030604. Outlet(s) = New River (Lat 43.0007, Long –124.4557); Twomile Creek (43.0440, –124.4415) upstream to endpoint(s) in: Bethel Creek (42.9619, –124.3954); Boulder Creek (42.8574, –124.5050); Butte Creek (42.9458, –124.4096); Conner Creek (42.9814, –124.4215); Davis Creek (42.9657, –124.3688); Floras Creek (42.9127, –124.3933); Fourmile Creek (42.9887, –124.3077); Fourmile Creek, South Fork (42.9642, –124.3734); Langlois Creek (42.9238, –124.4570); Little Creek (43.0030, –124.3562); Long Creek (42.9828, –124.3770); Lower Twomile Creek (43.0223, –124.4080); Morton Creek (42.9437, –124.4234); New River (42.8563, –124.4602); North Fourmile Creek (42.9900, –124.3176); Redibough Creek (43.0251, –124.3659); South Twomile Creek (43.0047, –124.3672); Spring Creek (43.0183, –124.4299); Twomile Creek (43.0100, –124.3291); Unnamed (43.0209, –124.3386); Unnamed (43.0350, –124.3506); Unnamed (43.0378, –124.3481); Unnamed (43.0409, –124.3544); Unnamed (42.8714, –124.4586); Unnamed (42.9029, –124.4222); Unnamed (42.9031, –124.4581); Unnamed (42.9294, –124.4421); Unnamed (42.9347, –124.4559); Unnamed (42.9737, –124.3363); Unnamed (42.9800, –124.3342); Unnamed (43.0058, –124.4066); Willow Creek (42.8880, –124.4505).

(14) Maps of critical habitat for the Oregon Coast coho salmon ESU follow:
Final Critical Habitat for the Oregon Coast Coho Salmon ESU

SILETZ - YAQUINA SUBBASIN 17100204

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 = Watershed code - last 2 digits of 17100204xx
Final Critical Habitat for the Oregon Coast Coho Salmon ESU

**ALSEA SUBBASIN 17100205**

Legend

- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 08 = Watershed code - last 2 digits of 17100205xx

Area of Detail

- WASHINGTON
- OREGON
- IDAHO
Final Critical Habitat for the Oregon Coast Coho Salmon ESU

SIUSLAW SUBBASIN 17100206

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 08 = Watershed code - last 2 digits of 17100206xx
Final Critical Habitat for the Oregon Coast Coho Salmon ESU

NORTH UMPQUA SUBBASIN
17100301

Legend
- Cities / Towns
- Critical Habitat
- Subbasin Boundary
- Watershed Boundaries

01 - 12 = Watershed code - last 2 digits of 17100301xx

Area of Detail

WASHINGTON
OREGON
IDAHO
§ 226.213 Critical habitat for Johnson’s seagrass.

Critical habitat is designated to include substrate and water in the following ten portions of the Indian River Lagoon and Biscayne Bay within the current range of Johnson’s seagrass.
(a) A portion of the Indian River, Florida, north of Sebastian Inlet Channel, defined by the following coordinates:

Northeast corner: 27°16′44.94″N, 80°12′49.70″W
Northeast corner: 27°16′44.94″N, 80°12′51.33″W
Southwest corner: 27°12′49.70″N, 80°14′00.00″W
Southwest corner: 27°12′49.70″N, 80°14′00.00″W

(b) A portion of the Indian River, Florida, south of the Sebastian Inlet Channel, defined by the following coordinates:

Northeast corner: 27°16′44.94″N, 80°12′49.70″W
Northeast corner: 27°16′44.94″N, 80°12′51.33″W
Southwest corner: 27°12′49.70″N, 80°14′00.00″W
Southwest corner: 27°12′49.70″N, 80°14′00.00″W

(c) A portion of the Indian River Lagoon in the vicinity of the Port Pierce Inlet. This site is located on the north side of the entrance channel just west of a small mangrove vegetated island where the main entrance channel bifurcates to the north. The area is defined by the following coordinates:

Northeast corner: 27°28′06.00″N, 80°18′49.89″W
Northeast corner: 27°28′06.00″N, 80°18′49.89″W
Southwest corner: 27°23′02.86″N, 80°18′49.06″W
Southwest corner: 27°23′01.46″N, 80°18′42.42″W

(d) A portion of the Indian River Lagoon, Florida, north of the St. Lucie Inlet, from South Nettles Island to the Florida Oceanographic Institute, defined by the following coordinates and excluding the Federally-marked navigation channel of the Intracoastal Waterway (ICW):

Northeast corner: 27°16′44.94″N, 80°14′00.00″W
Northeast corner: 27°16′44.94″N, 80°14′00.00″W
Southwest corner: 27°12′49.70″N, 80°14′00.00″W
Southwest corner: 27°12′49.70″N, 80°14′00.00″W

(e) Hobe Sound beginning at State Road 708 (27°03′49.90″N, 80°07′20.57″W) and extending south to 27°00′00.00″N, 80°05′32.54″W and excluding the federally-marked navigation channel of the ICW.

(f) Jupiter Inlet at a site located just west of the entrance to Zeek’s Marina on the south side of Jupiter Inlet and defined by the following coordinates (note a south central point was included to better define the shape of the southern boundary):

Northwest corner: 26°56′43.34″N, 80°04′37.84″W
Northeast corner: 26°56′40.93″N, 80°04′42.61″W
Southwest corner: 26°56′40.73″N, 80°04′48.65″W
South central point: 26°56′38.11″N, 80°04′45.83″W
Southeast corner: 26°56′38.31″N, 80°04′42.41″W

(g) A portion of Lake Worth, Florida, just north of Bingham Island defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northeast corner: 26°40′44.00″N, 80°02′39.00″W
Northeast corner: 26°40′40.00″N, 80°02′34.00″W
Southwest corner: 26°40′32.00″N, 80°02′44.00″W
Southwest corner: 26°40′33.00″N, 80°02′35.00″W

(h) A portion of Lake Worth Lagoon, Florida, located just north of the Boynton Inlet, on the west side of the ICW, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northeast corner: 26°33′28.00″N, 80°02′54.00″W
Northeast corner: 26°33′30.00″N, 80°03′04.00″W
Southwest corner: 26°32′50.00″N, 80°03′11.00″W
Southwest corner: 26°32′50.00″N, 80°02′58.00″W

(i) A portion of northeast Lake Wyman, Boca Raton, Florida, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northeast corner: 26°22′27.00″N, 80°04′23.00″W
Northeast corner: 26°22′27.00″N, 80°04′18.00″W
Southwest corner: 26°22′05.00″N, 80°04′16.00″W
Southwest corner: 26°22′05.00″N, 80°04′18.00″W

(j) A portion of Northern Biscayne Bay, Florida, defined by the following:

The northern boundary of Biscayne Bay Aquatic Preserve, NE 162nd Street, and including all parts of the Biscayne Bay Aquatic Preserve as defined in 18-18.002 of the Florida Administrative Code (F.A.C.) excluding the Oleta River, Miami River and Little River beyond their mouths, the federally-marked navigation channel of the ICW, and all existing federally authorized navigation channels, basins, and berths at the Port of Miami to the currently documented southernmost range of Johnson’s seagrass, Central Key Biscayne (25°45′N).
§ 226.213

Figure 1

Critical Habitat

Atlantic Ocean

Indian River

27°53' 27°52' 27°51' 27°50' 27°49'

80°28' 80°27'

80°28' 80°27'

80°29'

VerDate Mar<15>2010 11:01 Jan 05, 2011 Jkt 220227 PO 00000 Frm 00708 Fmt 8010 Sfmt 8006 Q:\50\220227.XXX ofr150 PsN: PC150


§ 226.214 Critical habitat for Gulf sturgeon.

Gulf sturgeon is under the joint jurisdiction of the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS). The FWS will maintain primary responsibility for recovery actions and NMFS will assist in and continue to fund recovery actions pertaining to estuarine and marine habitats. In riverine units, the FWS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. In estuarine units, we
will divide responsibility based on the action agency involved. The FWS will consult with the Department of Transportation, the Environmental Protection Agency, the U.S. Coast Guard, and the Federal Emergency Management Agency. NMFS will consult with the Department of Defense, U.S. Army Corps of Engineers, Minerals Management Service and any other Federal agencies not mentioned here explicitly. In marine units, NMFS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. Any Federal projects that extend into the jurisdiction of both the Services will be consulted on by the FWS with internal coordination with NMFS. Each agency will conduct its own intra-agency consultations as necessary.

The primary constituent elements essential for the conservation of Gulf sturgeon are those habitat components that support feeding, resting, and sheltering, reproduction, migration, and maintaining the natural processes that support these habitat components. The primary constituent elements include: abundant prey items within riverine habitats for larval and juvenile life stages, and within estuarine and marine habitats and substrates for juvenile, subadult, and adult life stages; riverine spawning sites with substrates suitable for egg deposition and development, such as limestone outcrops and cut limestone banks, bedrock, large gravel or cobble beds, marl, soapstone or hard clay; riverine aggregation areas, also referred to as resting, holding, and staging areas, used by adult, subadult, and/or juveniles, generally, but not always, located in holes below normal riverbed depths, believed necessary for minimizing energy expenditures during fresh water residency and possibly for osmoregulatory functions; a flow regime (i.e., the magnitude, frequency, duration, seasonality, and rate of change of fresh water discharge over time) necessary for normal behavior, growth, and survival of all life stages in the riverine environment, including migration, breeding site selection, courtship, egg fertilization, resting, and staging; and necessary for maintaining spawning sites in suitable condition for egg attachment, eggs sheltering, resting, and larvae staging; water quality, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; and safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats (e.g., a river unobstructed by any permanent structure, or a dammed river that still allows for passage).

The river reaches within Units 1 to 7 as critical habitat lie within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

The downstream limit of the riverine units is the mouth of each river. The mouth is defined as rkm 0 (rmi 0). Although the interface of fresh and saltwater, referred to as the saltwater wedge, occurs within the lower-most reach of a river, for ease in delineating critical habitat units, we are defining the boundary between the riverine and estuarine units as rkm 0 (rmi 0).

Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water (MHW) (33 CFR 329.12(a)(2)). All bays and estuaries within Units 8 to 14, therefore, lie below the MHW lines. Where precise determination of the actual location becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the “apparent shoreline” which is determined by reference to physical markings, lines of vegetation, may be used only where an estimate is needed.
of the line reached by the mean high water.

The term "COLREGS" is defined as demarcation lines which delineate those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 and those waters upon which mariners shall comply with the Inland Navigation Rules (33 CFR 80.01). The waters inside of these lines are Inland Rules waters and the waters outside the lines are COLREGS waters. These lines are defined in 33 CFR part 80, and have been used for identification purposes to delineate boundary lines of the estuarine and marine habitat Units 8, 9, 11, and 12.

Critical habitat does not include existing developed sites such as dams, piers, marinas, bridges, boat ramps, exposed oil and gas pipelines, oil rigs, and similar structures or designated public swimming areas.

Critical habitat units are depicted for Louisiana, Mississippi, Alabama and Florida on the maps below. The textual unit descriptions below are definitive sources for determining the critical habitat boundaries. General location maps by unit are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) Unit 1: Pearl River System in St. Tammany and Washington Parishes in Louisiana and Walthall, Hancock, Pearl River, Marion, Lawrence, Simpson, Copiah, Hinds, Rankin, and Pike Counties in Mississippi. (1) Unit 1 includes the Pearl River main stem from the spillway of the Ross Barnett Dam, Hinds and Rankin Counties, Mississippi, downstream to where the main stem river drainage discharges at its mouth joining Lake Borgne, Little Lake, or The Rigolets in Hancock County, Mississippi, and St. Tammany Parish, Louisiana. It includes the main stems of the East Pearl River, West Pearl River, West Middle River, Holmes Bayou, Wilson Slough, downstream to where these main stem river drainage discharges at the mouths of Lake Borgne, Little Lake, or The Rigolets. Unit 1 also includes the Bogue Chitto River main stem, a tributary of the Pearl River, from Mississippi State Highway 570, Pike County, Mississippi, downstream to its confluence with the West Pearl River, St. Tammany Parish, Louisiana. The lateral extent of Unit 1 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 1 follow:

708
Unit 1
Pearl River Critical Habitat Unit

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(b) Unit 2: Pascagoula River System in Forrest, Perry, Greene, George, Jackson, Clarke, Jones, and Wayne Counties, Mississippi. (1) Unit 2 includes all of the Pascagoula River main stem and its distributaries, portions of the Bouie, Leaf, and Chickasawhay tributaries, and all of the Big Black Creek tributary. It includes the Bouie River main stem beginning on the southern-most road crossing of Interstate 59, Forrest County, Mississippi, downstream to its confluence with the Leaf River, Forrest County, Mississippi. The Leaf River main stem beginning from Mississippi State Highway 588, Jones County, Mississippi, downstream to its confluence with the Chickasawhay River, George County, Mississippi is included. The main stem of the Chickasawhay River from the mouth of Oaky Creek, Clarke County, Mississippi, downstream to its confluence with the Leaf River, George County, Mississippi is included. Unit 2 also includes Big Black Creek main stem from its confluence with Black and Red Creeks, Jackson County, Mississippi, to its confluence with the Pascagoula River, Jackson County, Mississippi. All of the main stem of the Pascagoula River from its confluence with the Leaf and Chickasawhay Rivers, George County, Mississippi, to the discharge of the East and West Pascagoula Rivers into Pascagoula Bay, Jackson County, Mississippi, is included. The lateral extent of Unit 2 is the ordinary high water line on each bank of the associated rivers and shorelines.
(2) Major shipping channels in this unit are excluded under section 4(b)(2) of the Act.

(3) Maps of Unit 2 follow:

Unit 2
Pascagoula River Critical Habitat Unit

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
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Map 2.3

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(c) Unit 3: Escambia River System in Santa Rosa and Escambia Counties, Florida, and Escambia, Conecuh, and Covington Counties, Alabama. (1) Unit 3 includes the Conecuh River main stem beginning just downstream of the spillway of Point A Dam, Covington County, Alabama, downstream to the Florida State line, where its name changes to the Escambia River, Escambia County, Alabama, and Escambia and Santa Rosa Counties, Florida. It includes the entire main stem of the Escambia River downstream to its discharge into Escambia Bay and Macky Bay, Escambia and Santa Rosa Counties, Florida. All of the distributaries of the Escambia River including White River, Little White River, Simpson River, and Dead River, Santa Rosa County, Florida are included. The Sepulga River main stem from Alabama County Road 42, Conecuh and Escambia Counties, Alabama, downstream to its confluence with the Conecuh River, Escambia County, Alabama, is also included. The lateral extent of Unit 3 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines.

(2) Maps of Unit 3 follow:
Unit 3
Escambia River Critical Habitat Unit

Critical Habitat
- Rivers
- State line
- County line
- Dam

Critical Habitat - See Map 3.2

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
Map 3.1

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(d) Unit 4: Yellow River System in Santa Rosa and Okaloosa Counties, Florida and Covington County, Alabama. (1) Unit 4 includes the Yellow River main stem from Alabama State Highway 55, Covington County, Alabama, downstream to its discharge at Blackwater Bay, Santa Rosa County, Florida. All Yellow River distributaries (including Weaver River and Skim Lake) discharging into Blackwater Bay are included. The Shoal River main stem, a Yellow River tributary, from Florida Highway 85, Okaloosa County, Florida, to its confluence with the Yellow River, is included. The Blackwater River from its confluence with Big Coldwater Creek, Santa Rosa County, Florida, downstream to its discharge into Blackwater Bay is included. Wright Basin and Cooper Basin, Santa Rosa County, on the Blackwater River are included. The lateral extent of Unit 4 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines.

(2) Maps of Unit 4 follow:
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This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(e) Unit 5: Choctawhatchee River System in Holmes, Washington, and Walton Counties, Florida and Dale, Coffee, Geneva, and Houston Counties, Alabama. (1) Unit 5 includes the Choctawhatchee River main stem from its confluence with the west and east fork of the Choctawhatchee River, Dale County, Alabama, downstream to its discharge at Choctawhatchee Bay, Walton County, Florida. The distributaries discharging into Choctawhatchee Bay known as Mitchell River, Indian River, Cypress River, and Bells Leg are included. The Boynton Cutoff, Washington County, Florida, which joins the Choctawhatchee River main stem, and Holmes Creek, Washington County, Florida, are included. The section of Holmes Creek from Boynton Cutoff to the mouth of Holmes Creek, Washington County, Florida, is included. The Pea River main stem, a Choctawhatchee River tributary, from the Elba Dam, Coffee County, Alabama, to its confluence with the Choctawhatchee River, Geneva County, Alabama, is included. The lateral extent of Unit 5 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 5 follow:
Unit 5
Choctawhatchee River Critical Habitat Unit

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
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This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(f) **Unit 6: Apalachicola River System in Franklin, Gulf, Liberty, Calhoun, Jackson, and Gadsden Counties, Florida.** (1) Unit 6 includes the Apalachicola River mainstem, beginning from the Jim Woodruff Lock and Dam, Gadsden and Jackson Counties, Florida, downstream to its discharge at East Bay or Apalachicola Bay, Franklin County, Florida. All Apalachicola River distributaries, including the East River, Little St. Marks River, St. Marks River, Franklin County, Florida, to their discharge into East Bay and/or Apalachicola Bay are included. The entire main stem of the Brothers River, Franklin and Gulf Counties, Florida, a tributary of the Apalachicola River, is included. The lateral extent of Unit 6 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 6 follow:
Unit 6
Apalachicola River Critical Habitat Unit

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(g) Unit 7: Suwannee River System in Hamilton, Suwannee, Madison, Lafayette, Gilchrist, Levy, Dixie, and Columbia Counties, Florida. (1) Unit 7 includes the Suwannee River main stem, beginning from its confluence with Long Branch Creek, Hamilton County, Florida, downstream to the mouth of the Suwannee River. It includes all the Suwannee River distributaries, including the East Pass, West Pass, Wadley Pass, and Alligator Pass, Dixie and Levy Counties, Florida, to their discharge into the Suwannee Sound or the Gulf of Mexico. The Withlacoochee River main stem from Florida State Road 6, Madison and Hamilton Counties, Florida, to its confluence with the Suwannee River is included. The lateral extent of Unit 7 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 7 follow:
Unit 7
Suwannee River Critical Habitat Unit

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
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This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(h) **Unit 8**: Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, and St. Bernard Parish, Louisiana, Hancock, Jackson, and Harrison Counties in Mississippi, and in Mobile County, Alabama.  

(1) Unit 8 encompasses Lake Pontchartrain east of the Lake Pontchartrain Causeway, all of Little Lake, The Rigolets, Lake St. Catherine, Lake Borgne, including Heron Bay, and the Mississippi Sound. Critical habitat follows the shorelines around the perimeters of each included lake. The Mississippi Sound includes adjacent open bays including Pascagoula Bay, Point aux Chenes Bay, Grand Bay, Sandy Bay, and barrier island passes, including Ship Island Pass, Dog Keys Pass, Horn Island Pass, and Petit Bois Pass. The northern boundary of the Mississippi Sound is the shorelines of the mainland between Heron Bay Point, MS and Point aux Pins, AL. Designated critical habitat excludes St. Louis Bay, north of the railroad bridge across its mouth; Biloxi Bay, north of the U.S. Highway 90 bridge; and Back Bay of Biloxi. The southern boundary follows along the broken shoreline of Lake Borgne created by low swampy islands from Malheureux Point to Isle au Pitre. From the northeast point of Isle au Pitre, the boundary continues in a straight north-northeast line to the point 1 nm (1.9 km) seaward of the western most extremity of Cat Island (30°13′N, 89°10′W). The southern boundary continues 1 nm (1.9 km) offshore of the barrier islands and offshore of the 72 COLREGS lines at barrier island...
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passes (defined at 33 CFR 80.815 (c)), (d) and (e) to the eastern boundary. Between Cat Island and Ship Island there is no 72 COLREGS line. We therefore, have defined that section of the southern boundary as 1 nm (1.9 km) offshore of a straight line drawn from the southern tip of Cat Island to the western tip of Ship Island. The eastern boundary is the line of longitude 88°18.8″W from its intersection with the shore (Point aux Pins) to its intersection with the southern boundary. The lateral extent of Unit 8 is the MHW line on each shoreline of the included water bodies or the entrance to rivers, bayous, and creeks.

(2) Major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, are excluded under section 4(b)(2) of the Act.

(3) Maps of Unit 8 follow:
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
Map 8.2

This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
(1) **Unit 9: Pensacola Bay System in Escambia and Santa Rosa Counties, Florida.** (1) Unit 9 includes Pensacola Bay and its adjacent main bays and coves. These include Big Lagoon, Escambia Bay, East Bay, Blackwater Bay, Bayou Grande, Macky Bay, Saultsman Cove, Bass Hole Cove, and Catfish Basin. All other bays, bayous, creeks, and rivers are excluded at their mouths. The western boundary is the Florida State Highway 292 Bridge crossing Big Lagoon to Perdido Key. The southern boundary is the 72 COLREGS line between Perdido Key and Santa Rosa Island (defined at 33 CFR 80.810(g)). The eastern boundary is the Florida State Highway 399 Bridge at Gulf Breeze, FL. The lateral extent of Unit 9 is the MHW line on each included bay’s shoreline.

(2) Major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, are excluded under section 4(b)(2) of the Act.

(3) A Map of Unit 9 follows:
(j) Unit 10: Santa Rosa Sound in Escambia, Santa Rosa, and Okaloosa Counties, Florida. (1) Unit 10 includes the Santa Rosa Sound, bounded on the west by the Florida State Highway 399 bridge in Gulf Breeze, FL. The eastern boundary is the U.S. Highway 98 bridge.
in Fort Walton Beach, FL. The northern and southern boundaries of Unit 10 are formed by the shorelines to the MHW line or by the entrance to rivers, bayous, and creeks.

(2) A Map of Unit 10 follows:
(k) **Unit 11: Florida Nearshore Gulf of Mexico Unit in Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf Counties, Florida.** (1) Unit 11 includes a portion of the Gulf of Mexico as defined by the following boundaries. The western boundary is the line of longitude 87°20.0′W (approximately 1 nm (1.9 km) west of Pensacola Pass) from its intersection with the shore to its intersection with the southern boundary. The northern boundary is the MHW of the mainland shoreline and the 72 COLREGS lines at passes as defined at 30 CFR 80.810(a–g). The southern boundary is 1 nm (1.9 km) offshore of the northern boundary. The eastern boundary is the line of longitude 85°17.0′W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary.

(2) A Map of Unit 11 follows:
(1) **Unit 12: Choctawhatchee Bay in Okaloosa and Walton Counties, Florida.**

(1) Unit 12 includes the main body of Choctawhatchee Bay, Hogtown Bayou, Jolly Bay, Bunker Cove, and Grassy Cove. All other bayous, creeks, rivers are excluded at their mouths/entrances. The western boundary is the
U.S. Highway 98 bridge at Fort Walton Beach, FL. The southern boundary is the 72 COLREGS line across East (Destin) Pass as defined at 33 CFR 80.810(f). The lateral extent of Unit 12 is the MHW line on each shoreline of the included water bodies.

(2) A Map of Unit 12 follows:
(m) **Unit 13: Apalachicola Bay in Gulf and Franklin County, Florida.** (1) Unit 13 includes the main body of Apalachicola Bay and its adjacent sounds, bays, and the nearshore waters of the Gulf of Mexico. These consist of St. Vincent Sound, including Indian Lagoon; Apalachicola Bay including Horseshoe Cove and All Tides Cove; East Bay including Little Bay and Big Bay; and St. George Sound, including Rattlesnake Cove and East Cove. Barrier Island passes (Indian Pass, West Pass, and East Pass) are also included. Sike's cut is excluded from the lighted buoys on the Gulf of Mexico side to the day boards on the bay side. The southern boundary includes water extending into the Gulf of Mexico 1 nm (1.9 km) from the MHW line of the barrier islands and from 72 COLREGS lines between the barrier islands (defined at 33 CFR 80.805(e–h)). The western boundary is the line of longitude 85°17.0′W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary. The eastern boundary is formed by a straight line drawn from the shoreline of Lanark Village at 29°53.1′N, 84°35.0′W to a point that is 1 nm (1.9 km) offshore from the northeastern extremity of Dog Island at 29°49.6′N, 84°33.2′W. The lateral extent of Unit 13 is the MHW line on each shoreline of the included water bodies or the entrance of excluded rivers, bayous, and creeks.

(2) A Map of Unit 13 follows:
(n) *Unit 14: Suwannee Sound in Dixie and Levy Counties, Florida.* (1) Unit 14 includes Suwannee Sound and a portion of adjacent Gulf of Mexico waters extending 9 nm from shore (16.7 km) out to the State territorial water boundary. Its northern boundary is formed by a straight line from the
northern tip of Big Pine Island (at approximately 29°23'N, 83°12'W) to the Federal-State boundary at 29°17'N, 83°21'W. The southern boundary is formed by a straight line from the southern tip of Richards Island (at approximately 83°04'W, 29°11'N) to the Federal-State boundary at 83°18'W, 29°04'N. The lateral extent of Unit 14 is the MHW line along the shorelines and the mouths of the Suwannee River (East and West Pass), its distributaries, and other rivers, creeks, or water bodies.

(2) A Map of Unit 14 follows:
§ 226.215 Critical habitat for the North Pacific Right Whale (Eubalaena japonica).

(a) Primary Constituent Elements. The primary constituent elements of the North Pacific right whale are the copepods *Calanus marshallae*, *Neocalanus cristatus*, and *N. plumchrus*, and the euphausiid *Thysanoessa raschii*, in areas of the North Pacific Ocean in which North Pacific right whales are known or believed to feed, as described in paragraphs (b) and (c) of this section.

(b) Bering Sea. An area described by a series of straight lines connecting the following coordinates in the order listed:

58° 00' N/168° 00' W
58° 00' N/163° 00' W
56° 30' N/161° 45' W
55° 00' N/166° 00' W
56° 00' N/168° 00' W
58° 00' N/168° 00' W.

(c) Gulf of Alaska. An area described by a series of straight lines connecting the following coordinates in the order listed:

57° 03' N/153° 00' W
57° 18' N/151° 30' W
57° 00' N/151° 30' W
56° 45' N/153° 00' W
57° 03' N/153° 00' W.

(d) Maps of critical habitat for the North Pacific right whale follow:
§ 226.216 Critical habitat for elkhorn (Acropora palmata) and staghorn (A. cervicornis) corals.

Critical habitat is designated for both elkhorn and staghorn corals as described in this section. The textual descriptions of critical habitat in paragraphs (b) and (c) of this section are the definitive source for determining the critical habitat boundaries. The overview maps in paragraph (d) of this section are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) Physical Feature Essential to the Conservation of Threatened Corals. The physical feature essential to the conservation of elkhorn and staghorn corals is: substrate of suitable quality and availability to support larval settlement and recruitment, and reattachment and recruitment of asexual fragments. “Substrate of suitable quality and availability” is defined as natural consolidated hard substrate or dead coral skeleton that is free from fleshy or turf macroalgae cover and sediment cover.

(b) Critical Habitat Areas. Critical habitat includes one specific area of the Atlantic Ocean offshore of Palm Beach, Broward, Miami-Dade, and Monroe counties, Florida, and three specific areas of the Atlantic Ocean and Caribbean Sea offshore of the U.S. Territories of Puerto Rico and the U.S. Virgin Islands. The boundaries of each specific critical habitat area are described below. Except as specified below, the seaward boundary is the 98-ft (30 m) depth contour and the shoreward boundary is the line of mean low water (MLW; 33 CFR 2.20). Within these boundaries, discrete areas of water deeper than 98 ft (30 m) are not included.

(1) Florida Area: The Florida area contains three sub-areas.

(i) The shoreward boundary for Florida sub-area A begins at the 6-ft (1.8 m) contour at the south side of Boynton Inlet, Palm Beach County at 26° 32’ 42.5” N; then runs due east to the point of intersection with the 98-ft (30 m) contour; then follows the 98-ft (30 m) contour to the point of intersection with latitude 24° 31’ 35.75” N; then follows the COLREGS line (see 33 CFR 80.727. 730, 735, and 740) to the beginning point.

(ii) The shoreward boundary of Florida sub-area B begins at the 6-ft (1.8 m) contour at 25° 45’ 55” N, Government Cut, Miami-Dade County; then runs due east to the point of intersection with the 98-ft (30 m) contour; then follows the 98-ft (30 m) contour to the point of intersection with longitude 82° W; then runs due north to the point of intersection with the South Atlantic Fishery Management Council (SAFMC) boundary at 24° 31’ 35.75” N; then follows the SAFMC boundary to a point of intersection with the MLW line at Key West, Monroe County; then follows the MLW line, the SAFMC boundary (see 50 CFR 600.105(c)), and the COLREGS line (see 33 CFR 80.727. 730, 735, and 740) to the beginning point.

(iii) The seaward boundary of Florida sub-area C (the Dry Tortugas) begins at the northern intersection of the 98-ft (30 m) contour and longitude 82° 45’ W; then follows the 98-ft (30 m) contour west around the Dry Tortugas, to the southern point of intersection with longitude 82° 45’ W; then runs due north to the beginning point.

(2) Puerto Rico Area: All areas surrounding the islands of St. Thomas and St. John, U.S. Virgin Islands, and smaller surrounding islands, 98 ft (30 m) in depth and shallower.

(3) St. Thomas/St. John Area: All areas surrounding the islands of St. Thomas and St. John, U.S. Virgin Islands, and smaller surrounding islands, 98 ft (30 m) in depth and shallower.

(4) St. Croix Area: All areas surrounding the island of St. Croix, U.S. Virgin Islands, 98 ft (30 m) in depth and shallower.

(c) Areas not included in critical habitat. Critical habitat does not include the following particular areas where they overlap with the areas described in paragraph (b) of this section:

(1) Pursuant to ESA section 4(a)(3)(B), all areas subject to the 2008 Naval Air Station Key West Integrated Natural Resources Management Plan.

(2) Pursuant to ESA section 3(5)(A)(1), all areas containing existing (already constructed) federally authorized or permitted man-made structures.
such as aids-to-navigation (ATONs), artificial reefs, boat ramps, docks, pili-
ing, maintained channels, or marinas.

(3) Pursuant to ESA section 3(5)(A)(i), all waters identified as exist-
ing (already constructed) federally au-
thorized channels and harbors as fol-
lows:

(i) Palm Beach Harbor.
(ii) Hillsboro Inlet.
(iii) Port Everglades.
(iv) Miami Harbor.
(v) Key West Harbor.
(vi) Arecibo Harbor.
(vii) San Juan Harbor.
(viii) Fajardo Harbor.
(ix) Ponce Harbor.
(x) Mayaguez Harbor.
(xi) St. Thomas Harbor.
(xii) Christiansted Harbor.

(d) Areas excluded from critical habi-
tat. Pursuant to ESA Section 4(b)(2),
all waters of the Restricted Anchorage
Area as described at 33 CFR 334.580, be-
ginning at a point located at 26° 05' 30" N, 80° 06' 30" W; thence, southerly to
26° 03' 00" N, longitude 80° 06' 42" W;
thence, east to latitude 26° 03' 00" N, 80°
05' 44" W; thence, south to 26° 01' 36" N,
80° 05' 44" W; thence, east to 26° 01' 36"
N, 80° 03' 30" W; thence, north to the
point of beginning.

(e) Overview maps of designated crit-
ical habitat for elkhorn and staghorn
corals follow.

Critical habitat is designated to include all perennial rivers, streams, and estuaries and lakes connected to the marine environment within the range of the Gulf of Maine Distinct Population Segment of Atlantic Salmon (GOM DPS), except for those particular areas within the range which are specifically excluded. Within the GOM DPS, the primary constituent elements...
(PCEs) for Atlantic salmon include sites for spawning and incubation, sites for juvenile rearing, and sites for migration. The essential physical and biological features of habitat are those features that allow Atlantic salmon to successfully use sites for spawning and rearing and sites for migration. These features include substrate of suitable size and quality; rivers and streams of adequate flow, depth, water temperature and water quality; rivers, streams, lakes and ponds with sufficient space and diverse, abundant food resources to support growth and survival; waterways that allow for free migration of both adult and juvenile Atlantic salmon; and diverse habitat and native fish communities in which salmon interact with while feeding, migrating, spawning, and resting.

(a) The GOM DPS is divided into three salmon habitat recovery units (SHRUs) within the range of the GOM DPS: These are the Downeast Coastal SHRU, the Penobscot Bay SHRU, and the Merrymeeting Bay SHRU. Critical habitat is being considered only in specific areas currently occupied by the species. Critical habitat specific areas are identified by hydrological unit codes (HUC) and counties within the States of Maine. Hydrological units are those defined by the Department of Interior (DOI), U.S. Geological Survey (USGS) publication, "Hydrologic Unit Maps" Water Supply Paper (Seaber et al., 1994) and the following DOI, USGS 1:500,000 scale hydrologic unit map: State of Maine. These documents are incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and the maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, 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) Critical habitat is designated in the Maine counties and towns for the three SHRUs described in paragraphs (b)(1) and (2) of this section. The textual descriptions of critical habitat for each SHRU are included in paragraphs (b)(3) through (6) of this section, and these descriptions are the definitive source for determining the critical habitat boundaries. A general location map (Figure 1) is provided at the end of paragraph (b)(2) and is for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(1) Maine counties and towns affected. Critical habitat is designated for the following SHRUs in the following counties and towns.

(i) Counties and towns partially or entirely within areas containing critical habitat in the Downeast Coastal SHRU:

<table>
<thead>
<tr>
<th>Sub-basin</th>
<th>County</th>
<th>Town</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coastal Washington Hancock</td>
<td>Penobscot</td>
<td>Clifton, Eddington, Grand Falls Twp, Greenfield Twp, Summit Twp.</td>
</tr>
<tr>
<td>Hancock ...</td>
<td>Wash- ington.</td>
<td>Walham, Bucksport, Dedham, Eastbrook, Ellsworth, Fletchers Landing Twp, Franklin, Great Pond, Hancock, Lamoine, Mariaville, Oqton Twp, Otland, Osborn, Trenton Otis, Sullivan, Surry, T10 SD, T16 MD, T22 MD, T28 MD, T32 MD, T34 MD, T35 MD, T39 MD, T40 MD, T41 MD, T7 SD, T9 SD.</td>
</tr>
<tr>
<td>Wash- ington.</td>
<td>Addison, Alexander, Baileyville, Baring Pit, Beddington, Centerville Twp, Charlotte, Cherryfield, Columbia, Columbia Falls, Cooper, Crawford, Cutler, Deblois, Dennyville, Devereaux Twp, East Machias, Edmunds Twp, Harrington, Jonesbora, Jonesport, Lubec, Machias, Machiasport, Marion Twp, Marshfield, Meddybemp, Milbridge, No 14 Twp, No 21 Twp, Northfield, Princeton, Rogue Bluffs, Sakom Twp, Steuben, Trescott Twp, Whiting, Whitemyville, Wesley T18 ED BPP, T16 MD BPP, T19 ED BPP, T19 MD BPP, T24 MD BPP, T25 MD BPP, T26 ED BPP, T27 ED BPP, T30 MD BPP, T31 MD BPP, T36 MD BPP, T37 MD BPP, T42 MD BPP, T43 MD BPP.</td>
<td></td>
</tr>
</tbody>
</table>

(ii) Counties and towns partially or entirely within areas containing critical habitat in the Penobscot Bay SHRU:
### § 226.217

#### Sub-basin  County  Town

**Piscataquis**
- County: Penobscot
- Town: T4 Indian Purchase Twp, Long A Twp, Seboeis Pt, Mattamuskeet Twp, Maxfield, Lagrange, Charleston, Howard, T3 R9 NWP, Edinburg, Hopkins Academy Grant Twp, Garland, WELS.

**Somerset**
- County: Penobscot

**East Branch.**
- County: Aroostook
- Sub-basin: T7 R5 WELS.

**Penobscot**
- County: Mount Chase, East Millinocket, Grindstone Twp, Herseytown Twp, Medway, Patten, Soldier Twp T2 R7 WELS, Sticityville, T1 R6 WELS, T2 R8 WELS, T3 R7 WELS, T3 R8 WELS, T4 R7 WELS, T4 R8 WELS, T5 R7 WELS, T5 R8 WELS, T6 R6 WELS, T6 R7 WELS, T6 R8 WELS, T7 R7 WELS, T7 R8 WELS, T8 R6 WELS, T8 R7 WELS, T8 R8 WELS.

**Piscataquis**
- County: Mount Katahdin Twp, Nesourdnahunk Twp, Trout Brook Twp, T3 R10 WELS, T4 R10 WELS, T4 R9 WELS, T5 R11 WELS, T5 R9 WELS, T6 R11 WELS, T7 R10 WELS, T7 R11 WELS, T7 R12 WELS, T7 R9 WELS.

**Mattawamkeag.**
- County: Aroostook
- Sub-basin: Amity, Bangor, Benedicta Twp, Crystal, Dudley Twp, Dyer Brook, Forkstown Twp, Moro Pt, North Yarmouth Academy Grant Twp, Oakfield, Orient, Reed Pt, Sherman, Silver Ridge Twp, Smyrna, Upper Mooselookum Twp, Webbertown Twp, Weston, T1 R5 WELS, T2 R4 WELS, T3 R3 WELS, T3 R4 WELS, T4 R3 WELS, T7 R5 WELS, TA R2 WELS.

#### Sub-basin  County  Town

**Penobscot**
- County: Carroll Pt, Drew Pt, Herseytown Pt, Kingman Twp, Lee, Lincoln, Mattawamkeag, Mount Chase, Patten, Prentiss Twp T7 R3 NBPP, Sprool Twp, Sticityville, Webster Pt, Winn, T1 R6 WELS, T4 R7 WELS, T6 R6 WELS.

**Washington.**
- County: T8 R3 NBPP, T8 R4 NBPP.

**Penobscot**
- County: Benedicta Twp, Molunkus Twp, Sherman, T1 R5 WELS.

**Hancock**
- County: Amherst, Blue Hill, Bucksport, Castine, Dedham, Great Pond, Oqiton Twp, Orland, Penobscot, Surry, Verona Island, T3 ND, T32 MD, T34 MD, T35 MD, T39 MD, T40 MD, T41 MD.

**Penobscot**

**Piscataquis**
- County: Medford.

**Waldo**
- County: Belfast, Belmont, Brooks, Frankfort, Jackson, Knox, Monroe, Montville, Prospect, Searsport, Stockton Springs, Swanville, Thomdike, Waldo, Winterport.

**Penobscot Bay.**
- County: Waldo.

(iii) Counties and towns partially or entirely within areas containing critical habitat in the Merrymeeting Bay SHRU:
<table>
<thead>
<tr>
<th>Sub-basin</th>
<th>County</th>
<th>Town</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cumberland.</td>
<td>Brunswick, Freeport.</td>
</tr>
<tr>
<td></td>
<td>Kennebec.</td>
<td>Litchfield, Monmouth</td>
</tr>
<tr>
<td></td>
<td>Sagadahoc.</td>
<td>Bath, Bowdoin, Bowdoinham, Richmond, Topsham.</td>
</tr>
<tr>
<td>Merrymeeting Bay</td>
<td>Androscoggin.</td>
<td>Livermore Falls.</td>
</tr>
<tr>
<td></td>
<td>Somerset.</td>
<td>Arson, Athens, Bingham, Brightton Pt, Canaan, Cornville, Fairfield, Hartland, Madison, Mayfield Twp, Mercer, Norridgewock, Pittsfield, Skowhegan, Smithfield, Solon, Starks.</td>
</tr>
<tr>
<td>Waldo ......</td>
<td>Belmont, Freedom, Liberty, Lincolnville, Montville, Morrill, Palermo, Searsmont.</td>
<td></td>
</tr>
</tbody>
</table>

(2) Critical habitat boundaries. Critical habitat includes the stream channels within the designated stream reaches, and includes a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas where the ordinary high-water line has not been defined, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on an annual flood series. Critical habitat in estuaries is defined by the perimeter of the water body as displayed on standard 1:24,000 scale topographic maps or the elevation of extreme high water, whichever is greater.
(i) HUC 10 watersheds in the Penobscot Bay SHRU analyzed for critical habitat, those that meet the criteria for critical habitat, and those excluded under ESA section 4(b)(2):

<table>
<thead>
<tr>
<th>Penobscot Bay SHRU</th>
<th>HUC 10 Code</th>
<th>HUC 10 Name</th>
<th>Status</th>
<th>Economic (E), Military (M), or Tribal (T) exclusions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0102000101</td>
<td>North Branch Penobscot River</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>0102000102</td>
<td>Seeboomook Lake</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Figure 1
critical habitat, those that meet the criteria for critical habitat, and those excluded under ESA section 4(b)(2):

(ii) HUC 10 watersheds in the Merrymeeting Bay SHRU analyzed for critical habitat, those that meet the

<table>
<thead>
<tr>
<th>Merrymeeting Bay SHRU</th>
<th>HUC 10 code</th>
<th>HUC 10 name</th>
<th>Status</th>
<th>Military (M), or Tribal (T) exclusions</th>
</tr>
</thead>
<tbody>
<tr>
<td>41</td>
<td>0103000101</td>
<td>South Branch Moose River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>0103000102</td>
<td>Moose River (2) above Attean Pond.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>0103000103</td>
<td>Moose River (3) at Long Pond.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>0103000104</td>
<td>Brassua Lake.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>0103000105</td>
<td>Moosehead Lake.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>0103000106</td>
<td>Kennebec River (2) above The Forks.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>0103000107</td>
<td>North Branch Dead River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>0103000108</td>
<td>South Branch Dead River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>0103000109</td>
<td>Flagstaff Lake.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>0103000110</td>
<td>Dead River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>0103000111</td>
<td>Kennebec River (4) at Wyman Dam.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>0103000112</td>
<td>Austin Stream.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>0103000113</td>
<td>Kennebec River (6).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>0103000114</td>
<td>Carrabassett River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>0103000115</td>
<td>Sandy River</td>
<td></td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>0103000116</td>
<td>Kennebec River at Waterville Dam</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(iii) HUC 10 watersheds in the criteria for critical habitat, and Downeast Coastal SHRU analyzed for those excluded under ESA section critical habitat, and those that meet 4(b)(2):

<table>
<thead>
<tr>
<th>Merrymeeting Bay SHRU</th>
<th>HUC 10 code</th>
<th>HUC 10 name</th>
<th>Status</th>
<th>Military (M) exclusions</th>
</tr>
</thead>
<tbody>
<tr>
<td>57</td>
<td>01050000307</td>
<td>Sebastiscok River at Pittfield.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>58</td>
<td>01050000308</td>
<td>Sebastiscok River (3) at Burnham.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>59</td>
<td>01050000309</td>
<td>Sebastiscok River (4) at Winslow.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>60</td>
<td>01050000310</td>
<td>Messalonskee Stream.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>61</td>
<td>01050000311</td>
<td>Cobbosseecontee Stream.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>62</td>
<td>01050000312</td>
<td>Kennebec River at Merrymeeting Bay</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>63</td>
<td>01050000313</td>
<td>Mooseheadmeguntic Lake.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>64</td>
<td>01050000314</td>
<td>Umbagog Lake Drainage.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>65</td>
<td>01050000315</td>
<td>Aroostook Lake Drainage.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>66</td>
<td>01050000316</td>
<td>Magalloway River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>67</td>
<td>01050000317</td>
<td>Clear Stream.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>68</td>
<td>01050000318</td>
<td>Middle Androscoggin River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>69</td>
<td>01050000319</td>
<td>Gorham-Shellburne Tributaries.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>70</td>
<td>01050000320</td>
<td>Androscoggin River (2) at Rumford Point.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>71</td>
<td>01050000321</td>
<td>Ellis River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>72</td>
<td>01050000322</td>
<td>Ellis River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>73</td>
<td>01050000323</td>
<td>Androscoggin River (3) above Webb River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>74</td>
<td>01050000324</td>
<td>Androscoggin River (4) at Riley Dam.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>75</td>
<td>01050000325</td>
<td>Androscoggin River (5) at Nezinscot River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>76</td>
<td>01050000326</td>
<td>Nezinscot River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>77</td>
<td>01050000327</td>
<td>Androscoggin River (6) above Little Androscoggin River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>78</td>
<td>01050000328</td>
<td>Little Androscoggin River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>79</td>
<td>01050000330</td>
<td>St. George River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>80</td>
<td>01050000331</td>
<td>Medomak River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>81</td>
<td>01050000332</td>
<td>Johns Bay.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>82</td>
<td>01050000333</td>
<td>Sheepscot River.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>83</td>
<td>01050000334</td>
<td>Sheepscot Bay.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
<tr>
<td>84</td>
<td>01050000335</td>
<td>Kennebec River Estuary.</td>
<td>Critical Habitat</td>
<td>M</td>
</tr>
</tbody>
</table>

(3) Primary constituent elements. Within the GOM DPS, the primary constituent elements (PCEs) for the conservation of Atlantic salmon include sites for spawning and incubation, sites for juvenile rearing, and sites for migration. The physical and biological features of the habitat that are essential to the conservation of Atlantic salmon are those features that allow Atlantic salmon to successfully use sites for spawning and rearing and sites for migration. These features include:

(i) Deep, oxygenated pools and cover (e.g., boulders, woody debris, vegetation, etc.), near freshwater spawning sites, necessary to support adult migrants during the summer while they await spawning in the fall;

(ii) Freshwater spawning sites that contain clean, permeable gravel and cobble substrate with oxygenated water and cool water temperatures to

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support spawning activity, egg incubation and larval development;
(iii) Freshwater spawning and rearing sites with clean gravel in the presence of cool, oxygenated water and diverse substrate to support emergence, territorial development, and feeding activities of Atlantic salmon fry;
(iv) Freshwater rearing sites with space to accommodate growth and survival of Atlantic salmon parr, and population densities needed to support sustainable populations;
(v) Freshwater rearing sites with a combination of river, stream, and lake habitats, that accommodate parr’s ability to occupy many niches and to maximize parr production;
(vi) Freshwater rearing sites with cool, oxygenated water to support growth and survival of Atlantic salmon parr;
(vii) Freshwater rearing sites with diverse food resources to support growth and survival of Atlantic salmon parr;
(viii) Freshwater and estuary migration sites free from physical and biological barriers that delay or prevent access to spawning grounds needed to support a recovered population;
(ix) Freshwater and estuary migration sites with abundant, diverse native fish communities to serve as a protective buffer against predation;
(x) Freshwater and estuary migration sites free from physical and biological barriers that delay or prevent emigration of smolts to the marine environment;
(xi) Freshwater and estuary migration sites with sufficiently cool water temperatures and water flows that coincide with diurnal cues to stimulate smolt migration;
(xii) Freshwater and marine migration sites with water chemistry needed to support sea water adaptation of smolts; and
(xiii) Freshwater and marine sites with diverse, abundant assemblages of native fish communities to enhance survivorship as Atlantic salmon smolts emigrating through the estuary.

(4) Habitat that meets the definition of critical habitat in occupied habitat areas on Passamaquoddy Tribal Indian lands and Fee lands or lands held in Trust by the Penobscot Indian Reservation within the range of the GOM DPS are excluded from designation. Per request of the Penobscot Tribe, critical habitat does include occupied habitat that makes up the Penobscot Indian Reservation. The Indian lands specifically excluded from critical habitat are those defined in the Secretarial Order 3206, including:
(i) Lands held in Trust by the United States for the benefit of any Indian Tribe;
(ii) Lands held in trust by the United States for the benefit of any Indian Tribe or individual subject to restrictions by the United States against alienation;
(iii) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and
(iv) Fee lands within the reservation boundaries owned by individual Indians.

The rivers, streams, lakes, and estuaries on approximately 9,500 acres (38.4 sq km) of lands held by the Passamaquoddy Tribe and approximately 60,500 acres (244.8 sq km) of Fee lands and land held in Trust for the Penobscot Tribe within the areas occupied by the GOM DPS are excluded from critical habitat designation based on the principles of the Secretarial Order discussed above. Per request of the Penobscot Nation, the rivers, lakes, and streams within the approximately 4,400-acre (17.8 sq km) Penobscot Reservation are included as critical habitat.

(5) Areas that do not meet the definition of critical habitat under section §226.217. Critical habitat does not include the following areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a). These areas that are not included are:
(i) The 435 acres (1.8 sq km) of the Brunswick Naval Air Station in Brunswick Maine within the Little Androscoggin HUC 10 watershed in the Merrymeeting Bay SHRU; and
(ii) The 5,328 acres (21.5 sq km) of the Brunswick Naval Air Stations cold weather survival, evasion, resistance, and escape school within the Sandy River HUC 10 watershed in the Merrymeeting Bay SHRU.
(6) Areas excluded under ESA Section 4(b)(2). (i) The 396 acres (1.6 sq km) of the Great Pond Outdoor Adventure Center in the Graham Lake HUC 10 watershed in the Downeast Coastal SHRU;

(ii) The 3,000 acres (12.1 sq km) of the Naval Computer and Telecommunications Area Master Station Atlantic Detachment in the Roques Bluffs Coastal HUC 10 in the Downeast Coastal SHRU;

(iii) The Bath Iron Works ship building facility that provides the design, building, and support of complex Navy warships, including AEGIS Class Destroyers. The excluded area extends from U.S. Route 1 bridge over the Kennebec River down river to 50 feet below the south side of BIWs dry dock, but does not include any portion of Hanson Bay or the thoroughfare between Hanson Bay and the Kennebec River. The specific area excluded from designation lies within a box between four points with the following coordinates: Point 1: N43 54’39.8”, W069 48’43.5”; Point 2: N43 54’40.0”, W069 48’17.8”; Point 3: N43 54’0.0”, W069 48’41’7”; Point 4: N43 54’0.0”, W069 48’28’;

(iv) The Belfast Bay HUC 10 Watershed (HUC 105000218);

(v) The Passadumkeag River HUC 10 Watershed (HUC 102000503); and

(vi) The Molunkus Stream HUC 10 Watershed (HUC 102000306).

(7) Description of critical habitat. Critical habitat is designated to include the areas defined in the following hydrological units in the three SHRUs with the exception of those particular areas specifically identified:

(i) Downeast Coastal SHRU. Critical habitat area (in sq km), areas excluded under ESA section 4(b)(2) (in sq km), and exclusion type, by HUC 10 watersheds:

<table>
<thead>
<tr>
<th>Sub-basin</th>
<th>HUC 10 code</th>
<th>HUC 10 watershed name</th>
<th>Critical habitat</th>
<th>Excluded areas [type]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coastal Washington Hancock sub-basin.</td>
<td>0105000201</td>
<td>Dennys River ..........</td>
<td>218</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>0105000203</td>
<td>Grand Manan Channel ...</td>
<td>641</td>
<td>15.5</td>
</tr>
<tr>
<td></td>
<td>0105000204</td>
<td>East Machias River ....</td>
<td>575</td>
<td>70</td>
</tr>
<tr>
<td></td>
<td>0105000205</td>
<td>Machias River ..........</td>
<td>991</td>
<td>58</td>
</tr>
<tr>
<td></td>
<td>0105000206</td>
<td>Roque Bluffs Coastal ...</td>
<td>321</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>0105000207</td>
<td>Chandler River ..........</td>
<td>154</td>
<td>0.1</td>
</tr>
<tr>
<td></td>
<td>0105000208</td>
<td>Pleasant River .........</td>
<td>325</td>
<td>6.5</td>
</tr>
<tr>
<td></td>
<td>0105000209</td>
<td>Narraguagus River ......</td>
<td>573</td>
<td>15.5</td>
</tr>
<tr>
<td></td>
<td>0105000210</td>
<td>Tunk Stream .............</td>
<td>117</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>0105000212</td>
<td>Graham Lake .............</td>
<td>974</td>
<td>121</td>
</tr>
<tr>
<td></td>
<td>0105000213</td>
<td>Union River Bay ........</td>
<td>303</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>0105000214</td>
<td>Bois Bubert Coastal. ...</td>
<td>218</td>
<td></td>
</tr>
<tr>
<td></td>
<td>0105000215</td>
<td>Mt. Desert Coastal. ...</td>
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<td></td>
</tr>
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</table>


(ii) Penobscot Bay SHRU. Critical habitat area (in sq km), areas excluded under ESA section 4(b)(2) (in sq km), and exclusion type, by HUC 10 watersheds:
<table>
<thead>
<tr>
<th>Sub-basin</th>
<th>HUC 10 Code</th>
<th>HUC 10 Watershed Name</th>
<th>Critical Habitat</th>
<th>Excluded Areas[type]*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>River, stream and estuary (km)</td>
<td>Lake (sq. km)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>River, stream and estuary (km)</td>
<td>Lake (sq. km)</td>
</tr>
<tr>
<td>East Branch Penobscot sub-basin</td>
<td>0102000022</td>
<td>Grand Lake Matagamon</td>
<td>326</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>01020000203</td>
<td>East Branch Penobscot River (2)</td>
<td>179</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>01020000204</td>
<td>Seboeis River</td>
<td>418</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>01020000205</td>
<td>East Branch Penobscot River (3)</td>
<td>588</td>
<td>5</td>
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<tr>
<td></td>
<td>0102000201</td>
<td>Webster Brook</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>West Branch Penobscot sub-basin</td>
<td>0102000101</td>
<td>North Branch Penobscot River</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>0102000102</td>
<td>Seboomook Lake</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>0102000103</td>
<td>W. Br. Penobscot R. at Chesuncook</td>
<td>---</td>
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</tr>
<tr>
<td></td>
<td>0102000104</td>
<td>Caucomgomok Lake</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>0102000105</td>
<td>Chesuncook Lake</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>0102000106</td>
<td>Nesowadnehunk Stream</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>0102000107</td>
<td>Nahamakanta Stream</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>0102000108</td>
<td>Jo-Mary Lake</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>0102000109</td>
<td>West Branch Penobscot River (3)</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>0102000110</td>
<td>West Branch Penobscot River (4)</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Mattawamkeag River sub-basin</td>
<td>0102000301</td>
<td>West Branch Mattawamkeag River</td>
<td>657</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>0102000302</td>
<td>Mattawamkeag River</td>
<td>315</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>0102000303</td>
<td>Mattawamkeag River (1)</td>
<td>192</td>
<td>0.5</td>
</tr>
<tr>
<td></td>
<td>0102000305</td>
<td>Mattawamkeag River (2)</td>
<td>451</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>0102000307</td>
<td>Mattawamkeag River (3)</td>
<td>226</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>0102000306</td>
<td>Molunkus Stream</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>0102000304</td>
<td>Baskahegan Stream</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Piscataquis River sub-</td>
<td>0102000401</td>
<td>Piscataquis River (1)</td>
<td>762</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>0102000402</td>
<td>Piscataquis River (3)</td>
<td>382</td>
<td>6</td>
</tr>
</tbody>
</table>
(iii) Merrymeeting Bay SHRU. Critical habitat area (in sq km), areas excluded under ESA section 4(b)(2) (in sq km), and exclusion type, by HUC 10 watershed:

<table>
<thead>
<tr>
<th>Sub basin</th>
<th>HUC 10 code</th>
<th>HUC 10 watershed name</th>
<th>Critical habitat area (sq km)</th>
<th>Excluded areas [type] *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kennebec River above the Forks sub-basin.</td>
<td>0103000101</td>
<td>South Branch Moose River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000102</td>
<td>Moose River (2) above Attean Pond.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000103</td>
<td>Moose River (3) at Long Pond.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000104</td>
<td>Brassua Lake.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000105</td>
<td>Moosehead Lake.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000106</td>
<td>Kennebec River (2) above The Forks.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dead River sub-basin.</td>
<td>0103000201</td>
<td>North Branch Dead River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000202</td>
<td>South Branch Dead River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000203</td>
<td>Flagstaff Lake.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Merrymeeting Bay sub-basin.</td>
<td>0103000305</td>
<td>Sandy River.</td>
<td>1,215</td>
<td>12 [M]</td>
</tr>
<tr>
<td></td>
<td>0103000306</td>
<td>Kennebec River at Waterville Dam.</td>
<td>794</td>
<td>0.2 [M]</td>
</tr>
</tbody>
</table>

## § 226.218 Critical habitat for the U.S. DPS of smalltooth sawfish (Pristis pectinata)

Critical habitat is designated for the U.S. DPS of smalltooth sawfish as described in this section. The textual descriptions in paragraph (b) of this section are the definitive source for determining the critical habitat boundaries. The maps of the critical habitat units provided in paragraph (d) of this section are for illustrative purposes only.

### (a) Physical and biological features essential to the conservation of the endangered U.S. DPS of smalltooth sawfish.

The physical and biological features essential to the conservation of the U.S. DPS of smalltooth sawfish, which provide nursery area functions are: red mangroves and shallow euryhaline habitats characterized by water depths between the Mean High Water line and 3 ft (0.9 m) measured at Mean Lower High Water.

<table>
<thead>
<tr>
<th>Sub basin</th>
<th>HUC 10 code</th>
<th>HUC 10 watershed name</th>
<th>Critical habitat</th>
<th>Excluded areas [type]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>River, stream and estuary (km)</td>
<td>Lake (sq. km)</td>
</tr>
<tr>
<td></td>
<td>0103000312</td>
<td>Kennebec River at Merrymeeting Bay.</td>
<td>621</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>0103000310</td>
<td>Messalonskee Stream.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000301</td>
<td>Kennebec River (4) at Wyman Dam.</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>0103000302</td>
<td>Austin Stream.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000303</td>
<td>Kennebec River (6).</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000304</td>
<td>Carrabassett River.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000307</td>
<td>Sebasticook River at Pittsfield.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000308</td>
<td>Sebasticook River (3) at Burnham.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0103000309</td>
<td>Sebasticook River (4) at Winslow.</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>0103000311</td>
<td>Cobbosseecontee Stream.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0104000101</td>
<td>Mooselookmeguntic Lake.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>549</td>
<td>10.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Umbagog Lake Drainage.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aziscohos Lake Drainage.</td>
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<td>Middle Androscoggan River.</td>
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<td>Little Androscoggan River</td>
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<td>Gorham-Shelburne Tributaries.</td>
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<td>Androscoggan River at Rumford Point.</td>
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<td>Ellis River.</td>
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<td>Androscoggan River above Webb River.</td>
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<td>Androscoggan River at Riley Dam.</td>
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<td>Androscoggan River at Nezinscot River.</td>
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<td>Nezinscot River.</td>
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<td>Androscoggan R. above L. Andro. R.</td>
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<td>Medomak River.</td>
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[74 FR 29333, June 19, 2009, as amended at 74 FR 39904, Aug. 10, 2009]
Low Water (MLLW). These features are included in critical habitat within the boundaries of the specific areas in paragraph (b) of this section, except where the features were not physically accessible to sawfish at the time of this designation (September 2009); for example, areas where existing water control structures prevent sawfish passage to habitats beyond the structure.

(b) Critical habitat boundaries. Critical habitat includes two areas (units) located along the southwest coast of peninsular Florida. The northern unit is the Charlotte Harbor Estuary Unit and the southern unit is the Ten Thousand Islands/Everglades (TTI/E) Unit. The units encompass portions of Charlotte, Lee, Collier, Monroe, and Miami-Dade Counties.

(1) Charlotte Harbor Estuary Unit. The Charlotte Harbor Estuary Unit is located within Charlotte and Lee Counties. The unit includes Charlotte Harbor, Gasparilla Sound, Pine Island Sound, Matlacha Pass, San Carlos Bay, Estero Bay, and the Caloosahatchee River. The unit is defined by the following boundaries. It is bounded by the Peace River at the eastern extent at the mouth of Shell Creek at 81°59.467′ W, and the northern extent of the Charlotte Harbor Preserve State Park at 26°58.933′ N. At the Myakka River the unit is bounded by the SR–776 Bridge and in Gasparilla Sound by the SR–771 Bridge. The COLREGS–72 lines between Gasparilla Island, Lacosta Island, North Captiva Island, Captiva Island, Sanibel Island, and the northern point of Estero Island are used as the coastal boundary for the unit. The southern extent of the unit is the Estero Bay Aquatic Preserve, which is bounded on the south by the Lee/Collier County line. Inland waters are bounded by SR–867 (McGregor Boulevard) from Punta Rassa Road to SR–80 near Fort Myers, then by SR–80 (Palm Beach Boulevard) to Orange River Boulevard, then by Orange River Boulevard to Buckingham Road, then by Buckingham Road to SR–80, and then following SR–80 until it is due south of the Franklin Lock and Dam (S–79), which is the eastern boundary on the Caloosahatchee River and a structural barrier for sawfish access. Additional inland water boundaries north and west of the lock are bounded by North Franklin Lock Road to North River Road, then by North River Road to SR–31, then by SR–31 to SR–78 near Cape Coral, then by SR–78 to SR–765, then by SR–765 to US–41, then by US–41 to US–17 (Marion Avenue) in Punta Gorda, then by US–17 to Riverside Drive, and then by Riverside Drive to the eastern extent of the Peace River at 81°59.467′ W. From the northern extent of the Charlotte Harbor Preserve State Park at 26°58.933′ N, inland waters are bounded westward along that latitude to Harbor View Road, then by Harbor View Road to US–41, then by US–41 to SR–776, then by SR–776 to the Myakka River Bridge.

(2) Ten Thousand Islands/Everglades Unit (TTI/E). The TTI/E Unit is located within Collier, Monroe, and Miami-Dade Counties, Florida. The unit includes waters within Everglades National Park (ENP), including Florida Bay, in the vicinity of Everglades City, within the Cape Romano-Ten Thousand Islands Aquatic Preserve (AP), and within the portion of Rookery Bay AP south of SR–92. The boundaries match the portion of Rookery Bay AP south of SR–92, and the Cape Romano-Ten Thousand Islands Aquatic Preserve AP. The unit boundaries also closely match the ENP boundaries with the following two exceptions: the unit boundary connects points 55 and 57 as illustrated in the critical habitat map that follows, which extend beyond the ENP boundary; and the unit boundary is located inside the ENP boundary between points 77 and 2, omitting the northeast portion of the ENP. The boundary of the unit is comprised of the following connected points, listed by point number in the ID field, degrees North latitude, degrees West longitude, and brief description of the boundary.

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<tr>
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</table>
(c) *Areas not included in critical habitat.* Critical habitat does not include the following particular areas where they overlap with the areas described in paragraph (b) of this section:

(1) Pursuant to ESA section 3(5)(A)(i), all areas containing existing (already constructed) federally authorized or permitted man-made structures such as channels or canals maintained at depths greater than 3 ft. at MLLW, boat ramps, docks, and marinas deeper than 3 ft. at MLLW.

(2) Pursuant to ESA section 3(5)(A)(i), all waters identified as existing (already constructed) federally authorized channels as follows:

(i) Charlotte Harbor.
(ii) Ft. Myers Beach (Matanzas Pass).
(iii) Portions of the Gulf Intracoastal Waterway in the Caloosahatchee River.

(d) *Maps.* Overview maps of designated critical habitat for the U.S. DPS of smalltooth sawfish follow.
Smalltooth Sawfish Critical Habitat - Charlotte Harbor Estuary Unit

Legend
- Cities/Towns
- Major Roads
- County Boundary
- Open Water Critical Habitat
- Inland Water Critical Habitat

This map is provided for illustrative purposes only of smalltooth sawfish critical habitat. For the precise legal definition of critical habitat, please refer to the narrative description.
§ 226.218 50 CFR Ch. II (10–1–10 Edition)

Smalltooth Sawfish Critical Habitat
Ten Thousand Islands/Everglades Unit

Legend
- Critical Habitat Boundary Points
- Cities/Towns
- Major Roads
- County Boundary
- Open Water Critical Habitat
- Inland Water Critical Habitat

This map is provided for illustrative purposes only of smalltooth sawfish critical habitat. For the precise legal definition of critical habitat, please refer to the narrative description.

[74 FR 45373, Sept. 2, 2009]

Critical habitat is designated for the Southern Distinct Population Segment of North American green sturgeon (Southern DPS) as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview maps are provided for general guidance purposes only and not as a definitive source for determining critical habitat boundaries.

(a) Critical habitat boundaries. Critical habitat in freshwater riverine areas includes the stream channels and a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas for which the ordinary high-water line has not been defined pursuant to 33 CFR 329.11, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. Critical habitat in bays and estuaries includes tidally influenced areas as defined by the elevation of mean higher high water. The boundary between coastal marine areas and bays and estuaries are delineated by the COLREGS lines (33 CFR 80). Critical habitat in coastal marine areas is defined by the zone between the 60 fathom (fm) depth bathymetry line and the line on shore reached by mean lower low water (MLLW), or to the COLREGS lines.

(1) Coastal marine areas: All U.S. coastal marine waters out to the 60 fm depth bathymetry line (relative to MLLW) from Monterey Bay, California (36°38'12" N./121°56'13" W.) north and east to include waters in the Strait of Juan de Fuca, Washington. The Strait of Juan de Fuca includes all U.S. marine waters: in Clallam County east of a line connecting Cape Flattery (48°23'10" N./124°43'32" W.), Tatoosh Island (48°23'30" N./124°44'12" W.), and Bonilla Point, British Columbia (48°35'30" N./124°43'00" W.); in Jefferson and Island counties north and west of a line connecting Point Wilson (48°08'38" N./122°45'07" W.) and Partridge Point (48°13'29" N./122°46'11" W.); and in San Juan and Skagit counties south of lines connecting the U.S.-Canada border (48°27'27" N./123°09'46" W.) and Pile Point (48°26'56" N./123°05'33" W.), Cattle Point (48°27'11" N./122°57'39" W.) and Davis Point (48°27'21" N./122°56'03" W.), and Fidalgo Head (48°29'34" N./122°42'07" W.) and Lopez Island (48°28'43" N./122°49'08" W.).

(2) Freshwater riverine habitats: Critical habitat is designated to include the following freshwater riverine areas in California:

(i) Sacramento River, California. From the Sacramento I-Street Bridge (40°9'10" N./122°12'9" W.) upstream to Keswick Dam (40°36'39" N./122°26'46" W.), including the waters encompassed by the Yolo Bypass and the Sutter Bypass areas and the lower American River from the confluence with the mainstream Sacramento River upstream to 38°35'47" N./121°28'36" W. (State Route 160 bridge over the American River).

(ii) Lower Feather River, California. From the confluence with the mainstream Sacramento River upstream to Fish Barrier Dam (39°31'13" N./121°32'31" W.).

(iii) Lower Yuba River, California. From the confluence with the mainstream Feather River upstream to Daguerre Dam (39°12'32" N./121°35'53" W.).

(3) Sacramento-San Joaquin Delta, California: Critical habitat is designated to include the Sacramento-San Joaquin Delta including all waterways up to the elevation of mean high water within the area defined in California Water Code Section 12220, except for the following excluded areas: Clifton Court and California Aqueduct Intake Channel (all reaches upstream from the Clifton Court Radial Gates at 37°49'47" N./121°33'25" W.); Delta-Mendota Canal (upstream from 37°48'58" N./121°33'30" W.); Fivemile Slough (all reaches upstream from its confluence with Fourteenmile Slough at 38°00'50" N./121°22'09" W.); Indian Slough and Werner Cuts (all reaches between the entrance to Discovery Bay at 37°55'8" N./121°35'12" W. and the junction of Werner Cut and Rock Slough at 37°58'14" N./121°35'41" W.); Italian Slough (all reaches upstream from 37°51'39" N./
§ 226.219

121°34'38" W.; Rock Slough (all reaches upstream from the junction with the Old River at 37°56'22" N./121°34'40" W.); Sand Mound Slough (all reaches upstream from 37°56'37" N./121°37'19" W.); Sacramento Deep Water Ship Channel (upstream from the confluence with Cache Slough at 38°14'13" N./121°40'23" W.); Sevenmile Slough (all reaches between Threemile Slough at 38°06'55" N./121°40'55" W. and Jackson Slough at 38°06'59" N./121°37'44" W.); Snodgrass Slough (all reaches upstream from Layotte Creek at 38°13'30" N./121°30'46" W.); Tom Paine Slough (all reaches upstream from its confluence with Middle River at 37°47'25" N./121°25'08" W.); Trapper Slough (all reaches upstream from 37°53'36" N./121°29'15" W.); Unnamed oxbow loop (upstream from the confluence with the San Joaquin River at 37°43'9" N./121°16'36" W.); Unnamed oxbow loop (upstream from the confluence with the San Joaquin River at 37°46'9" N./121°18'6" W.).

(4) Coastal bays and estuaries: Critical habitat is designated to include the following coastal bays and estuaries in California, Oregon, and Washington:

(i) San Francisco Bay, San Pablo Bay, and Suisun Bay in California. All tidally influenced areas of San Francisco Bay, San Pablo Bay, and Suisun Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide end point in: Adobe Creek (38°12'42" N./122°36'6" W.); Alameda Creek (37°36'47" N./122°4'18" W.); Arroyo Corte Madera del Presidio (37°53'43" N./122°31'48" W.); Black John Slough (38°8'12" N./122°33'42" W.); Black John Slough (38°7'59" N./122°32'54" W.); Carneros Creek (38°13'52" N./122°18'49" W.); Colma Creek (37°36'5" N./122°25'59" W.); Coyote Creek (37°52'45" N./122°31'31" W.); Coyote Creek (37°27'17" N./121°55'36" W.); Coyote Creek, unnamed waterway (37°27'56" N./121°55'40" W.); Coyote Creek, unnamed waterway (37°26'23" N./121°57'29" W.); Coyote Creek, unnamed waterway (37°27'15" N./121°56'12" W.); Coyote Hills Slough (37°34'26" N./122°3'36" W.); Deverton Creek (38°13'38" N./121°53'47" W.); Gallinas Creek (38°0'50" N./122°32'24" W.); Gallinas Creek, South Fork (38°0'4" N./122°32'9" W.); Green Valley Creek (38°10'10" N./122°7'31" W.); Hastings Slough (38°1'30" N./122°3'35" W.); Huichica Creek, unnamed tributary (38°12'36" N./122°21'35" W.); Mt. Eden Creek (37°37'6" N./122°7'23" W.); Mud Slough, unnamed waterway (37°29'48" N./121°57'14" W.); Mud Slough, unnamed waterway (37°28'48" N./121°57'33" W.); Newark Slough (37°31'36" N./122°3'24" W.); Newark Slough, unnamed waterway (37°31'31" N./122°4'7" W.); Novato Creek (38°5'50" N./122°33'52" W.); Petaluma River (38°14'53" N./122°38'17" W.); Petaluma River, unnamed tributary (38°12'36" N./122°34'23" W.); Railroad Slough (38°13'30" N./121°30'46" W.); Richardson Bay, unnamed tributary (37°54'2" N./122°31'36" W.); San Antonio Creek, unnamed tributary (38°9'45" N./122°34'1" W.); San Clemente Creek (37°55'12" N./122°30'25" W.); San Francisco Bay shoreline (37°40'44" N./122°10'38" W.); San Franciscoquito Creek (37°27'10" N./122°7'40" W.); San Pablo Bay shoreline (38°24'4" N./122°15'44" W.); San Pablo Creek (37°58'6" N./122°22'42" W.); San Rafael Creek (37°58'5" N./122°31'35" W.); Seal Slough (37°34'9" N./122°17'30" W.); Suisun Marsh (38°22'28" N./121°57'55" W.); Suisun Marsh (38°25'0" N./121°58'39" W.); Suisun Marsh (38°24'2" N./121°56'16" W.); Suisun Marsh (38°23'0" N./121°55'18" W.); Suisun Marsh, Grizzly Bay shoreline (38°5'33" N./122°9'35" W.); Suisun Marsh, Grizzly Bay shoreline (38°8'49" N./121°58'54" W.); Suisun Marsh, Grizzly Bay shoreline (38°8'19" N./121°59'31" W.); Suisun Marsh, Grizzly Bay shoreline (38°8'6" N./121°59'33" W.); Tolay Creek (38°49'42" N./122°26'49" W.); Tolay Creek (38°9'0" N./122°26'49" W.); Walnut Creek (38°9'16" N./122°3'41" W.); Wildcat Creek (37°57'26" N./122°22'45" W.).

(ii) Humboldt Bay, California. All tidally influenced areas of Humboldt Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide end point in: Elk River (40°43'45" N./124°11'15" W.); Elk River (40°45'9" N./124°10'57" W.); Elk River (40°45'7" N./124°10'58" W.); Eureka Slough (40°48'14" N./124°7'15" W.); Eureka Slough (40°48'18" N./124°8'29" W.); Eureka Slough (40°48'14" N./124°8'22" W.); Eureka Slough (40°48'9" N./124°8'14" W.); Freshwater Creek (40°46'43" N./124°14'48" W.); Freshwater Slough (40°47'18" N./124°6'54" W.); Freshwater Slough (40°47'10" N./124°6'15" W.); Freshwater Slough (40°46'3" N./124°6'33" W.); Gannon Slough (40°50'48" N./124°18'45" W.)
124°15′ W.); Gannon Slough (40°56′37″ N./124°45′3″ W.); Jacoby Creek (40°56′22″ N./124°41′6″ W.); Jacoby Slough (40°56′25″ N./124°45′6″ W.); Liscom Slough (40°52′35″ N./124°8′14″ W.); Mad River Slough (40°53′14″ N./124°8′9″ W.); Mad River Slough (40°51′54″ N./124°8′52″ W.); McNab Slough (40°51′39″ N./124°6′2″ W.); Rocky Gulch/Washington Gulch (40°49′52″ N./124°4′58″ W.); Salmon Creek (40°41′12″ N./124°13′10″ W.); Unnamed Slough (40°40′36″ N./124°15′45″ W.); White Slough (40°41′56″ N./124°12′18″ W.).

(iii) Coos Bay, Oregon. All tidally influenced areas of Coos Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint: Boone Creek (43°16′31″ N./124°9′26″ W.); Catching Creek (43°16′31″ N./124°9′11″ W.); Coalbank Slough (43°21′10″ N./124°13′17″ W.); Coos River, South Fork (43°22′32″ N./123°59′34″ W.); Coos River, Middle Fork (43°16′33″ N./124°14′52″ W.); Daniels Creek (43°21′10″ N./124°5′29″ W.); Davis Creek (43°17′29″ N./124°14′30″ W.); Day Creek (43°18′59″ N./124°18′24″ W.); Delmar Creek (43°15′24″ N./124°13′52″ W.); Deton Creek (43°24′15″ N./124°3′59″ W.); Elliot Creek (43°17′45″ N./124°17′45″ W.); Goat Creek (43°15′42″ N./124°12′58″ W.); Haynes Inlet (43°27′56″ N./124°11′22″ W.); Hayward Creek (43°19′7″ N./124°19′59″ W.); Joe Ney Slough (43°29′12″ N./124°17′39″ W.); John B Creek (43°16′59″ N./124°16′27″ W.); Kentuck Slough (43°25′19″ N./124°11′19″ W.); Larson Slough (43°27′43″ N./124°11′38″ W.); Lillian Creek (43°21′41″ N./124°8′41″ W.); Mart Davis Creek (43°22′58″ N./124°5′38″ W.); Matson Creek (43°18′27″ N./124°8′16″ W.); Millicoma River, East Fork (43°25′50″ N./124°11′12″ W.); Millicoma River, West Fork (43°25′48″ N./124°2′50″ W.); Noble Creek (43°15′16″ N./124°12′54″ W.); North Slough (43°29′26″ N./124°13′14″ W.); Pony Creek (43°24′6″ N./124°13′55″ W.); Seelander Creek (43°17′15″ N./124°42′58″ W.); Shinglehouse Slough (43°19′4″ N./124°13′14″ W.); Stock Slough (43°19′58″ N./124°8′22″ W.); Talbot Creek (43°17′11″ N./124°17′49″ W.); Theodore Johnson Creek (43°16′16″ N./124°19′22″ W.); Unnamed Creek (43°17′24″ N./124°17′56″ W.); Unnamed Creek (43°13′27″ N./124°7′53″ W.); Unnamed Creek (43°21′12″ N./124°9′17″ W.); Vogel Creek (43°22′10″ N./124°8′49″ W.); Wasson Creek (43°16′3″ N./124°19′23″ W.); Willanch Slough (43°24′5″ N./124°11′27″ W.); Wilson Creek (43°16′51″ N./124°9′22″ W.); Winchester Creek (43°15′49″ N./124°19′10″ W.).

(iv) Winchester Bay, Oregon. All tidally influenced areas of Winchester Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Brainerd Creek (43°44′46″ N./124°1′39″ W.); Butler Creek (43°42′50″ N./124°3′30″ W.); Edick Creek (43°37′26″ N./124°58′40″ W.); Frantz Creek (43°44′50″ N./124°5′25″ W.); Hudson Slough (43°44′56″ N./124°4′43″ W.); Joyce Creek (43°45′32″ N./124°1′49″ W.); Noel Creek (43°46′21″ N./124°6′6″ W.); Oar Creek (43°40′26″ N./124°3′11″ W.); Otter Creek (43°43′28″ N./124°0′4″ W.); Providence Creek (43°43′13″ N./124°7′44″ W.); Scholfield Creek (43°40′36″ N./124°5′38″ W.); Silver Creek (43°40′37″ N./124°9′21″ W.); Smith River (43°47′48″ N./123°5′33″ W.); Smith River, North Fork (43°48′17″ N./123°5′59″ W.); Umpqua River (43°43′ N./124°48′32″ W.); Unnamed Creek (43°40′06″ N./124°10′44″ W.); Unnamed Creek (43°40′14″ N./124°9′26″ W.); Winchester Creek (43°40′20″ N./124°8′49″ W.).

(v) Yaquina Bay, Oregon. All tidally influenced areas of Yaquina Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Babcock Creek (44°33′33″ N./123°5′42″ W.); Big Elk Creek (44°35′23″ N./123°5′43″ W.); Boone Slough (44°35′5′ N./123°57′50″ W.); Depot Creek (44°38′30″ N./123°5′64″ W.); Fliesher Slough (44°34′0″ N./123°5′33″ W.); Johnson Slough (44°34′60″ N./123°5′10″ W.); King Slough (44°35′35″ N./124°1′55″ W.); McCaffery Slough (44°35′56″ N./124°1′10″ W.); Mill Creek (44°35′ N./123°5′37″ W.); Montgomery Creek (44°35′8″ N./123°5′61″ W.); Nute Slough (44°35′19″ N./123°5′73″ W.); Ollalla Creek (44°36′48″ N./123°5′30″ W.); Parker Slough (44°35′21″ N./124°0′50″ W.); Poole Slough (44°38′27″ N./124°0′46″ W.); Yaquina River (44°39′4″ N./123°5′12″ W.).

(vi) Nehalem Bay, Oregon. All tidally influenced areas of Yaquina Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Alder Creek (45°42′32″ N./123°5′12″ W.); Anderson Creek (45°44′25″ N./123°5′12″ W.);
N.123°52′26″ W.); Coal Creek (45°44′49″ N./123°51′57″ W.); Foley Creek (45°41′48″ N./123°50′53″ W.); Gallagher Slough (45°42′4″ N./123°52′50″ W.); Messhouse Creek (45°40″ N./123°55′32″ W.); Nehalem River (45°41′48″ N./123°49′31″ W.); Nehalem River, North Fork (45°47′11″ N./123°49′19″ W.); Unnamed Creek (45°43′35″ N./123°51′53″ W.); Unnamed Creek (45°44′53″ N./123°51′12″ W.); Unnamed Creek (45°45′6″ N./123°50′56″ W.); Unnamed Creek (45°44′11″ N./123°51′40″ W.); Unnamed Creek (45°44′7″ N./123°51′40″ W.); Unnamed Creek (45°43′44″ N./123°52′35″ W.).

(vi) Lower Columbia River estuary, Washington and Oregon. All tidally influenced areas of the lower Columbia River estuary from the mouth upstream to river kilometer 74, up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Bear Creek (46°10′0″ N./123°40′6″ W.); Big Creek (46°10′33″ N./123°35′30″ W.); Blind Slough/Gnat Creek (46°10′47″ N./123°31′45″ W.); Chinook River (46°18′14″ N./123°58′1″ W.); Deep Creek (46°19′3″ N./123°42′23″ W.); Driscoll Slough (46°35″ N./123°23′44″ W.); Ferris Creek (46°10′5″ N./123°39′8″ W.); Grays River (46°21′34″ N./123°35′5″ W.); Hunt Creek (46°11′46″ N./123°26′30″ W.); Jim Crow Creek (46°16′19″ N./123°33′26″ W.); John Day River (46°9′13″ N./123°43′16″ W.); John Day River (46°9′10″ N./123°43′27″ W.); Klaskianine River (46°5′33″ N./123°44′52″ W.); Lewis and Clark River (46°5′32″ N./123°51′4″ W.); Marys Creek (46°10′12″ N./123°40′17″ W.); Seal Slough (46°19′20″ N./123°40′15″ W.); Sisson Creek (46°18′25″ N./123°43′46″ W.); Skamokaw River (46°19′11″ N./123°27′20″ W.); Skippanon River (46°3′31″ N./123°55′34″ W.); Wallacut River (46°19′28″ N./123°59′11″ W.); Wallowaskee River (46°7″ N./123°46′25″ W.); Westport Slough/Clatskanie River (46°8′4″ N./123°13′31″ W.); Youngs River (46°41′1″ N./123°47′9″ W.).

(viii) Willapa Bay, Washington. All tidally influenced areas of Willapa Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Bear River (46°26′5″ N./123°56′8″ W.); Bone River (46°39′29″ N./123°54′2″ W.); Cedar River (46°45′37″ N./123°0′3″ W.); Naselle River (46°22′32″ N./123°49′19″ W.); Middle Nemah River (46°28′42″ N./123°51′13″ W.); North Nemah River (46°30′36″ N./123°52′27″ W.); South Nemah River (46°28′37″ N./123°51′15″ W.); Niwaiakum River (46°36′39″ N./123°53′34″ W.); North River (46°48′51″ N./123°50′54″ W.); Palix River, Middle Fork (46°35′46″ N./123°52′29″ W.); Palix River, North Fork (46°36′10″ N./123°52′26″ W.); Palix River, South Fork (46°34′30″ N./123°53′42″ W.); Stuart Slough (46°41′9″ N./123°52′16″ W.); Willapa River (46°38′50″ N./123°38′50″ W.).

(ix) Grays Harbor, Washington. All tidally influenced areas of Grays Harbor up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Andrews Creek (46°49′23″ N./124°1′23″ W.); Beaver Creek (46°52′40″ N./123°58′53″ W.); Campbell Creek (46°56′9″ N./123°53′12″ W.); Campbell Slough (47°2′45″ N./124°3′40″ W.); Chapin Creek (46°56′16″ N./123°52′30″ W.); Charle- ley Creek (46°56′55″ N./123°49′53″ W.); Chehalis River (46°58′16″ N./123°35′38″ W.); Chonols Creek (47°2′36″ N./124°0′54″ W.); Elk River (46°50′8″ N./123°59′8″ W.); Gillis Slough (47°2′34″ N./124°2′29″ W.); Grass Creek (47°1′11″ N./124°0′40″ W.); Hoquiam Creek (47°3′33″ N./123°55′34″ W.); Hoquiam River, East Fork (47°37′ N./123°51′25″ W.); Humptrull River (47°5′42″ N./124°3′34″ W.); Indian Creek (46°55′35″ N./123°53′47″ W.); Jessie Slough (47°3′23″ N./124°3′30″ W.); Johns River (46°52′28″ N./123°57′2″ W.); Newskah Creek (46°56′20″ N./123°50′58″ W.); O’Leary Creek (46°54′1″ N./123°57′24″ W.); Stafford Creek (46°55′31″ N./123°54′28″ W.); Wishkah River (47°2′39″ N./123°47′20″ W.); Wynoochee River (46°58′19″ N./123°36′57″ W.).

(b) Primary constituent elements. The primary constituent elements essential for the conservation of the Southern DPS of green sturgeon are:

(1) For freshwater riverine systems:

(i) Food resources. Abundant prey items for larval, juvenile, subadult, and adult life stages.

(ii) Substrate type or size (i.e., structural features of substrates). Substrates suitable for egg deposition and development (e.g., bedrock sills and shelves, cobble and gravel, or hard clean sand, with interstices or irregular surfaces to "collect" eggs and provide protection from predators, and free of excessive...
silt and debris that could smother eggs during incubation), larval development (e.g., substrates with interstices or voids providing refuge from predators and from high flow conditions), and subadults and adults (e.g., substrates for holding and spawning).

(iii) Water flow. A flow regime (i.e., the magnitude, frequency, duration, seasonality, and rate-of-change of fresh water discharge over time) necessary for normal behavior, growth, and survival of all life stages.

(iv) Water quality. Water quality, including temperature, salinity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages.

(v) Migratory corridor. A migratory pathway necessary for the safe and timely passage of Southern DPS fish within riverine and estuarine habitats.

(vi) Depth. A diversity of depths necessary for shelter, foraging, and migration of juvenile, subadult, and adult life stages.

(vii) Sediment quality. Sediment quality (i.e., chemical characteristics) necessary for normal behavior, growth, and viability of all life stages.

(3) For nearshore coastal marine areas:

(i) Migratory corridor. A migratory pathway necessary for the safe and timely passage of Southern DPS fish within marine and between estuarine and marine habitats.

(ii) Water quality. Nearshore marine waters with adequate dissolved oxygen levels and acceptably low levels of contaminants (e.g., pesticides, organochlorines, elevated levels of heavy metals) that may disrupt the normal behavior, growth, and viability of subadult and adult green sturgeon.

(iii) Food resources. Abundant prey items for subadults and adults, which may include benthic invertebrates and fishes.

(c) Sites owned or controlled by the Department of Defense. Critical habitat does not include the following areas owned or controlled by the Department of Defense, or designated for its use, in the States of California, Oregon, and Washington:

(1) Mare Island U.S. Army Reserve Center, San Pablo Bay, CA;

(2) Strait of Juan de Fuca naval air-to-surface weapon range, restricted area, WA;

(3) Strait of Juan de Fuca and Whidbey Island naval restricted area, WA;

(4) Admiralty Inlet naval restricted area, Strait of Juan de Fuca, WA; and

(5) Navy 3 operating area, Strait of Juan de Fuca, WA.

(d) Indian lands. Critical habitat does not include any Indian lands of the following Federally-recognized Tribes in the States of California, Oregon, and Washington:

(1) Cachil DeHe Band of Wintun Indians of the Colusa Indian Community, California;

(2) Cher-Ae Heights Trinidad Rancheria, California;

(3) Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw, Oregon;
(4) Coquille Indian Tribe, Oregon;
(5) Hoh Tribe, Washington;
(6) Jamestown S’Klallam Tribe, Washington;
(7) Lower Elwha Tribe, Washington;
(8) Makah Tribe, Washington;
(9) Quileute Tribe, Washington;
(10) Quinault Tribe, Washington;
(11) Shoalwater Bay Tribe, Washington;
(12) Wiyot Tribe, California; and
(13) Yurok Tribe, California.
(e) Overview maps of final critical habitat for the Southern DPS of green sturgeon follow:
§ 226.219

Final Critical Habitat for the Southern DPS of Green Sturgeon

Legend:
- Cities/Towns
- State Boundaries
- Designated Riverine, Estuarine, and Marsh Areas
- Designated Coastal Marine Areas (Offshore to 50 Fathoms Depth)
Final Critical Habitat for the Southern DPS of Green Sturgeon

Department of Defense Sites Not Designated

[Strait of Juan de Fuca and Whidbey Island Naval Restricted Areas 1 and 2]

[Admiralty Inlet Naval Restricted Area]

[74 FR 52345, Oct. 9, 2009]
Major Steller sea lion rookery sites are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

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<th>State/region/site</th>
<th>Latitude</th>
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<td>Western Aleutians:</td>
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<td>Outer 1, 3</td>
<td>59 20.5N</td>
<td>150 23.0W</td>
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<td><strong>Oregon:</strong></td>
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<td>Rogue Reef:</td>
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<td>Seal Rock</td>
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<td>124 35.4W</td>
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</table>

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National Marine Fisheries Service/NOAA, Commerce  Pt. 226, Table 2

<table>
<thead>
<tr>
<th>State/region/site</th>
<th>Boundaries to—</th>
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<td>Ano Nuevo I.</td>
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<td>123 00.1W</td>
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<td>40 26.0N</td>
<td>124 24.0W</td>
<td>40 26.0N</td>
<td>124 24.0W</td>
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</tbody>
</table>

1 Includes an associated 20 NM aquatic zone.
2 Associated 20 NM aquatic zone lies entirely within one of the three special foraging areas.

[58 FR 45278, Aug. 27, 1993]

Table 2 to Part 226—Major Stellar Sea Lion Haulout Sites in Alaska

Major Steller sea lion haulout sites in Alaska are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the basepoint.

<table>
<thead>
<tr>
<th>State/region/site</th>
<th>Boundaries to—</th>
<th></th>
<th></th>
<th></th>
<th></th>
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<tr>
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<td>Latitude</td>
<td>Longitude</td>
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<tr>
<td>Western Aleutians:</td>
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<td></td>
<td></td>
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<tr>
<td>Atka I.</td>
<td>52 45.0N</td>
<td>173 56.5E</td>
<td>52 46.5N</td>
<td>173 51.5E</td>
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<tr>
<td>Shemya I.</td>
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<td>174 53.5W</td>
<td>52 24.5N</td>
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<td>Central Aleutians:</td>
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<td>Amatignak I.</td>
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<td>179 08.0E</td>
<td>52 06.0N</td>
<td>172 57.0W</td>
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<tr>
<td>Amakta I. &amp; Rocks</td>
<td>52 31.5N</td>
<td>171 16.5W</td>
<td>52 26.5N</td>
<td>171 16.5W</td>
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<td>Anagalsk I.</td>
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<td>North Cape Rocks</td>
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<td>177 09.0E</td>
<td>51 49.0N</td>
<td>177 20.0E</td>
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<td>South Rocks</td>
<td>52 19.5N</td>
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<td>Uliaga I.</td>
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<td>169 46.0W</td>
<td></td>
</tr>
<tr>
<td>Uralis &amp; Dinkum</td>
<td>51 34.0N</td>
<td>179 04.0W</td>
<td>51 34.5N</td>
<td>179 03.0W</td>
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<tr>
<td>Eastern Aleutians:</td>
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<td></td>
<td></td>
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<tr>
<td>Akutan I./Reef-Lava</td>
<td>54 10.5N</td>
<td>166 04.5W</td>
<td>54 07.5N</td>
<td>166 06.5W</td>
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<td>Amak I.</td>
<td>55 24.0N</td>
<td>163 07.0W</td>
<td>55 26.0N</td>
<td>163 10.0W</td>
<td></td>
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<tr>
<td>Cape Sedanka &amp; Is-</td>
<td>53 50.5N</td>
<td>166 05.0W</td>
<td>55 26.0N</td>
<td>163 10.0W</td>
<td></td>
</tr>
<tr>
<td>Old Man Rocks</td>
<td>53 17.5N</td>
<td>167 51.5W</td>
<td>53 15.0N</td>
<td>167 50.0W</td>
<td></td>
</tr>
<tr>
<td>Polnovoi Rock</td>
<td>53 16.0N</td>
<td>167 50.0W</td>
<td>53 16.0N</td>
<td>167 50.0W</td>
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<tr>
<td>Tanginak I.</td>
<td>54 13.0N</td>
<td>165 19.5W</td>
<td>54 13.0N</td>
<td>165 19.5W</td>
<td></td>
</tr>
</tbody>
</table>

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### Southeast Alaska:

- **Cape Ommaney**
  - Latitude: 56° 10.5' N
  - Longitude: 134° 42.5' W

- **Cape Addington**
  - Latitude: 55° 26.5' N
  - Longitude: 133° 49.5' W

### Central Gulf of Alaska:

- **Cape Newenham**
  - Latitude: 58° 39.0' N
  - Longitude: 162° 10.5' W

- **Hall I.**
  - Latitude: 60° 37.0' N
  - Longitude: 173° 00.0' W

- **Round I.**
  - Latitude: 58° 36.0' N
  - Longitude: 159° 58.0' W

- **St. Paul I.**
  - Latitude: 57° 15.0' N
  - Longitude: 170° 06.5' W

- **St. George I.**
  - Latitude: 56° 33.5' N
  - Longitude: 169° 40.0' W

- **Dalnoi Point**
  - Latitude: 56° 36.0' N
  - Longitude: 169° 46.0' W

- **St. Lawrence I.**
  - Latitude: 64° 04.0' N
  - Longitude: 168° 51.0' W

### Western Gulf of Alaska:

- **Bird I.**
  - Latitude: 54° 40.5' N
  - Longitude: 163° 18.0' W

- **Castle Rock**
  - Latitude: 55° 17.0' N
  - Longitude: 159° 30.0' W

- **Caton I.**
  - Latitude: 54° 23.5' N
  - Longitude: 162° 25.5' W

- **Jude I.**
  - Latitude: 55° 16.0' N
  - Longitude: 161° 06.0' W

- **Lighthouse Rocks**
  - Latitude: 55° 47.5' N
  - Longitude: 157° 24.0' W

- **Nagai I.**
  - Latitude: 54° 52.5' N
  - Longitude: 160° 14.0' W

- **Nagai Rocks**
  - Latitude: 55° 50.0' N
  - Longitude: 155° 46.0' W

- **Sea Lion Rocks (Unga)**
  - Latitude: 55° 04.5' N
  - Longitude: 160° 31.0' W

- **Middleton I.**
  - Latitude: 55° 40.0' N
  - Longitude: 162° 43.5' W

### Bering Sea:

- **The Needle**
  - Latitude: 55° 04.5' N
  - Longitude: 160° 31.0' W

### Central Gulf of Alaska:

- **Cape Barnabas**
  - Latitude: 57° 10.0' N
  - Longitude: 152° 55.0' W

- **Cape Chiniak**
  - Latitude: 57° 35.0' N
  - Longitude: 152° 09.0' W

- **Cape Gull**
  - Latitude: 58° 13.5' N
  - Longitude: 154° 09.5' W

- **Cape Hikoll**
  - Latitude: 57° 17.0' N
  - Longitude: 154° 47.5' W

- **Cape Kula**
  - Latitude: 56° 08.0' N
  - Longitude: 154° 12.5' W

- **Cape Sitkinak**
  - Latitude: 56° 32.0' N
  - Longitude: 153° 52.0' W

- **Cape Ugat**
  - Latitude: 57° 52.0' N
  - Longitude: 153° 51.0' W

- **Gore Point**
  - Latitude: 59° 12.0' N
  - Longitude: 150° 58.0' W

- **Gull Point**
  - Latitude: 57° 21.5' N
  - Longitude: 152° 36.5' W

- **Latak Rocks**
  - Latitude: 58° 42.0' N
  - Longitude: 152° 29.5' W

- **Long I.**
  - Latitude: 57° 45.5' N
  - Longitude: 152° 16.0' W

- **Nagahut Rocks**
  - Latitude: 59° 06.0' N
  - Longitude: 151° 46.0' W

- **Puale Bay**
  - Latitude: 57° 41.0' N
  - Longitude: 155° 23.0' W

- **Sea Lion Rocks (Marmot)**
  - Latitude: 58° 21.0' N
  - Longitude: 151° 48.5' W

### St. Paul I:

- **Round I.**
  - Latitude: 59° 36.0' N
  - Longitude: 152° 15.5' W

### St. George I:

- **Hall I.**
  - Latitude: 58° 48.0' N
  - Longitude: 144° 36.0' W

### St. Lawrence I:

- **Cape Fairweather**
  - Latitude: 58° 48.0' N
  - Longitude: 144° 36.0' W

- **Cape Chiniak**
  - Latitude: 58° 35.0' N
  - Longitude: 152° 09.0' W

### St. Lawrence I:

- **Cape Newenham**
  - Latitude: 58° 39.0' N
  - Longitude: 162° 10.5' W

- **Cape Tulk**
  - Latitude: 56° 03.0' N
  - Longitude: 154° 12.5' W

### Umnak I:

- **Dalnoi Point**
  - Latitude: 58° 03.0' N
  - Longitude: 154° 30.0' W

### Ushagat I:

- **Dalnoi Point**
  - Latitude: 58° 13.5' N
  - Longitude: 154° 09.5' W

- **Dalnoi Point**
  - Latitude: 58° 12.5' N
  - Longitude: 154° 10.5' W

### VerDate Mar<15>2010 11:01 Jan 05, 2011 Jkt 220227 PO 00000 Frm 00796 Fmt 8010 Sfmt 8002 Q:\50\220227.XXX ofr150 PsN: PC150
### Table 3 to Part 226—Hydrologic Units Containing Critical Habitat for Snake River Sockeye Salmon and Snake River Spring/Summer and Fall Chinook Salmon

<table>
<thead>
<tr>
<th>Hydrologic unit name</th>
<th>Hydrologic unit number</th>
<th>Sockeye salmon</th>
<th>Spring/summer chinook salmon</th>
<th>Fall chinook salmon</th>
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<td>Hells Canyon</td>
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<td>17060101</td>
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<td>Imnaha</td>
<td>17060103</td>
<td>17060102</td>
<td>17060102</td>
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<tr>
<td>Lower Snake—Asotin</td>
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<td>17060103</td>
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<td>Upper Grande Ronde</td>
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<td>17060103</td>
<td>17060103</td>
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<td>Wallowa</td>
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<td>Lower Grande Ronde</td>
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<td></td>
<td>17060106</td>
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<tr>
<td>Lower Snake—Tucannon</td>
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<td>Palouse</td>
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<td>17060108</td>
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<td>Lower Snake</td>
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<td>17060110</td>
<td></td>
<td>17060110</td>
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<tr>
<td>Upper Salmon</td>
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<td>Pahsimeroi</td>
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<td>Middle Salmon—Panther</td>
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<td>Lemhi</td>
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</tbody>
</table>

1. Includes an associated 20 NM aquatic zone.
2. Associated 20 nm aquatic zone lies entirely within one of the three special foraging areas.


### Table 4 [Reserved]
<table>
<thead>
<tr>
<th>Hydrologic</th>
<th>Hydrologic</th>
<th>Counties and tribal lands contained in hydrologic unit and within the range of ESU</th>
<th>Dams (reservoirs)</th>
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<tbody>
<tr>
<td>unit name</td>
<td>unit No.</td>
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<tr>
<td>Russian</td>
<td>18010110</td>
<td>Sonoma (CA), Mendocino (CA)—Cloverdale Rancheria; Coyote Valley Rancheria; Dry Creek Rancheria; Guidiville Rancheria; Hopland Rancheria; Lytton Rancheria; Pineville Rancheria; Stewarts Point Rancheria.</td>
<td>Warm Springs Dam (Lake Sonoma); Coyote Dam (Lake Mendocino).</td>
</tr>
<tr>
<td>Gualala-Salmon</td>
<td>18010109</td>
<td>Sonoma (CA), Mendocino (CA).</td>
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<tr>
<td>Big Navarro-Garcia</td>
<td>18010108</td>
<td>Mendocino (CA)—Manchester/Point Arena Rancheria.</td>
<td></td>
</tr>
</tbody>
</table>

1 Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

2 Tribal lands are specifically excluded from critical habitat for this ESU.

[64 FR 24061, May 5, 1999]
§ 228.1 Basis and purpose.
(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) and these regulations authorize the Assistant Administrator of the National Marine Fisheries Service, to:
(1) Impose regulations governing the taking of marine mammals incidental to commercial fishing operations;
(2) Waive the moratorium and to adopt regulations with respect to the taking and importing of animals from each species of marine mammals under the Assistant Administrator’s jurisdiction;
(3) Prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the Act refers the Assistant Administrator to section 103 (16 U.S.C. 1373). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Assistant Administrator to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)).
(b) The purpose of this part is to establish rules of practice and procedure for all hearings conducted pursuant to section 103(d) of the Act.

§ 228.2 Definitions.
(a) Party means, for the purposes of this subpart:
(1) The Assistant Administrator or the Assistant Administrator’s representative;
(2) A person who has notified the Assistant Administrator by specified dates of his or her intent to participate in the hearing pursuant to §§ 228.5 and 228.14(b).
(b) Witness means, for the purpose of this part, any person who submits written direct testimony on the proposed regulations. A person may be both a party and a witness.

§ 228.3 Scope of regulations.
The procedural regulations in this part govern the practice and procedure in hearings held under section 103(d) of the Act. These hearings will be governed by the provisions of 5 U.S.C. 556 and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy and inexpensive determination of all issues raised with respect to any waiver or regulation proposed pursuant to section 103(d) of the Act with full protection for the rights of all persons affected thereby.

§ 228.4 Notice of hearing.
(a) A notice of hearing on any proposed regulations shall be published in the Federal Register, together with the Assistant Administrator’s proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)), where applicable.
(b) The notice shall state:
(1) The nature of the hearing;
(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;
§ 228.5 Notification by interested persons.

Any person desiring to participate as a party shall notify the Assistant Administrator, by certified mail, on or before the date specified in the notice.

§ 228.6 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to §228.4, the Assistant Administrator shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

(1) Change the time and place of the hearing and adjourn the hearing;

(2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the Federal Register a final hearing agenda;

(3) Rule upon motions, requests and admissibility of direct testimony;

(4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;

(5) Modify or waive any rule (after notice) when determining that no party will be prejudiced;

(6) Receive written comments and hear oral arguments;

(7) Render a recommended decision; and

(8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or the original presiding officer’s inability to act, the powers and duties to be performed by the original presiding officer under this subpart in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Assistant Administrator.

(d) The presiding officer may upon the presiding officer’s own motion withdraw as presiding officer in a proceeding if the presiding officer deems himself or herself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer’s personal bias, malice, conflict of interest or other basis which might result in prejudice to a party, the hearing shall recess. The Assistant Administrator shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Assistant Administrator may deem appropriate in the circumstances.

§ 228.7 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later
than the dates specified in the notice of the hearing (§228.4), the final hearing agenda (§228.12), or within 15 days after the conclusion of the prehearing conference (§228.14) as the case may be. All direct testimony shall be in affidavit form and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the FEDERAL REGISTER.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness’ interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state the witness’ relationship to the party; and

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing specifies otherwise.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Assistant Administrator’s direct testimony in support of the proposed regulations and waiver, where applicable, shall be available for public inspection as specified in the notice of hearing. The Assistant Administrator may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 228.8 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

§ 228.9 Inspection and copying of documents.

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–unless the file is in the care and custody of the presiding officer, in which case the presiding officer shall notify the parties as to where and when the record may be inspected.

§ 228.10 Ex parte communications.

(a) After notice of a hearing is published in the FEDERAL REGISTER, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Assistant Administrator, Deputy Assistant Administrator, or Chief of the Marine Mammal Division, National Marine Fisheries Service, without reference to these rules of procedure, shall be deemed ex parte communications and are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the persons who are contacted. All communications shall be available for public viewing at the place(s) specified in the notice of hearing.

(c) The presiding office shall not consult any person or party on any fact in issue or on the merits of the matter unless notice and opportunity is given for all parties to participate.

§ 228.11 Prehearing conference.

(a) After an examination of all the direct testimony submitted pursuant to §228.7, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

(b) The presiding officer’s preliminary determination shall be made available at the place or places provided in the notice of the hearing (§228.4(b)(8)) at least 5 days before the prehearing conference.
§ 228.12 The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer’s preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties’ interests are adverse.

d) Only parties may participate in the hearing conference and a party may appear in person or be represented by counsel.

e) Parties who do not appear at the prehearing conference shall be bound by the conference’s determinations.

§ 228.13 Determination to cancel the hearing.

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, the presiding officer shall publish such conclusion and notice in the FEDERAL REGISTER that a hearing shall not be held and shall also publish a date for filing written comments on the proposed regulations. Written comments may include proposed findings and conclusions, arguments or briefs.

(b) A person need not be a party to submit any written comments.

c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and written comments submitted. He shall transfer to the Assistant Administrator his recommended decision, the record and a certificate stating that the record contains all the written direct testimony and comments submitted. The Assistant Administrator shall then make a final decision in accordance with these regulations (§ 228.21).

§ 228.14 Rebuttal testimony and new issues of fact in final agenda.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to § 228.4:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Assistant Administrator by certified mail of an intent to participate not later than 10 days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless that person previously notified the Assistant Administrator pursuant to § 228.5; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of § 228.7.
§ 228.15 Waiver of right to participate.
Persons who fail to notify the Assistant Administrator pursuant to §§ 228.5 and 228.14 shall be deemed to have waived their right to participate as parties in any part of the hearing.

§ 228.16 Conduct of the hearing.
(a) The hearing shall be held at the time and place fixed in the notice of the hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail: Provided, that if that change in time or place of hearing is made less than 5 days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.
(b) The presiding officer shall, at the commencement of the hearing, introduce into the record: the notice of hearing as published in the FEDERAL REGISTER; all subsequent documents published in the FEDERAL REGISTER; the draft Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments; and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevancy of such testimony.
(c) The hearing shall be publicly conducted and reported verbatim by an official reporter.
(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he or she shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling by the presiding officer on any objection shall be a part of the transcript and shall be subject to review at the same time and in the same manner as the Assistant Administrator’s final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.
(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer, if made prior to his certification of the transcript or by the Assistant Administrator if made thereafter.

§ 228.17 Direct testimony.
(a) Only direct testimony submitted by affidavit as provided in these regulations and introduced at the hearing by a witness shall be considered part of the record. Such direct testimony shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof;
(b) The witness introducing direct testimony shall:
(1) State his or her name, address and occupation;
(2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies the witness as an expert;
(3) Identify the direct testimony previously submitted in accordance with these regulations; and
(4) Submit to appropriate cross and direct examination. Cross-examination shall be by a party whose interests are adverse on the issue presented, to the witness’, if the witness is a party, or to the interests of the party who presented the witness.
(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.
(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States: Provided, that parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 228.18 Cross-examination.
(a) The presiding officer may:
§ 228.19  Oral and written arguments.

(a) The presiding officer may, in his or her discretion, provide for oral argument at the end of the hearing. Such argument, when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, the party shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state their arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 228.20  Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Assistant Administrator. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Assistant Administrator the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Assistant Administrator shall give notice thereof in the FEDERAL REGISTER, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Assistant Administrator, National Marine Fisheries Service, 1315 East–West Highway, Silver Spring, MD 20910.

(d) Within 20 days after the notice of receipt of the recommended decision
§ 228.21 Assistant Administrator’s decision.

(a) Upon receipt of the recommended decision and transcript and after the 20-day period for receiving written comments on the recommended decision has passed, the Assistant Administrator shall make a final decision on the proposed regulations and waiver, where applicable. The Assistant Administrator’s decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Assistant Administrator may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Assistant Administrator’s decision shall include:

1. A statement containing a description of the history of the proceeding;
2. Findings on the issues of fact with the reasons therefor; and
3. Rulings on issues of law.

4. The Assistant Administrator’s decision shall be published in the Federal Register. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

Subpart A—General Provisions

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229.1 Purpose and scope.
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FIGURE 1 TO PART 229—DRIFT GILLNET FINGER CONFIGURATION AND EXTENDER REQUIREMENTS

AUTHORITY: 16 U.S.C. 1361 et seq.; § 229.32(f) also issued under 16 U.S.C. 1531 et seq.

SOURCE: 60 FR 45100, Aug. 30, 1995, unless otherwise noted.

Subpart A—General Provisions

§ 229.1 Purpose and scope.

(a) The regulations in this part implement sections 101(a)(5)(E) and 118 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)(E) and 1387) that provide for exceptions for the taking of marine mammals incidental to certain commercial fishing operations from the Act’s general moratorium on the taking of marine mammals.

(b) Section 118 of the Act, rather than sections 103 and 104, governs the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean purse seine fishery, and vessels that have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery...
§ 229.2 Definitions.

In addition to the definitions contained in the Act and §216.3 of this chapter, and unless otherwise defined in this chapter, the terms in this chapter have the following meaning:

**Act** or **MMPA** means the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.).

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

**Anchored gillnet** means any gillnet gear, including an anchored float gillnet, sink gillnet or stab net, that is set anywhere in the water column and which is anchored, secured, or weighted to the bottom of the sea. Also called a set gillnet.

**Assistant Administrator** means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

**Authorization Certificate** means a document issued by the Assistant Administrator, or designee, under the authority of section 118 of the Act that authorizes the incidental, but not intentional, taking of marine mammals in Category I or II fisheries.

**Bitter end** means the end of a line that detaches from a weak link.

**Bottom portion of the line** means, for buoy lines, the portion of the line in the water column that is closest to the fishing gear.

**Breaking strength** means the highest tensile force which an object can withstand before breaking.

**Bridle** means the lines connecting a gillnet to an anchor or buoy line.

**Buoy line** means a line connecting fishing gear in the water to a buoy at the surface of the water.

**Category I fishery** means a commercial fishery determined by the Assistant Administrator to have frequent incidental mortality and serious injury of marine mammals. A commercial fishery that frequently causes mortality or serious injury of marine mammals is one that is by itself responsible for the annual removal of 50 percent or more of any stock’s potential biological removal level.

**Category II fishery** means a commercial fishery determined by the Assistant Administrator to have occasional incidental mortality and serious injury of marine mammals. A commercial fishery that occasionally causes mortality or serious injury of marine mammals is one that, collectively with other fisheries, is responsible for the annual removal of more than 10 percent of any marine mammal stock’s potential biological removal level and...
that is by itself responsible for the annual removal of between 1 and 50 percent, exclusive, of any stock’s potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is “occasional” by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next list of fisheries is published.

Category III fishery means a commercial fishery determined by the Assistant Administrator to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals. A commercial fishery that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other fisheries is responsible for the annual removal of:

1. Ten percent or less of any marine mammal stock’s potential biological removal level, or
2. More than 10 percent of any marine mammal stock’s potential biological removal level, yet that fishery by itself is responsible for the annual removal of 1 percent or less of that stock’s potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is “remote” by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area or at the discretion of the Assistant Administrator.

Commercial fishing operation means the catching, taking, or harvesting of fish from the marine environment (or other areas where marine mammals occur) that results in the sale or barter of all or part of the fish harvested. The term includes licensed commercial passenger fishing vessel (as defined in §216.3 of this chapter) activities and aquaculture activities.

Depleted species means any species or population that has been designated as depleted under the Act and is listed in §216.15 of this chapter or part 18, subpart E of this title, or any endangered or threatened species of marine mammal.

Driftnet, drift gillnet, or drift entanglement gear means a gillnet or gillnets that are unattached to the ocean bottom and not anchored, secured or weighted to the bottom, regardless of whether attached to a vessel.

Fisher or fisherman means the vessel owner or operator, the owner or operator of gear in a nonvessel fishery.

Fishing or to fish means any commercial fishing operation activity 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 trip means any time spent away from port actively engaged in commercial fishing operations. The end of a fishing trip will be the time of a fishing vessel’s return to port or the return of a fisher from tending gear in a nonvessel fishery.

Fishing vessel or vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for, fishing.
Float-line means the rope at the top of a gillnet from which the mesh portion of the net is hung.

Gillnet means fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term "gillnet" includes gillnets of all types, including but not limited to sink gillnets, other anchored gillnets (e.g., anchored float gillnets, stab, and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.

Groundline, with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

Incidental means, with respect to an act, a non-intentional or accidental act that results from, but is not the purpose of, carrying out an otherwise lawful action.

Injury means a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to, visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing gear, or signs of equilibrium imbalance. Any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body will be considered injured regardless of the absence of any wound or other evidence of an injury.

Insignificance threshold means the upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate. An insignificance threshold is estimated as 10 percent of the Potential Biological Removal level for a stock of marine mammals. If certain parameters (e.g., maximum net productivity rate or the recovery factor in the calculation of the stock's potential biological removal level) can be estimated or otherwise modified from default values, the Assistant Administrator may use a modification of the number calculated from the simple formula for the insignificance threshold. The Assistant Administrator may also use a modification of the simple formula when information is insufficient to estimate the level of mortality and serious injury that would have an insignificant effect on the affected population stock and provide a rationale for using the modification.

Interaction means coming in contact with fishing gear or catch. An interaction may be characterized by a marine mammal entangled, hooked, or otherwise trapped in fishing gear, regardless of whether injury or mortality occurs, or situations where marine mammals are preying on catch. Catch means fish or shellfish that has been hooked, entangled, snagged, trapped or otherwise captured by commercial fishing gear.

Large mesh gillnet means a gillnet constructed with a mesh size of 7 inches (17.78 cm) to 18 inches (45.72 cm).

Lead-line means the rope, weighted or otherwise, to which the bottom edge of a gillnet is attached.

List of Fisheries means the most recent final list of commercial fisheries published in the Federal Register by the Assistant Administrator, categorized according to the likelihood of incidental mortality and serious injury of marine mammals during commercial fishing operations.

Mesh size means the distance between inside knot to inside knot. Mesh size is measured as described in §648.80(f)(1) of this title.

Mid-Atlantic coastal waters means waters bounded by the line defined by the following points: The southern shoreline of Long Island, New York at 72°36'W, then due south to 33°51'N lat., thence west to the North Carolina/South Carolina border.

Minimum population estimate means an estimate of the number of animals in a stock that:
(1) Is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and
(2) Provides reasonable assurance that the stock size is equal to or greater than the estimate.

Negligible impact has the same meaning as in §216.103 of this chapter.

Net productivity rate means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

Night means any time between one half hour before sunset and one half hour after sunrise.

NMFS means the National Marine Fisheries Service.

Nonvessel fishery means a commercial fishing operation that uses fixed or other gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch, and pen fisheries.

Observer means an individual authorized by NMFS, or a designated contractor, to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data, and collect biological specimens during commercial fishing activities.

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

Potential biological removal level means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(1) The minimum population estimate of the stock;
(2) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and
(3) A recovery factor of between 0.1 and 1.0.

Qualified individual means an individual ascertained by NMFS to be reasonably able, though training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS.

Regional Fishery Management Council means a regional fishery management council established under section 302 of the Magnuson Fishery Conservation and Management Act.

Reliable report means a credible right whale sighting report based upon which a DAM zone would be triggered.

Seine means a net that fishes vertically in the water, is pulled by hand or by power, and captures fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used. In some regions, the net is typically constructed with a capture bag in the center of the net which concentrates the fish as the net is closed.

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

Sink gillnet or stab net means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Sinking line means, for both groundlines and buoy lines, line that has a specific gravity greater than or equal to 1.030, and, for groundlines only, does not float at any point in the water column.

Small mesh gillnet means a gillnet constructed with a mesh size of greater than 5 inches (12.7 cm) to less than 7 inches (17.78 cm).

Spotter plane means a plane that is deployed for the purpose of locating schools of target fish for a fishing vessel that intends to set fishing gear on them.

Stowed means traps/pots and gillnets that are unavailable for immediate use and further, all gillnets are stored in accordance with the following:

(1) All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum, and all buoys larger than 6 inches (15.24 cm) in diameter,
§ 229.3 Prohibitions.

(a) It is prohibited to take any marine mammal incidental to commercial fishing operations except as otherwise provided in part 216 of this chapter or in this part 229.

(b) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer, or attempt the same. This prohibition includes, but is not limited
to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment.

(c) It is prohibited to provide false information when registering for an Authorization Certificate, applying for renewal of the Authorization Certificate, reporting the injury or mortality of any marine mammal, or providing information to any observer.

(d) It is prohibited to tamper with or destroy observer equipment in any way.

(e) It is prohibited to retain any marine mammal incidentally taken in commercial fishing operations unless authorized by NMFS personnel, by designated contractors or an official observer, or by a scientific research permit that is in the possession of the vessel operator.

(f) It is prohibited to intentionally lethally take any marine mammal in the course of commercial fishing operations unless unnecessarily necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported in accordance with the requirements of §229.6.

(g) It is prohibited to violate any regulation in this part or any provision of section 118 of the Act.

(h) It is prohibited to fish with or possess trap/pot gear in the areas and during the times specified in §229.32(c)(2) through (c)(9) unless the trap/pot gear complies with the marking requirements, closures, modifications, and restrictions specified in §229.32(b)(2)(ii), (b)(2)(iii), and (c)(1) through (c)(9), or unless the gear is stowed as specified in §229.2.

(i) It is prohibited to fish with or possess anchored gillnet gear in the areas and during the times specified in §229.32(f)(1) and (g)(1) unless the gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in §229.32(b)(2)(i), (b)(2)(iii), (f)(2)(ii), (f)(2)(iv), (f)(2)(v), and (g)(3), or for (g)(3) unless the gear is stowed as specified in §229.2.

(j) It is prohibited to fish with or possess gillnet gear in the areas and during the times specified in §229.32(f)(2)(ii), (f)(2)(iv), (f)(2)(v), and (g)(3) unless the gear is stowed as specified in §229.2.

(k) It is prohibited to fish with or possess gillnet gear in the areas and during the times specified in §229.32(f)(1) and (g)(1) unless the gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in §229.32(b)(2)(i), (b)(2)(iii), (f)(2)(ii), (f)(2)(iv), (f)(2)(v), (g)(2), and (h)(2), or for the gear marking requirements for (h)(2) unless the gear is stowed as specified in §229.2.

(l) It is prohibited to fish with or possess shark gillnet gear (i.e. gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the areas and during the times specified in §229.32(f)(1), (g)(1) and (h)(1) unless the gear complies with the marking requirements, closures, modifications, and restrictions specified in §229.32(b)(2)(i), (b)(2)(iii), (f)(2)(ii), (f)(2)(iv), (f)(2)(v), and (g)(2), or for the gear marking requirements for (h)(2) unless the gear is stowed as specified in §229.2.

(m) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the areas and for the times specified in §229.33(a)(1), (a)(3), (a)(6), and (a)(8). This prohibition also applies to areas where pingers are required, unless the vessel owner or operator complies with the pinger provisions specified in §229.33(a)(2) through (a)(5) and (a)(7). This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in §648.81(f)(2)(ii) of this title).

(n) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear from the areas and for the times as specified in §229.34(b)(1)(i), (b)(2)(i), (b)(3)(i), or (b)(4)(i).

(o) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh or small mesh gillnet gear from the areas and for the times specified in §229.34(b)(1)(i), (b)(2)(i), (b)(3)(i), or (b)(4)(i).
§ 229.34(b) unless the gear complies with the specified gear restrictions set forth in the provisions of paragraphs (b)(1)(ii) or (iii), (b)(2)(ii) or (iii), (b)(3)(ii) or (iii), or (b)(4)(ii) or (iii) of § 229.34.

(p) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in areas where pingers are required, as specified under §§ 229.33(a)(2) through (a)(5) and (a)(7), unless the operator on board the vessel during fishing operations possesses and retains on board the vessel a valid pinger training authorization issued by NMFS as specified under § 229.33(c).

(q)— (r) [Reserved]

(s) It is prohibited to fish with, or possess on board a vessel unless stowed, or fail to remove, any gillnet gear from the areas specified in § 229.35(d) unless the gear complies with the specified restrictions set forth in § 229.35(d).

(t) It is prohibited to deploy or fish with pelagic longline gear in the Mid-Atlantic Bight unless the vessel:

(1) Complies with the placard posting requirement specified in § 229.36(c); and

(2) Complies with the gear restrictions specified in § 229.36(e).

(u) It is prohibited to deploy or fish with pelagic longline gear in the Cape Hatteras Special Research Area unless the vessel is in compliance with the observer and research requirements specified in § 229.36(d).

§ 229.4 Requirements for Category I and II fisheries.

(a) General. (1) For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of a commercial fishing operation in a Category I or II fishery, the owner or authorized representative of a fishing vessel or nonvessel fishing gear must have in possession a valid Certificate of Authorization. The owner of a fishing vessel or nonvessel fishing gear is responsible for obtaining a Certificate of Authorization.

(2) The granting and administration of Authorization Certificates under this part will be integrated and coordinated with existing fishery license, registration, or permit systems and related programs wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of Authorization Certificates is integrated into a program, NMFS will publish a notice in the FEDERAL REGISTER announcing the integrated program and summarizing how an owner or authorized representative of a fishing vessel or non-fishing vessel may register under that program or how registration will be achieved if no action is required on the part of the affected fisher. NMFS will make additional efforts to contact participants in the affected fishery via other appropriate means of notification.

(b) Registration. (1) The owner of a vessel, or for nonvessel gear fisheries, the owner of gear, who participates in a Category I or II fishery is required to be registered for a Certificate of Authorization.

(2) Unless a notice is published in the FEDERAL REGISTER announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear must register for and receive an Authorization Certificate. To register, owners must submit the following information using the format specified by NMFS:

(i) Name, address, and phone number of owner.

(ii) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted.

(iii) For a vessel fishery, vessel name, length, home port; U.S. Coast Guard documentation number or state registration number, and if applicable; state commercial vessel license number and for a nonvessel fishery, a description of the gear and state commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may actively engage during the calendar year.
(v) A certification signed and dated by the owner of an authorized representative of the owner as follows: “I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge.”

(vi) A check or money order made payable to NMFS in the amount specified in the notice of the final List of Fisheries must accompany each registration submitted to NMFS. The amount of this fee will be based on recovering the administrative costs incurred in granting an authorization. The Assistant Administrator may waive the fee requirement for good cause upon the recommendation of the Regional Director.

(3) If a notice is published in the Federal Register announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear may register by following the directions provided in that notice. If a person receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. If a fisher participating in a Category I or II fishery who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated registration program, the person shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (b)(1)(vi) of this section.

(c) Address. Unless the granting and administration of authorizations under this part 229 is integrated and coordinated with existing fishery licenses, registrations, or related programs pursuant to paragraph (a) of this section, requests for registration forms and completed registration and renewal forms should be sent to the NMFS Regional Offices as follows:

(1) Alaska Region, NMFS, P.O. Box 21668, 709 West 9th Street, Juneau, AK 99802; telephone: 907–586–7235;

(2) Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070; telephone: 206–526–4353;

(3) Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; telephone: 562–980–4001;

(4) Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; telephone: 978–281–9254; or

(5) Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 727–570–5312.

(d) Issuance. (1) For integrated fisheries, an Authorization Certificate or other proof of registration will be issued annually to each fisher registered for that fishery.

(2) For all other fisheries (i.e., nonintegrated fisheries), NMFS will issue an Authorization Certificate and, if necessary, a decal to an owner or authorized representative who:

(i) Submits a completed registration form and the required fee.

(ii) Has complied with the requirements of this section and §§229.6 and 229.7

(iii) Has submitted updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injured during the current or previous calendar year.

(3) If a person receives a renewed Authorization Certificate or a decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt.

(e) Authorization Certificate and decal requirements. (1) If a decal has been issued under the conditions specified in paragraph (e)(2) of this section, the decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition. The decal must be attached to the Authorization Certificate for nonvessel fisheries.

(2) The Authorization Certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of nonvessel fisheries, the Authorization Certificate with decal attached, or copy, must be in the possession of the person in charge of the fishing operation. The Authorization Certificate, or copy, must be made available upon request to any
§ 229.5 Requirements for Category III fisheries.

(a) General. Vessel owners and crew members of such vessels engaged only in Category III fisheries may incidentally take marine mammals without registering for or receiving an Authorization Certificate.

(b) Reporting. Vessel owners engaged in a Category III fishery must comply with the reporting requirements specified in §229.6.

(c) Disposition of marine mammals. Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury unless directed otherwise by NMFS personnel, a designated contractor, or an official observer, or authorized otherwise by a scientific research permit in the possession of the operator.

(d) Monitoring. Vessel owners engaged in a Category III fishery must comply with the observer requirements specified under §229.7.

(e) Deterrence. When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in commercial fishing operations must comply with all provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(f) Self-defense. When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of §229.6.

(g) Emergency regulations. Vessel owners engaged in a Category III fishery must comply with any applicable emergency regulations.
§ 229.6 Reporting requirements.

(a) Vessel owners or operators engaged in any commercial fishery must report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Assistant Administrator, or appropriate Regional Office, by mail or other means, such as fax or overnight mail specified by the Assistant Administrator. Reports must be sent within 48 hours after the end of each fishing trip during which the incidental mortality or injury occurred, or, for nonvessel fisheries, within 48 hours of an occurrence of an incidental mortality or injury. Reports must be submitted on a standard postage-paid form as provided by the Assistant Administrator. The vessel owner or operator must provide the following information on this form:

(1) The vessel name, and Federal, state, or tribal registration numbers of the registered vessel;
(2) The name and address of the vessel owner or operator;
(3) The name and description of the fishery, including gear type and target species; and
(4) The species and number of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence. A description of the animal(a) killed or injured must be provided if the species is unknown.

(b) Participants in nonvessel fisheries must provide all of the information in paragraph (a)(1) through (a)(4) of this section except, instead of providing the vessel name and vessel registration number, participants in nonvessel fisheries must provide the gear permit number.

§ 229.7 Monitoring of incidental mortalities and serious injuries.

(a) Purpose. The Assistant Administrator will establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations in order to:

(1) Obtain statistically reliable estimates of incidental mortality and serious injury;
(2) Determine the reliability of reports of incidental mortality and injury under § 229.6; and
(3) Identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(b) Observer program. Pursuant to paragraph (a) of this section, the Assistant Administrator may observe Category I and II vessels as necessary. Observers may, among other tasks:

(1) Record incidental mortality and injury, and bycatch of other nontarget species;
(2) Record numbers of marine mammals sighted; and
(3) Perform other scientific investigations, which may include, but are not limited to, sampling and photographing incidental mortalities and serious injuries.

(c) Observer requirements for participants in Category I and II fisheries. (1) If requested by NMFS or by a designated contractor providing observer services to NMFS, a vessel owner/operator must take aboard an observer to accompany the vessel on fishing trips.

(2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the vessel owner/operator must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

(3) NMFS, or a designated contractor providing observer services to NMFS, may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(4) The vessel owner/operator and crew must cooperate with the observer in the performance of the observer’s duties including:

(i) Providing, at no cost to the observer, the United States government, or the designated observer provider, food, toilet, bathing, sleeping accommodations, and other amenities that are equivalent to those provided to the crew, unless other arrangements are
 approved in advance by the Regional Administrator;

(ii) Allowing for the embarking and debarking of the observer as specified by NMFS personnel or designated contractors. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours if feasible, as weather and sea conditions allow, and with the agreement of the observer involved;

(iii) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;

(iv) Allowing the observer access to communications equipment and navigation equipment, when available on the vessel, as necessary to perform observer duties;

(v) Providing true vessel locations by latitude and longitude, accurate to the minute, or by loran coordinates, upon request by the observer;

(vi) Sampling, retaining, and storing of marine mammal specimens, other protected species specimens, or target or non-target catch specimens, upon request by NMFS personnel, designated contractors, or the observer, if adequate facilities are available and if feasible;

(vii) Notifying the observer in a timely fashion of when all commercial fishing operations are to begin and end;

(viii) Not impairing or in any way interfering with the research or observations being carried out; and

(ix) Complying with other guidelines or regulations that NMFS may develop to ensure the effective deployment and use of observers.

(5) Marine mammals or other specimens identified in paragraph (c)(4)(vi) of this section, which are readily accessible to crew members, must be brought on board the vessel and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the observer. Specimens so collected and retained must, upon request by NMFS personnel, designated contractors, or the observer, be retained in cold storage on board the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the observer, retrieved by authorized personnel of NMFS, or released by the observer for return to the ocean. These biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(d) Observer requirements for participants in Category III fisheries. (1) The Assistant Administrator may place observers on Category III vessels if the Assistant Administrator:

(i) Believes that the incidental mortality and serious injury of marine mammals from such fishery may be contributing to the immediate and significant adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(ii) Has complied with §229.9(a)(3)(i) and (ii); or

(iii) Has the consent of the vessel owner.

(2) If an observer is placed on a Category III vessel, the vessel owner and/or operator must comply with the requirements of §229.7(c).

(e) Alternative observer program. The Assistant Administrator may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.


§229.8 Publication of List of Fisheries.

(a) The Assistant Administrator will publish in the Federal Register a proposed revised List of Fisheries on or about July 1 of each year for the purpose of receiving public comment. Each year, on or about October 1, the Assistant Administrator will publish a final revised List of Fisheries, which will become effective January 1 of the next calendar year.

(b) The proposed and final revised List of Fisheries will:

(1) Categorize each commercial fishery based on the definitions of Category I, II, and III fisheries set forth in §229.2; and
§ 229.9 Emergency regulations.

(a) If the Assistant Administrator finds that the incidental mortality or serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Assistant Administrator will:

(1) In the case of a stock or species for which a take reduction plan is in effect—
   (i) Prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and
   (ii) Approve and implement, on an expedited basis, any amendments to such plan that are recommended by the Take Reduction Team to address such adverse impact;

(2) In the case of a stock or species for which a take reduction plan is being developed—
   (i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and
   (ii) Approve and implement, on an expedited basis, such plan, which will provide methods to address such adverse impact if still necessary;

(3) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a Category III fishery that the Assistant Administrator believes may be contributing to such adverse impact,
   (i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;
   (ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established and if recategorization of the fishery is warranted; and
   (iii) Where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act (16 U.S.C. 1531 et seq.), place observers on vessels in a Category III fishery if the Assistant Administrator has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(b) Prior to taking any action under §229.9(a)(1) through (3), the Assistant Administrator will consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, state fishery managers, and the appropriate take reduction team, if established.

(c) Any emergency regulations issued under this section:
   (1) Shall be published in the Federal Register and will remain in effect for no more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier, except as provided in paragraph (d) of this section; and

(2) May be terminated by notification in the Federal Register at an earlier date if the Assistant Administrator determines that the reasons for the emergency regulations no longer exist.

(d) If the Assistant Administrator finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Assistant Administrator may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency regulations no longer exist, whichever is earlier.

§ 229.10 Penalties.

(a) Except as provided for in paragraphs (b) and (c) of this section, any person who violates any regulation under this part or any provision of section 118 of the MMPA shall be subject to all penalties set forth in the Act.

(b) The owner or master of a vessel that fails to comply with a take reduction plan shall be subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(c) The owner of a vessel engaged in a Category I or II fishery who fails to ensure that a decal, or other physical evidence of such authorization issued by NMFS, is displayed on the vessel or is in possession of the operator of the vessel shall be subject to a penalty of not more than $100.

(d) Failure to comply with take reduction plans or emergency regulations issued under this part may result in suspension or revocation of an Authorization Certificate, and failure to comply with a take reduction plan or emergency regulation is also subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(e) For fishers operating in Category I or II fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip, or failure to comply with requirements to carry an observer, will subject such persons to the penalties of sections 105 and 107 and may subject them to the penalties of section 106 of the Act, which will result in suspension, revocation, or denial of an Authorization Certificate until such requirements have been fulfilled.

(f) For fishers operating in Category III fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip will subject such persons to the penalties of sections 105 and 107, and may subject them to section 106 of the Act.

§ 229.11 Confidential fisheries data.

(a) Proprietary information collected under this part is confidential and includes information, the unauthorized disclosure of which could be prejudicial or harmful, such as information or data that are identifiable with an individual fisher. Proprietary information obtained under part 229 will not be disclosed, in accordance with NOAA Administrative Order 216–100, except:

(1) To Federal employees whose duties require access to such information;

(2) To state employees under an agreement with NMFS that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(5) To other individuals or organizations authorized by the Assistant Administrator to analyze this information, so long as the confidentiality of individual fishers is not revealed.

(b) Information will be made available to the public in aggregate, summary, or other such form that does not disclose the identity or business of any person in accordance with NOAA Administrative Order 216–100. Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.


§229.12 Consultation with the Secretary of the Interior.

The Assistant Administrator will consult with the Secretary of the Interior prior to taking actions or making determinations under this part that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under the Act.

Subpart B—Takes of Endangered and Threatened Marine Mammals

§229.20 Issuance of permits.

(a) Determinations. During a period of up to 3 consecutive years, NMFS will allow the incidental, but not the intentional, taking by persons using vessels of the United States or foreign vessels that have valid fishing permits issued by the Assistant Administrator in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 if the Assistant Administrator determines that:

1. The incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;
2. A recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and
3. Where required under regulations in subpart A of this part:
   (i) A monitoring program has been established under §229.7;
   (ii) Vessels engaged in such fisheries are registered in accordance with §229.4; and
   (iii) A take reduction plan has been developed or is being developed for such species or stock in accordance with regulations at subpart C of this part.

(b) Procedures for making determinations. In making any of the determinations listed in paragraph (a) of this section, the Assistant Administrator will publish an announcement in the Federal Register of fisheries having takes of marine mammals listed under the Endangered Species Act, including a summary of available information regarding the fisheries interactions with listed species. Any interested party may, within 45 days of such publication, submit to the Assistant Administrator written data or views with respect to the listed fisheries. As soon as practicable after the end of the 45 days following publication, NMFS will publish in the Federal Register a list of the fisheries for which the determinations listed in paragraph (a) of this section have been made. This publication will set forth a summary of the information used to make the determinations.

(c) Issuance of authorization. The Assistant Administrator will issue appropriate permits for vessels in fisheries that are required to register under §229.4 and for which determinations under the procedures of paragraph (b) of this section can be made.

(d) Category III fisheries. Vessel owners engaged only in Category III fisheries for which determinations are made under the procedures of paragraph (b) of this section will not be subject to the penalties of this Act for the incidental taking of marine mammals to which this subpart applies, as long as the vessel owner or operator of such vessel reports any incidental mortality or injury of such marine mammals in accordance with the requirements of §229.6.
(e) Emergency authority. During the course of the commercial fishing season, if the Assistant Administrator determines that the level of incidental mortality or serious injury from commercial fisheries for which such a determination was made under this section has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Assistant Administrator will use the emergency authority of §229.9 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(f) Suspension, revocation, modification and amendment. The Assistant Administrator may, pursuant to the provisions of 15 CFR part 904, suspend or revoke a permit granted under this section if the Assistant Administrator determines that the conditions or limitations set forth in such permit are not being complied with. After notification and opportunity for public comment, the list of fisheries published in accordance with paragraph (b) of this section whenever the Assistant Administrator determines there has been a significant change in the information or conditions used to determine such a list.

(g) Southern sea otters. This subpart does not apply to the taking of Southern (California) sea otters.

Subpart C—Take Reduction Plan Regulations and Emergency Regulations

§ 229.30 Basis.

Section 118(f)(9) of the Act authorizes the Director, NMFS, to impose regulations governing commercial fishing operations, when necessary, to implement a take reduction plan in order to protect or restore a marine mammal stock or species covered by such a plan.

§ 229.31 Pacific Offshore Cetacean Take Reduction Plan.

(a) Purpose and scope. The purpose of this section is to implement the Pacific Offshore Cetacean Take Reduction Plan. Paragraphs (b) through (d) of this section apply to all U.S. drift gillnet fishing vessels operating in waters seaward of the coast of California or Oregon, including adjacent high seas waters. For purposes of this section, the fishing season is defined as beginning May 1 and ending on January 31 of the following year.

(b) Extenders. An extender is a line that attaches a buoy (float) to a drift gillnet’s floatline. The floatline is attached to the top of the drift gillnet. All extenders (buoy lines) must be at least 6 fathoms (36 ft; 10.9 m) in length during all sets. Accordingly, all floatlines must be fished at a minimum of 36 feet (10.9 m) below the surface of the water.

(c) Pingers. (1) For the purposes of this paragraph (c), a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (±2 kHz) sound at 132 dB (±4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (±15 milliseconds), and repeating every 4 seconds (+.2 seconds); and remains operational to a water depth of at least 100 fathoms (600 ft or 182.88 m).

(2) While at sea, operators of drift gillnet vessels with gillnets onboard must carry enough pingers on the vessel to meet the requirements set forth under paragraphs (c)(3) through (6) of this section.

(3) Floatline. Pingers shall be attached within 30 ft (9.14 m) of the floatline and spaced no more than 300 ft (91.44 m) apart.

(4) Leadline. Pingers shall be attached within 36 ft (10.97 m) of the leadline and spaced no more than 300 ft (91.44 m) apart.

(5) Staggered Configuration. Pingers attached within 30 ft (9.14 m) of the floatline and within 36 ft (10.97 m) of the leadline shall be staggered such that the horizontal distance between them is no more than 150 ft (45.5 m).

(6) Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

(7) The pingers must be operational and functioning at all times during deployment.
(8) If requested, NMFS may authorize the use of pingers with specifications or pinger configurations differing from those set forth in paragraphs (c)(1) and (c)(3) of this section for limited, experimental purposes within a single fishing season.

(d) Skipper education workshops. After notification from NMFS, vessel operators must attend a skipper education workshop before commencing fishing each fishing season. For the 1997/1998 fishing season, all vessel operators must have attended one skipper education workshop by October 30, 1997. NMFS may waive the requirement to attend these workshops by notice to all vessel operators.


§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) Purpose and scope. The purpose of this section to implement the Atlantic Large Whale Take Reduction Plan to reduce incidental mortality and serious injury of fin, humpback, and right whales in specific Category I and Category II commercial fisheries from Maine through Florida. The measures identified in the Atlantic Large Whale Take Reduction Plan are also intended to benefit minke whales, which are not designated as a strategic stock, but are known to be taken incidentally in gillnet and trap/pot fisheries. The gear types affected by this plan include gillnets (e.g., anchored, drift, and shark) and traps/pots.

(2) Regulated waters. The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(3) of this section.

(3) Exempted waters. (i) The regulations in this section do not apply to waters landward of the following bridges over any embayment, harbor, or inlet in Massachusetts.

(ii) The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:30,000 scale), and as described in 33 CFR part 80 with the exception of the COLREGS lines for Casco Bay (Maine), Portsmouth Harbor (New Hampshire), Gardiners Bay and Long Island Sound (New York), and the state of Massachusetts.

(iii) Other exempted waters. The regulations in this section do not apply to waters landward of the following lines:

Maine

A line connecting the following points (Quoddy Narrows/U.S.-Canada border to Odiornes Pt., Portsmouth, New Hampshire):

44°49.67′ N. lat., 66°57.77′ W. long. (R "2", Quoddy Narrows)

44°48.64′ N. lat., 66°56.43′ W. long. (G "1" Whistle, West Quoddy Head)

44°47.36′ N. lat., 66°59.25′ W. long. (R N "2", Morton Ledge)

44°45.51′ N. lat., 67°02.87′ W. long. (R "28M" Whistle, Baileys Mistake)

44°37.70′ N. lat., 67°09.75′ W. long. (Obstruction, Southeast of Cutler)

44°27.77′ N. lat., 67°32.86′ W. long. (Freeman Rock, East of Great Wass Island)

44°25.74′ N. lat., 67°38.39′ W. long. (R "2SR" Bell, Seashore Rock, West of Great Wass Island)

44°21.66′ N. lat., 67°51.78′ W. long. (R N "2", Petit Manan Island)

44°19.08′ N. lat., 68°02.05′ W. long. (R "25" Bell, Schoodic Island)

44°13.55′ N. lat., 68°10.71′ W. long. (R "8BH" Whistle, Baker Island)

44°08.36′ N. lat., 68°14.75′ W. long. (Southern Point, Great Duck Island)

43°59.36′ N. lat., 68°37.95′ W. long. (R "2" Bell, Roaring Bull Ledge, Isle Au Haut)

43°59.83′ N. lat., 68°50.06′ W. long. (R "2A" Bell, Old Horse Ledge)

43°56.72′ N. lat., 69°04.89′ W. long. (G "5TB" Bell, Two Bush Channel)

43°50.28′ N. lat., 69°18.86′ W. long. (R "2 OM" Whistle, Old Man Ledge)

43°48.96′ N. lat., 69°31.15′ W. long. (GR C "PL", Pemaquid Ledge)

43°43.64′ N. lat., 69°37.58′ W. long. (R "2BR" Bell, Bantam Rock)

43°41.44′ N. lat., 69°45.27′ W. long. (R "20ML" Bell, Mile Ledge)

43°36.04′ N. lat., 70°03.98′ W. long. (RG N "3S", Bulwark Shoal)

43°31.94′ N. lat., 70°08.68′ W. long. (G "1", East Hue and Cry)
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43°27.63' N. lat., 70°17.48' W. long. (RW "WI" Whistle, Wood Island)

43°20.23' N. lat., 70°23.64' W. long. (RW "CP" Whistle, Cape Porpoise)

43°04.06' N. lat., 70°36.70' W. long. (R N "2MR", Murray Rock)

43°02.55' N. lat., 70°43.33' W. long. (Odiornes Pt., Portsmouth, New Hampshire)

New Hampshire
A line from 42°53.691' N. lat., 70°48.516' W. long. to 42°53.516' N. lat., 70°48.746' W. long. (Hampton Harbor)
A line from 42°59.986' N. lat., 70°44.654' W. long. to 42°59.556' N. lat., 70°44.737' W. long. (Rye Harbor)

Rhode Island
A line from 41°22.441' N. lat., 71°30.781' W. long. to 41°22.447' N. lat., 71°30.893' W. long. (Pt. Judith Pond Inlet)
A line from 41°21.310' N. lat., 71°38.300' W. long. to 41°21.300' N. lat., 71°38.330' W. long. (Ninigret Pond Inlet)
A line from 41°19.875' N. lat., 71°43.061' W. long. to 41°19.879' N. lat., 71°43.115' W. long. (Quonochontaug Pond Inlet)
A line from 41°19.660' N. lat., 71°45.750' W. long. to 41°19.660' N. lat., 71°45.780' W. long. (Weekapaug Pond Inlet)

New York
A line that follows the territorial sea baseline through Block Island Sound (Watch Hill Point, RI to Montauk Point, NY)

South Carolina
A line from 32°34.717' N. lat., 80°08.565' W. long. to 32°34.686' N. lat., 80°08.642' W. long. (Captain Sams Inlet)

(4) Sinking groundline exemption. The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking line if their groundline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m) (as shown on NOAA charts 13200 (Georges Bank and Nantucket Shoals, 1:400,000), 12300 (NY Approaches - Nantucket Shoals to Five Fathom Bank, 1:400,000), 12200 (Cape May to Cape Hatteras, 1:419,706), 11520 (Cape Hatteras to Charleston, 1:432,720), 11480 (Charleston Light to Cape Canaveral, 1:449,659) and 11460 (Cape Canaveral to Key West, 1:466,940).

(5) Net panel weak link and anchoring exemption. The anchored gillnet fisheries regulated under this section are exempt from the requirement to install weak links in the net panel and anchor each end of the net string if the floatline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m) (as shown on NOAA charts 13200 (Georges Bank and Nantucket Shoals, 1:400,000), 12300 (NY Approaches—Nantucket Shoals to Five Fathom Bank, 1:400,000), 12200 (Cape May to Cape Hatteras, 1:419,706), 11520 (Cape Hatteras to Charleston, 1:432,720), 11480 (Charleston Light to Cape Canaveral, 1:449,659) and 11460 (Cape Canaveral to Key West, 1:466,940).

(b) Gear marking requirements. (1) Specified gear consists of trap/pot gear and gillnet gear set in specified areas.

(2) Specified areas. The following areas are specified for gear marking purposes: Northern Inshore State Trap/Pot Waters, Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, Great South Channel Restricted Trap/Pot Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Southeast Gillnet Waters Area, Northeast U.S. Restricted Area, and Southeast U.S. Monitoring Area.

(1) Requirements for Shark Gillnet Gear in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area and Other Southeast Gillnet Waters—(A) Color code. Shark gillnet gear (i.e., gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area, and Other Southeast Gillnet Waters must be marked with the appropriate color code to designate gear types and areas as follows:

(1) Gear type code. Shark gillnet gear must be marked with a green marking.

(2) Area code. Shark gillnet gear set in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area,
and Other Southeast Gillnet Waters must be marked with a blue marking.

(B) Markings. All specified gear in specified areas must be marked with two color codes, one designating the gear type, the other indicating the area where the gear is set. Each color of the two-color code must be permanently marked on or along the line or lines specified below under paragraphs (b)(2)(i)(C) and (D) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(C) Buoy line markings. All buoy lines greater than 4 feet (1.22 m) long must be marked within 2 feet (0.6 m) of the top of the buoy line (closest to the surface) and midway along the length of the buoy line.

(D) Net panel markings. Each gillnet net panel must be marked along both the floatline and the leadline at least once every 100 yards (91.4 m), unless otherwise required by the Assistant Administrator under paragraph (i) of this section.

(ii) Requirements for other specified areas. Any person who owns or fishes with specified gear in the other specified areas must mark that gear in accordance with paragraphs (b)(2)(ii)(A), (b)(2)(ii)(B), and (b)(2)(ii)(C) of this section, unless otherwise required by the Assistant Administrator under paragraph (i) of this section.

(A) Color code. Specified gear must be marked with the appropriate colors to designate gear-types and areas as follows:

(1) Trap/pot gear in the Northern Inshore State Trap/Pot Waters Area, the Cape Cod Bay Restricted Area, the Stellwagen Bank/Jeffreys Ledge Restricted Area, the Great South Channel Restricted Trap/Pot Area where it overlaps with Lobster Management Area (LMA) 2 and the Outer Cape LMA (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and the Northern Nearshore Trap/Pot Waters Area must be marked with a red marking.

(2) Trap/pot gear in the Southern Nearshore Trap/Pot Waters Area must be marked with an orange marking.

(3) Trap/pot gear in the Great South Channel Restricted Trap/Pot Area where it overlaps with LMA % Overlap and LMA 3 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and the Offshore Trap/Pot Waters Area must be marked with a black marking.

(4) Anchored and drift gillnet gear in the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Silver Restricted Area, and Other Northeast Gillnet Waters Area must be marked with a green marking.

(5) Anchored and drift gillnet gear in the Mid/South Atlantic Gillnet Waters Area must be marked with a yellow marking.

(6) Gillnet gear (except gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the Southeast U.S. Restricted Area S and Other Southeast Gillnet Waters must be marked with a blue marking.

(B) Markings. All specified gear in specified areas must be marked with one color code described in paragraph (b)(2)(ii)(A) of this section (which indicates the gear type and general area where the gear is set). Each color code must be permanently affixed on or along the line or lines. Each color code must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long and be placed midway on the buoy line in the water column. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code,
Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

The line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iii) Requirements for all specified areas—(A) Surface buoy markings. Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: The owner’s motorboat registration number, the owner’s U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel’s home-port state. When marking of surface buoys is not already required by state or federal regulations, the letters and numbers used to mark the gear to identify the vessel or fishery must be at least 1 inch (2.5 cm) in height in block letters or arabic numbers in a color that contrasts with the background color of the buoy. A brochure illustrating the techniques for marking gear is available upon request from the Regional Administrator, NMFS, Northeast Region upon request.

(2) Cape Cod Bay Restricted Area—(1) Area. The Cape Cod Bay restricted area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b) unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) Area-specific gear or vessel requirements during the winter restricted period. No person or vessel may fish with or possess trap/pot gear in the Cape Cod Bay Restricted Area during the winter restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below for the winter restricted period, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) Winter restricted period. The winter restricted period for the Cape Cod Bay Restricted Area is from January 1 through May 15 of each year unless the Assistant Administrator changes this period in accordance with paragraph (i) of this section.

(B) Buoy line weak links. All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and
(1) The breaking strength of the weak links must not exceed 500 lb (226.8 kg).

(2) Weak links must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(3) Weak links must leave behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(C) Single traps and multiple-trap trawls. Single traps and three-trap trawls are prohibited. All traps must be set in either a two-trap string or in a trawl of four or more traps. A two-trap string must have no more than one buoy line.

(D) Buoy lines. All buoy lines must be composed entirely of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(E) Groundlines. All groundlines must be composed entirely of sinking line. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) Area-specific gear or vessel requirements for the other restricted period.

No person or vessel may fish with or possess trap/pot gear in the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section and the universal trap/pot gear requirements specified in paragraph (c)(1) of this section as well as the area-specific requirements listed below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) Other restricted period. The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section.

(B) Gear and vessel requirements—(i) State-water portion. No person or vessel may fish with or possess trap/pot gear in the state-water portion of the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the requirements for the Northern Inshore State Trap/Pot Waters Area listed in paragraph (c)(6) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(ii) Federal-water portion. No person or vessel may fish with or possess trap/pot gear in the Federal-water portion of the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the requirements for the Northern Nearshore Trap/Pot Waters Area in paragraph (c)(7) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(C) Great South Channel Restricted Trap/Pot Area—(i) Area. The Great South Channel Restricted Trap/Pot Area consists of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a) unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) Closure during the spring restricted period. The spring restricted period for the Great South Channel Restricted Trap/Pot Area is from April 1 through June 30 of each year unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with paragraph (i) of this section. The spring restricted period is in effect for the purposes of this provision.

(iii) Other restricted period. The other restricted period in South Channel Restricted Trap/Pot Area is from May 16 through December 31 of each year unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section.
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those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) Area-specific gear or vessel requirements for the other restricted period. The other restricted period for the Great South Channel Restricted Trap/Pot Area is July 1 through March 31, unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section. During the other restricted period, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, and the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) Offshore Trap/Pot2 Waters Area—(i) Area. The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area 3 (including the area known as the Area 2 Overlap and Area 3 Overlap as defined in the American Lobster Fishery regulations at 50 CFR 697.18, with the exception of the Great South Channel Restricted Trap/Pot Area), and extending south along the 100-fathom (600-ft or 182.9-m) depth contour from 35°30′ N. lat., south along the 300-fathom contour to 27°51′ N. lat., and then east to the eastern edge of the EEZ. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(ii) Year-round area-specific gear or vessel requirements. No person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) Buoy line weak links. All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface

2Fishermen using red crab trap/pot gear should refer to §229.32(c)(8) for the restrictions applicable to red crab trap/pot fishery.
buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

1. The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

2. The breaking strength of the weak links may not exceed 1,500 lb (680.4 kg).

3. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) Groundlines. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) Seasonal area-specific gear or vessel requirements. From September 1 to May 31, no person or vessel may fish with or possess trawl/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00′ N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, and the area-specific requirements specified in (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(5)(i)(A) and (c)(5)(i)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise this period and these requirements in accordance with paragraph (i) of this section.

(iv) Seasonal area-specific gear or vessel requirements. From November 15 to April 15, no person or vessel may fish with or possess trawl/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 32°00′ N. lat. south to 29°00′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trawl/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(5)(i)(A) and (c)(5)(i)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) Seasonal area-specific gear or vessel requirements. From December 1 to March 31, no person or vessel may fish with or possess trawl/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 29°00′ N. lat. south to 27°51′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trawl/pot gear requirements specified in (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(5)(i)(A) and (c)(5)(i)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise this period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(6) Northern Inshore State Trap/Pot Waters Area—(i) Area. The Northern Inshore State Trap/Pot Waters Area includes the state waters of Rhode Island, Massachusetts, New Hampshire, and Maine, with the exception of Cape Cod Bay Restricted Area and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) Year-round area-specific gear or vessel requirements. No person or vessel may fish with or possess trawl/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that gear complies...
with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) Buoy line weak links. All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) Groundlines. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted for this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(C) [Reserved]

(7) Northern Nearshore Trap/Pot Waters Area—(1) Area. The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations at 50 CFR 697.18), with the exception of the Great South Channel Restricted Trap/Pot Area, Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) Year-round area-specific gear or vessel requirements. No person or vessel may fish with or possess trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) Buoy line weak links. All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links must not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.
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(B) Single traps and multiple-trap trawls. Single traps are prohibited. All traps must be set in trawls of two or more traps. All trawls up to and including five traps must have no more than one buoy line.

(C) Groundlines. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(D) [Reserved]

(8) Southern Nearshore\(^3\) Trap/Pot Waters Area.—(i) Area. The Southern Nearshore Trap/Pot Waters Area includes all state and Federal waters which fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and inside the 100-fathom (600-ft or 182.9-m) depth contour line from 35°30′ N lat. south to 27°51′ N lat. and extending inshore to the shoreline or exemption line, with the exception of those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) Year-round area-specific gear or vessel requirements. No person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that is east of a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed here, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(A) Buoy line weak links. All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) Groundlines. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) Seasonal area-specific gear or vessel requirements. From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by 32°00′ N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1)(i)(A) and (c)(8)(i)(B) of this section, or unless the gear is

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\(^3\)Fishermen using red crab trap/pot gear should refer to §229.32(c)(3) for the restrictions applicable to red crab trap/pot fishery.
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stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(iv) Seasonal area-specific gear or vessel requirements. From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 32°00′ N. lat., south to 29°00′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (i) of this section, the universal trap/pot gear requirements specified in paragraph (b) of this section, and the area-specific requirements specified in paragraph (c)(1) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(v) Seasonal area-specific gear or vessel requirements. From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 29°00′ N. lat., south to 27°51′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

9 Restrictions applicable to the red crab trap/pot fishery—(i) Area. The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(5)(i) and (c)(8)(i) of this section.

(ii) Year-round area-specific gear or vessel requirements. No person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator revises these requirements in accordance with paragraph (i) of this section.

(A) Buoy line weak links. All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 2,000 lb (907.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) Groundlines. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) Seasonal area-specific gear or vessel requirements. From September 1 to May 31, no person or vessel may fish
with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(d) Restrictions applicable to anchored gillnet gear—(1) Universal anchored gillnet gear requirements. In addition to the area-specific measures listed in paragraphs (d)(2) through (d)(7) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed here. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) No buoy line floating at the surface. No person or vessel may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, sinking line must be used between these objects.

(ii) No wet storage of gear. Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(2) Cape Cod Bay Restricted Area—(i) Area. The Cape Cod Bay Restricted Area consists of the Cape Cod right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) Closure during the winter restricted period—(A) Winter restricted period. The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revives that period in accordance with paragraph (i) of this section.

(B) Closure. During the winter restricted period, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions.

Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.
or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining period of the winter restricted period in any year through a notification in the Federal Register if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) Area-specific gear or vessel requirements for the other restricted period.—(A) Other restricted period. The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) Area-specific gear or vessel requirements. No person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) Great South Channel Restricted Gillnet Area—(i) Area. The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2’ N. lat./69°02’ W. long., 41°43.5’ N. lat./69°36.3’ W. long., 42°10’ N. lat./68°31’ W. long., and 41°38’ N. lat./68°13’ W. long. This area includes most of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (d)(4)(i) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) Closure during the spring restricted period.—(A) Spring restricted period. The spring restricted period for the Great South Channel Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator revises that period in accordance with paragraph (i) of this section. (B) Closure. During the spring restricted period, no person or vessel may set, fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) Area-specific gear or vessel requirements for the other restricted period.—(A) Other restricted period. The other restricted period for the Great South Channel Restricted Gillnet Area is from July 1 though March 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) Area-specific gear or vessel requirements. During the other restricted period, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) Great South Channel Sliver Restricted Area—(i) Area. The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following four points: 41°02.2’ N. lat./69°02’ W. long., 41°43.5’ N. lat./69°36.3’ W. long., 41°40’ N. lat./69°45’ W. long., and 41°00’ N. lat./69°05’ W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) Year-round area-specific gear or vessel requirements. No person or vessel...
may fish with or possess anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area. The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15’ N. lat. and west of 70°00’ W. long, and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) Year-round area-specific gear or vessel requirements. No person or vessel may fish with or possess anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) Buoy line weak links. All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

1. The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope stapled to a buoy stick, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

2. The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

3. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be
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knots for the purposes of this provision.

(B) Net panel weak links. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations:

(1) Configuration 1. (i) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(ii) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(iii) One weak link must be placed between the floatline tie loops between net panels; and

(iv) One weak link must be placed where the floatline tie loops attaches to the bridle, buoy line, or groundline at the end of a net string; and

(v) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(vi) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(C) Anchoring systems. All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(D) Groundlines. On or before October 5, 2008, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) Seasonal area-specific gear or vessel requirements. From September 1 to May 31, no person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraphs (d)(6)(ii)(A) through (d)(6)(ii)(D) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may...
revise these requirements in accordance with paragraph (i) of this section.

(7) Mid/South Atlantic Gillnet Waters—

(i) Area. The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY, at 72°30’ W. long. south to 36°33.03’ N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00’ N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may change that area in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(ii) Area-specific gear or vessel requirements. From September 1 through May 31, no person or vessel may fish with or possess anchored gillnet gear in the Mid/South Atlantic Gillnet Waters unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(A) Buoy line weak links. All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) Net panel weak links. The weak link requirements apply to all variations in panel size. All net panels must contain weak links that meet the following specifications:

(1) The breaking strength for each of the weak links must not exceed 1,100 lb (499.0 kg).

(2) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline then individual weak links are not required. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(3) Weak links must be placed in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m) in length, or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(C) Additional anchoring system and net panel weak link requirements. All gillnets must return to port with the vessel unless the gear meets the following specifications:

(1) Anchoring systems. All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead
weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) Net panel weak links. Net panel weak links must meet the specifications in this paragraph. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(3) Additional provision for North Carolina. All gillnets set 300 yards (274.3 m) or less from the shoreline in North Carolina must meet the anchoring system and net panel weak link requirements in paragraphs (d)(7)(ii)(C)(1) and (d)(7)(ii)(C)(2) of this section, or the following:

(i) The entire net string must be less than 300 yards (274.3 m) from shore.

(ii) The breaking strength of each weak link must not exceed 600 lb (272.2 kg). The weak link requirements apply to all variations in panel size.

(iii) All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(iv) Regardless of the number of net panels, all anchored gillnets must be secured at the offshore end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having a holding capacity equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor, and at the inshore end of the net string with a dead weight equal to or greater than 31 lb (14.1 kg).

(D) Groundlines. On or before October 5, 2008, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(8) [Reserved]

(e) Restrictions applicable to drift gillnet gear—(1) Cape Cod Bay Restricted Area—(i) Area. The Cape Cod Bay Restricted Area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) Closure during the winter restricted period—(A) Winter restricted period. The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) Closure. During the winter restricted period, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the FEDERAL REGISTER if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) Area-specific gear or vessel requirements for the other restricted period—(A) Other restricted period. The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) Area specific gear or vessel requirements. During the other restricted period, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in §229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Cape Cod Bay Restricted Area during the other restricted period unless that gear is tended, or unless the gear is stowed as specified in §229.2. During that time, all drift gillnet gear set by
that vessel in the Cape Cod Bay Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(2) Great South Channel Restricted Gillnet Area—(i) Area. The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02'2 N. lat./69°02' W. long., 41°43'5 N. lat./68°36'3 W. long., 42°10' N. lat./68°31 W. long., and 41°38' N. lat./68°13' W. long. This area includes most of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (e)(3)(i) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) Closure during the spring restricted period—(A) Spring restricted period. The spring restricted period for the Great South Channel Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) Area-specific gear or vessel requirements for the other restricted period—(A) Other restricted period. The other restricted period for the Great South Channel Restricted Gillnet Area is from July 1 through March 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) Area-specific gear or vessel requirements. During the other restricted period, no person or vessel may fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in §229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Restricted Gillnet Area unless that gear is tended, or unless the gear is stowed as specified in §229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Restricted Gillnet Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) Great South Channel Sliver Restricted Area—(i) Area. The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02'2 N. lat./69°02' W. long., 41°43'5 N. lat./69°36'3 W. long., 41°40' N. lat./69°45' W. long., and 41°00' N. lat./69°05' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) Year-round area-specific gear or vessel requirements. No person or vessel may fish with or possess drift gillnet gear in the Great South Channel Sliver Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in §229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Sliver Restricted Area unless that gear is tended, or unless the gear is stowed as specified in §229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area. The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15'...
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N. lat. and west of 70°00' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) Year-round area-specific gear or vessel requirements. No person or vessel may fish with or possess drift gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Stellwagen Bank/Jeffreys Ledge Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(iii) Seasonal area-specific gear or vessel requirements. From September 1 to May 31, no person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in §§ 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) Other Northeast Gillnet Waters Area—(1) Area. The Other Northeast Gillnet Waters Area consists of all U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) Year-round area-specific gear or vessel requirements. No person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet
Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in §229.2. During that time, no person may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in §229.2. During that time, all drift gillnet gear set by that vessel in the Mid/South Atlantic Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(7) [Reserved]

(f) Restrictions applicable to the Southeast U.S. Restricted Area—(1) Area. The Southeast U.S. Restricted Area consists of the area bounded by straight lines connecting the following points in the order stated from south to north, unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section:

<table>
<thead>
<tr>
<th>Point</th>
<th>N. lat.</th>
<th>W. long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SERA1</td>
<td>27°51'</td>
<td>80°30'</td>
</tr>
<tr>
<td>SERA2</td>
<td>32°00'</td>
<td>78°36'</td>
</tr>
<tr>
<td>SERA3</td>
<td>32°15'</td>
<td>78°24'</td>
</tr>
<tr>
<td>SERA4</td>
<td>32°27'</td>
<td>78°04'</td>
</tr>
<tr>
<td>SERA5</td>
<td>27°51'</td>
<td>80°30'</td>
</tr>
<tr>
<td>SERA6</td>
<td>32°00'</td>
<td>78°36'</td>
</tr>
<tr>
<td>SERA7</td>
<td>32°15'</td>
<td>78°24'</td>
</tr>
<tr>
<td>SERA8</td>
<td>33°27'</td>
<td>78°04'</td>
</tr>
</tbody>
</table>

1 Florida shoreline
2 South Carolina shoreline.

(i) Southeast U.S. Restricted Area N. The Southeast U.S. Restricted Area N consists of the Southeast U.S. Restricted Area from 29°00' N. lat. northward.

(ii) Southeast U.S. Restricted Area S. The Southeast U.S. Restricted Area S consists of the Southeast U.S. Restricted Area southward of 29°00' N. lat.

(2) Restricted periods, closure, and exemptions—(i) Restricted periods. The restricted period for the Southeast U.S. Restricted Area N is from November 15 through April 15, and the restricted period for the Southeast U.S. Restricted Area S is from December 1 through March 31, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i) of this section.

(ii) Closure for gillnets. (A) Except as provided under paragraph (f)(2)(v) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

(B) Except as provided under paragraph (f)(2)(ii)(B) if:

(A) The gillnet is deployed so that it encloses an area of water;

(B) A valid commercial directed shark limited access permit has been issued to the vessel in accordance with 50 CFR 635.4(e) and is on board;

(C) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(D) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(E) Each set is made under the observation of a spotter plane;

(F) No gillnet is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(G) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear;

(H) The gear complies with the gear marking requirements specified in paragraph (b) of this section; and

(I) The operator of the vessel calls the Southeast Fisheries Science Center Panama City Laboratory in Panama City, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Panama City Laboratory requests that an observer be taken on board a vessel during a fishing trip at
any time from December 1 through March 31 south of 29°00' N. lat., no person may fish with such gillnet aboard that vessel in the Southeast U.S. Restricted Area S unless an observer is on board that vessel during the trip.

(iv) Exemption for Spanish Mackerel component of the Southeast Atlantic gillnet fishery. Fishing with gillnet for Spanish mackerel is exempt from the restrictions under paragraph (f)(2)(i)(B) from December 1 through December 31, and from March 1 through March 31 if:

(A) Gillnet mesh size is between 3.5 inches (8.9 cm) and 4 7⁄8 inches (12.4 cm) stretched mesh;

(B) A valid commercial vessel permit for Spanish mackerel has been issued to the vessel in accordance with 50 CFR 622.4(a)(2)(iv) and is on board;

(C) No person may fish with, set, place in the water, or have on board a vessel a gillnet with a float line longer than 800 yards (2,400 ft, 732 m);

(D) No person may fish with, set, or place in the water more than one gillnet at any time;

(E) No more than two gillnets, including any net in use, are possessed at any one time;

(F) 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;

(G) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(H) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(I) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(J) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear; and

(K) The gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(i)(A) through (d)(7)(i)(D) of this section for the Mid/South Atlantic Gillnet Waters.

(v) Exemption for vessels in transit with gillnet aboard. Possession of gillnet aboard a vessel in transit is exempt from the restrictions under paragraph (f)(2)(i)(A) of this section if:

All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum; and all buoys, high flyers, and anchors are disconnected from all gillnets. No fish may be possessed aboard such a vessel in transit.

(vi) [Reserved]

(g) Restrictions applicable to the Other Southeast Gillnet Waters Area—(1) Area. The Other Southeast Gillnet Waters Area consists of the area from 32°00' N. lat. (near Savannah, GA) south to 27°51' N. lat. for the Southeast Atlantic gillnet fishery, and from 32°00' N. lat. south to 26°45.50' N. lat. (near West Palm Beach, FL) for the Southeastern U.S. Atlantic shark gillnet fishery, and extending from 80°00' W. long. east to the eastern edge of the EEZ, for both the Southeast Atlantic gillnet and Southeastern U.S. Atlantic gillnet fisheries unless the Assistant Administrator changes this area in accordance with paragraph (i) of this section.

(2) Restrictions for Southeastern U.S. Atlantic shark gillnet fishery. No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Other Southeast Gillnet Waters Area north of 29°00' N. lat. (near New Smyrna Beach, FL) from November 15 through April 15 and south of 29°00' N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, and the set restrictions listed
below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) **Set restrictions.** All gillnets must comply with the following set restrictions:
   (A) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and
   (B) If a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear, the gear is removed immediately from the water.

(3) **Restrictions for Southeast Atlantic gillnet fishery.** No person or vessel may fish with or possess gillnet gear in the Other Southeast Gillnet Waters Area, except as provided in paragraph (g)(2) of this section, north of 29°00′ N. lat. from November 15 through April 15 and south of 29°00′ N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(i)(A) through (d)(7)(i)(D) of this section for the Mid/South Atlantic Gillnet Waters, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) **[Reserved]**

(h) **Restrictions applicable to the Southeast U.S. Monitoring Area—(1) Area.** The Southeast U.S. Monitoring Area consists of the area from 27°51′ N. lat. (near Sebastian Inlet, FL) south to 26°46.50′ N. lat. (near West Palm Beach, FL), extending from the shoreline or exemption line out to 80°00′ W. long., unless the Assistant Administrator changes that area in accordance with paragraph (l) of this section.

(4) **[Reserved]**

(i) **Other provisions.** In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) **Entanglements in critical habitat or restricted areas.** If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, the Southeast U.S. Restricted Area N from November 15 to April 15, or the Southeast U.S. Restricted Area S from December 1 through March 31 as the result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type (i.e., trap/pot or gillnet) for the rest of that time period and for that same time period in each subsequent year,
unless the Assistant Administrator revises the restricted period in accordance with paragraph (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) Other special measures. The Assistant Administrator may revise the requirements of this section through a publication in the Federal Register if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

(3) Seasonal Area Management (SAM) Program. Until October 6, 2008, in addition to existing requirements for vessels deploying anchored gillnet or trap/pot gear in the Other Northeast Gillnet Waters, Northern Inshore State Trap/Pot Waters, Trap/Pot Waters, Offshore Trap/Pot Waters, Great South Channel Restricted Gillnet Area (July 1 through July 31), Great South Channel Silver Restricted Area (May 1 through July 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area (anchored gillnet and trap/pot area) found at §229.32 (b)–(d), a vessel may fish in the SAM Areas as described in paragraphs (i)(3)(i)(A) and (i)(3)(ii)(A) of this section, which overlay the previously mentioned areas, provided the gear or vessel complies with the requirements specified in paragraphs (i)(3)(i)(B) and (i)(3)(ii)(B) of this section during the times specified in those paragraphs. These requirements are in addition to requirements found in §229.32 (b)–(d). The requirements in (i)(3)(i)(B) and (i)(3)(ii)(B) of this section supercede requirements found at §229.32 (b)–(d) when the former are more restrictive than the latter. For example, the closures applicable to trap/pot and gillnet gear in the Great South Channel found in paragraphs (c)(3)(ii) and (d)(3)(ii) of this section are more restrictive than the gear modifications described in this section and, therefore, supercede them. A copy of a chart depicting these areas is available upon request from the Regional Administrator, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930.

(i) SAM West—(A) Area. SAM West consists of all waters bounded by straight lines connecting the following points in the order stated:

<table>
<thead>
<tr>
<th>SAM WEST</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Point</td>
<td>N. lat.</td>
<td>W. long</td>
</tr>
<tr>
<td>1W</td>
<td>42°30'</td>
<td>70°30'</td>
</tr>
<tr>
<td>2W</td>
<td>42°30'</td>
<td>69°24'</td>
</tr>
<tr>
<td>3W</td>
<td>41°48.9'</td>
<td>69°24'</td>
</tr>
<tr>
<td>4W</td>
<td>41°40'</td>
<td>69°45'</td>
</tr>
<tr>
<td>5W</td>
<td>41°40'</td>
<td>69°57'</td>
</tr>
<tr>
<td>6W</td>
<td>42°04.8'</td>
<td>70°10'</td>
</tr>
<tr>
<td>7W</td>
<td>42°12'</td>
<td>70°15'</td>
</tr>
<tr>
<td>8W</td>
<td>42°12'</td>
<td>70°30'</td>
</tr>
</tbody>
</table>

(B) Gear or vessel requirements. Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (i)(2) of this section, from March 1 through April 30, no person or vessel may fish with or possess anchored gillnet or trap/pot gear in SAM West unless that gear complies with the following gear modifications, or unless the gear is stowed as specified in §229.2.

(i) Anchored gillnet gear—(i) Groundlines. All groundlines must be made entirely of sinking line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(ii) Buoy lines. All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(iii) Buoy line weak links. All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc.,
must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible that has a maximum breaking strength of 1,100 lb (499.0 kg). The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iv) Net panel weak links. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(v) Anchoring systems. All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) Trap/pot gear—(i) Groundlines. All groundlines must be made entirely of sinking line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(ii) Buoy lines. All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(a) Restrictions—(1) Northeast Closure Area—(i) Area restrictions. From August 15 through September 13, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or remove sink gut net gear or gillnet gear of catching multispecies from the Northeast Closure Area. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in §648.81(f)(2)(ii) of this title).

(ii) Area boundaries. The Northeast Closure Area is bounded by straight lines connecting the following points in the order stated:

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>NE1</td>
<td>44°27.3'</td>
<td>68°55.0' (ME shoreline)</td>
</tr>
<tr>
<td>NE2</td>
<td>42°29.6'</td>
<td>68°55.0'</td>
</tr>
<tr>
<td>NE3</td>
<td>44°04.4'</td>
<td>67°48.7'</td>
</tr>
<tr>
<td>NE4</td>
<td>44°06.9'</td>
<td>67°52.8'</td>
</tr>
<tr>
<td>NE5</td>
<td>44°31.2'</td>
<td>67°02.7'</td>
</tr>
<tr>
<td>NE6</td>
<td>44°45.8'</td>
<td>67°02.7' (ME shoreline)</td>
</tr>
</tbody>
</table>

(2) Mid-Coast Management Area—(i) Area restrictions. From September 15 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gut net gear or gillnet gear capable of catching multispecies from the Mid-Coast Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in §648.81(f)(2)(ii) of this title).

(ii) Area boundaries. The Mid-Coast Management Area is the area bounded by straight lines connecting the following points in the order stated:

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>MC1</td>
<td>42°30.0'</td>
<td>70°50.1' (MA shoreline)</td>
</tr>
<tr>
<td>MC2</td>
<td>42°30.0'</td>
<td>70°15.0'</td>
</tr>
<tr>
<td>MC3</td>
<td>42°30.0'</td>
<td>70°15.0'</td>
</tr>
<tr>
<td>MC4</td>
<td>42°30.0'</td>
<td>70°00.0'</td>
</tr>
<tr>
<td>MC5</td>
<td>43°00.0'</td>
<td>70°00.0'</td>
</tr>
<tr>
<td>MC6</td>
<td>43°00.0'</td>
<td>69°30.0'</td>
</tr>
<tr>
<td>MC7</td>
<td>43°30.0'</td>
<td>69°30.0'</td>
</tr>
<tr>
<td>MC8</td>
<td>43°30.0'</td>
<td>69°00.0'</td>
</tr>
<tr>
<td>MC9</td>
<td>44°17.8'</td>
<td>69°00.0' (ME shoreline)</td>
</tr>
</tbody>
</table>

(iii) Closing procedures. According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close the western portion of the Mid-Coast Management Area (west of 70°15' W. long.) from October 1 through November 30 annually by incorporating it into the Coastal Gulf of Maine Closure Area if, after two full, consecutive management seasons, the average observed by-catch rate of harbor porpoises for the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas combined exceeds the target harbor.
porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings.

(3) Massachusetts Bay Management Area—(i) Area restrictions. From November 1 through February 28/29 and from April 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. From March 1 through March 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title).

(ii) Area boundaries. The Massachusetts Bay Management Area is bounded by straight lines connecting the following points in the order stated:

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>MB1</td>
<td>42°30.0'</td>
<td>70°30.0' (MA shoreline)</td>
</tr>
<tr>
<td>MB2</td>
<td>42°30.0'</td>
<td>70°30.0'</td>
</tr>
<tr>
<td>MB3</td>
<td>42°15.0'</td>
<td>70°30.0'</td>
</tr>
<tr>
<td>MB4</td>
<td>42°15.0'</td>
<td>70°00.0'</td>
</tr>
<tr>
<td>MB5</td>
<td>42°00.0'</td>
<td>70°00.0'</td>
</tr>
<tr>
<td>MB6</td>
<td>42°00.0'</td>
<td>70°01.2' (MA shoreline)</td>
</tr>
<tr>
<td>MB7</td>
<td>42°00.0'</td>
<td>70°04.8' (MA shoreline)</td>
</tr>
<tr>
<td>MB8</td>
<td>42°00.0'</td>
<td>70°42.2' (MA shoreline)</td>
</tr>
</tbody>
</table>

(iii) Closing procedures. According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close the Stellwagen Bank Management Area from October 1 through November 30 annually by incorporating it into the Coastal Gulf of Maine Closure Area if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Stellwagen Bank, Mid-Coast, and Massachusetts Bay Management Areas combined exceeds the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings.

(4) Stellwagen Bank Management Area—(i) Area restrictions. From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Stellwagen Bank Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title).

(ii) Area boundaries. The Stellwagen Bank Management Area is bounded by straight lines connecting the following points in the order stated:

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB1</td>
<td>42°30.0'</td>
<td>70°30.0'</td>
</tr>
<tr>
<td>SB2</td>
<td>42°30.0'</td>
<td>70°15.0'</td>
</tr>
<tr>
<td>SB3</td>
<td>42°15.0'</td>
<td>70°15.0'</td>
</tr>
<tr>
<td>SB4</td>
<td>42°15.0'</td>
<td>70°30.0'</td>
</tr>
<tr>
<td>SB5</td>
<td>42°30.0'</td>
<td>70°30.0'</td>
</tr>
</tbody>
</table>

(iii) Closing procedures. According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close the Southern New England Management Area (north of 42°15' N. lat.) from October 1 through November 30 annually by incorporating it into the Coastal Gulf of Maine Closure Area if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Stellwagen Bank, Mid-Coast, and Massachusetts Bay Management Areas combined exceeds the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings.

(5) Southern New England Management Area—(i) Area restrictions. From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Southern New England Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to vessels fishing...
with a single pelagic gillnet (as described in §648.81(f)(2)(i) of this title).

(ii) Area boundaries. The Southern New England Management Area is bounded by straight lines connecting the following points in the order stated:

**SOUTHERN NEW ENGLAND MANAGEMENT AREA**

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SNE1</td>
<td>Western boundary as specified(^1)</td>
<td></td>
</tr>
<tr>
<td>SNE2</td>
<td>40°00.0'</td>
<td>72°30.0'</td>
</tr>
<tr>
<td>SNE3</td>
<td>40°00.0'</td>
<td>69°30.0'</td>
</tr>
<tr>
<td>SNE4</td>
<td>42°15.0'</td>
<td>69°30.0'</td>
</tr>
<tr>
<td>SNE5</td>
<td>42°15.0'</td>
<td>70°00.0'</td>
</tr>
<tr>
<td>SNE6</td>
<td>41°58.3'</td>
<td>70°00.0' (MA shoreline)</td>
</tr>
</tbody>
</table>

\(^1\) 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 Fisher's Island, NY, to Race Point, Fisher's Island, NY; and from Race Point, Fisher's Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southeasterly along the 3-nautical mile line to the intersection of 72°30.0' W. long.

(iii) Closing procedures. According to paragraphs (d)(2), (d)(3), and (d)(4) of this section, NMFS shall close the Cape Cod South Closure Area and an area to its south (Cape Cod South Expansion Closure Area) from February 1 through April 30 annually if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Southern New England Management Area exceeds the target harbor porpoise bycatch rate of 0.023 harbor porpoise per metric tons of landings.

(7) Offshore Management Area—(1) Area restrictions. From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.3, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Offshore Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title).

(ii) Area boundaries. The Offshore Management Area is bounded by straight lines connecting the following points in the order stated:

**OFFSHORE MANAGEMENT AREA**

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>OFS1</td>
<td>42°50.0'</td>
<td>69°30.0'</td>
</tr>
<tr>
<td>OFS2</td>
<td>43°10.0'</td>
<td>69°10.0'</td>
</tr>
<tr>
<td>OFS3</td>
<td>43°10.0'</td>
<td>67°40.0'</td>
</tr>
<tr>
<td>OFS4</td>
<td>43°05.8'</td>
<td>67°40.0' (EEZ boundary)</td>
</tr>
<tr>
<td>OFS5</td>
<td>42°53.1'</td>
<td>67°44.5' (EEZ boundary)</td>
</tr>
<tr>
<td>OFS6</td>
<td>42°47.3'</td>
<td>67°40.0' (EEZ boundary)</td>
</tr>
<tr>
<td>OFS7</td>
<td>42°10.0'</td>
<td>67°40.0'</td>
</tr>
<tr>
<td>OFS8</td>
<td>42°10.0'</td>
<td>69°30.0'</td>
</tr>
<tr>
<td>OFS1</td>
<td>42°50.0'</td>
<td>69°30.0'</td>
</tr>
</tbody>
</table>

(8) Cashes Ledge Closure Area—(1) Area restrictions. During the month of February, it is prohibited to fish with, set, haul back, possess on board a vessel...
unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cashes Ledge Closure Area. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in §648.81(d)(2)(ii) of this title).

(ii) Area boundaries. The Cashes Ledge Closure Area is bounded by straight lines connecting the following points in the order stated:

### CASHES LEDGE CLOSURE AREA

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CL1</td>
<td>42°30.0'</td>
<td>69°00.0'</td>
</tr>
<tr>
<td>CL2</td>
<td>42°30.0'</td>
<td>68°30.0'</td>
</tr>
<tr>
<td>CL3</td>
<td>43°00.0'</td>
<td>68°30.0'</td>
</tr>
<tr>
<td>CL4</td>
<td>43°00.0'</td>
<td>69°00.0'</td>
</tr>
<tr>
<td>CL5</td>
<td>42°30.0'</td>
<td>69°00.0'</td>
</tr>
</tbody>
</table>

(b) Pingers—(1) Pinger specifications. For the purposes of this subpart, a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (plus or minus 2 kHz) sound at 132 dB (plus or minus 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (plus or minus 15 milliseconds), and repeating every 4 seconds (plus or minus 0.2 seconds).

(2) Pinger attachment. An operating and functional pinger must be attached at each end of a string of gillnets and at the bridle of every net, or every 300 feet (91.4 m or 50 fathoms), whichever is closer.

(c) Pinger training and authorization. The operator of a vessel may not fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in closed areas where pingers are required as specified under paragraph (b) of this section, unless the operator has satisfactorily received pinger training and possesses and retains on board the vessel a valid pinger training authorization issued by NMFS.

(d) Annual review for consequence area actions—(1) Coastal Gulf of Maine Closure Area—(i) Establishment. If, after two full, consecutive management seasons, the calculated average observed bycatch rate of the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas exceeds the target bycatch rate of 0.031 harbor porpoises per metric tons of landings, the Coastal Gulf of Maine Closure Area shall be established.

(ii) Restrictions. From October 1 through November 30, it will be prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Coastal Gulf of Maine Closure Area. This prohibition will not apply to vessels fishing with a single pelagic gillnet (as described in §648.81(d)(2)(ii) of this title). When the area is open to fishing, the requirements of the Mid-Coast (as described in paragraph (a)(2) of this section), Massachusetts Bay (as described in paragraph (a)(3) of this section), and Stellwagen Bank (as described in paragraph (a)(4) of this section) Management Areas will remain in effect.

(iii) Area boundaries. The Coastal Gulf of Maine Closure Area is bounded by straight lines connecting the following points in the order stated:

### COASTAL GULF OF MAINE CLOSURE AREA

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CGM1</td>
<td>43°33.0'</td>
<td>70°15.0' (ME shore-line)</td>
</tr>
<tr>
<td>CGM2</td>
<td>42°15.0'</td>
<td>70°15.0'</td>
</tr>
<tr>
<td>CGM3</td>
<td>42°15.0'</td>
<td>70°46.0' (MA shore-line)</td>
</tr>
</tbody>
</table>

(2) Cape Cod South Expansion and Eastern Cape Cod Closure Areas—(i) Establishment. If, after two full, consecutive management seasons, the calculated average observed bycatch rate of the Southern New England Management Area exceeds the target bycatch rate of 0.023 harbor porpoises per metric tons of landings, the Cape Cod South Expansion Closure Area and the Eastern Cape Cod Closure Area shall be established.

(ii) Restrictions. From February 1 through April 30, it will be prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cape Cod South Expansion Closure Area and the Eastern Cape Cod Closure Area.
This prohibition will not apply to vessels fishing with a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title). When the areas are open to fishing, the requirements of the Southern New England Management Area, as described in paragraph (a)(3) of this section, will remain in effect.

(iii) Area boundaries. (A) The Cape Cod South Expansion Closure Area is bounded by straight lines connecting the following points in the order stated:

**CAPE COD SOUTH EXPANSION CLOSURE AREA**

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCSE1</td>
<td>41°19.6'</td>
<td>71°45.0' (RI shoreline)</td>
</tr>
<tr>
<td>CCSE2</td>
<td>40°00.0'</td>
<td>71°45.0'</td>
</tr>
<tr>
<td>CCSE3</td>
<td>40°00.0'</td>
<td>70°00.0'</td>
</tr>
<tr>
<td>CCSE4</td>
<td>40°30.0'</td>
<td>70°00.0'</td>
</tr>
<tr>
<td>CCSE5</td>
<td>40°30.0'</td>
<td>70°30.0'</td>
</tr>
<tr>
<td>CCSE6</td>
<td>41°20.0'</td>
<td>70°30.0'</td>
</tr>
<tr>
<td>CCSE7</td>
<td>41°23.1'</td>
<td>70°30.0'</td>
</tr>
<tr>
<td>CCSE8</td>
<td>41°53.1'</td>
<td>70°30.0' (MA shoreline)</td>
</tr>
</tbody>
</table>

(B) The Eastern Cape Cod Closure Area is bounded by straight lines connecting the following points in the order stated:

**EASTERN CAPE COD CLOSURE AREA**

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECC1</td>
<td>41°58.3'</td>
<td>70°00.0' (MA shoreline)</td>
</tr>
<tr>
<td>ECC2</td>
<td>42°15.0'</td>
<td>70°00.0'</td>
</tr>
<tr>
<td>ECC3</td>
<td>42°15.0'</td>
<td>69°30.0'</td>
</tr>
<tr>
<td>ECC4</td>
<td>41°40.0'</td>
<td>69°30.0'</td>
</tr>
<tr>
<td>ECC5</td>
<td>41°40.0'</td>
<td>69°56.8' (MA shoreline)</td>
</tr>
</tbody>
</table>

(3) Notification. Upon determining that establishing a consequence closure area as described in paragraphs (d)(1) and (d)(2) of this section is necessary, NMFS will notify, in advance of the closure, the Harbor Porpoise Take Reduction Team and gillnet permit holders through mail notification. NMFS will also publish notification in the Federal Register and post information on the Harbor Porpoise Take Reduction Plan Web site related to the establishment of the closure area(s).

4. If any or all of the closure areas discussed in paragraphs (d)(1) and (d)(2) are implemented, NMFS will monitor harbor porpoise bycatch rates throughout the New England region. The provisions set forth in paragraphs (d)(1) and (d)(2) shall remain in effect each year after implementation until bycatch levels approach a zero mortality and serious injury rate (ZMRG), or until NMFS, in collaboration with the Harbor Porpoise Take Reduction Team, develops and implements new measures.

(e) Research permits. An exemption to the requirements set forth in this section may be acquired for the purposes of conducting scientific or gear research within the restricted areas described in this section. A scientific research permit must be acquired through NMFS’s existing permit application process, administered by NMFS.

(f) Other special measures. The Assistant Administrator may revise the requirements of this section through notification published in the FEDERAL REGISTER if:

(1) NMFS determines that pinger operating effectiveness in the commercial gillnet fishery is inadequate to reduce bycatch below the stock’s PBR level; or

(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

75 FR 7396, Feb. 19, 2010

§ 229.34 Harbor Porpoise Take Reduction Plan Regulations—Mid-Atlantic.

(a)(1) Regulated waters. The regulations in this section apply to all waters in the Mid-Atlantic bounded on the east by 72°30' W. long. at the southern coast of Long Island, NY at 40°50.1' N. lat. and on the south by the NC/SC border (33°51.1' N. lat.), except for the areas exempted in paragraph (a)(2) of this section.

(2) Exempted waters. The regulations within this section are not applicable to waters landward of the first bridge over any embayment, harbor, or inlet, or to waters landward of the following lines:

New York
40°45.70' N., 72°45.15' W. to 40°45.72' N., 72°45.30' W. (Moriches Bay Inlet)
40°37.32' N., 73°18.40' W. to 40°38.00' N., 73°18.56' W. (Fire Island Inlet)
40°34.49' N., 73°34.35' W. to 40°35.08' N., 73°35.22' W. (Jones Inlet)

New Jersey/Delaware
39°45.90' N., 74°05.90' W. to 39°45.15' N., 74°06.20' W. (Barneget Inlet)  
39°30.70' N., 74°16.70' W. to 39°26.30' N., 74°19.75' W. (Beach Haven to Brigantine Inlet)  
38°56.20' N., 74°51.70' W. to 38°56.20' N., 74°51.90' W. (Cape May Inlet)  

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Chincoteague to Ship Shoal Inlet)  
74°07.00' N., 75°53.75' W. to 37°05.30' N., 75°56.75' W. (Smith Island Inlet)  

North Carolina  
All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Chincoteague to Ship Shoal Inlet)  

(b) Restrictions—(1) Waters off New Jersey Management Area. The Waters off New Jersey Management Area is bounded by straight lines connecting the following points in the order stated:

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>WNU1</td>
<td>40°50.1'</td>
<td>72°30.0' (NY shoreline)</td>
</tr>
<tr>
<td>WNU2</td>
<td>38°47.0'</td>
<td>72°30.0'</td>
</tr>
<tr>
<td>WNU3</td>
<td>38°47.0'</td>
<td>75°05.0' (DE shoreline)</td>
</tr>
</tbody>
</table>

(iii) Gear limitations and requirements—small mesh gillnet gear. From January 1 through April 30, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh gillnet gear from the Waters off New Jersey Management Area.

(F) Tie-down system. The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(ii) Gear limitations and requirements—large mesh gillnet gear. From January 1 through April 30, except during April 1 through April 20, as described in paragraph (b)(1)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh gillnet gear in the Waters off New Jersey Management Area, unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(ii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Waters off New Jersey Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(ii)(A) through (F) of this section, or is stowed in accordance with §229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) Floatline length. The floatline is not more than 4,800 ft (1,463.0 m).

(B) Twine size. The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) Size of nets. Individual nets or net panels are not more than 300 ft (91.44 m or 50 fathoms) in length.

(D) Number of nets. The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel, or deployed by the vessel, does not exceed 80.

(E) Number of nets per string. The total number of nets or net panels in a net string does not exceed 16.

(National Marine Fisheries Service/NOAA, Commerce § 229.34)
any small mesh gillnet gear in the Waters off New Jersey Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(iii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Waters off New Jersey Management Area with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(iii)(A) through (F) of this section, or is stowed in accordance with §229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) Floatline length. The floatline is not more than 3,900 ft (914.4 m) in length.

(B) Twine size. The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) Size of nets. Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) Number of nets. The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) Number of nets per string. The total number of nets or net panels in a net string does not exceed 13.

(F) Tie-down system. Tie-downs are prohibited.

(2) Mudhole North Management Area. The Mudhole North Management Area is bounded by straight lines connecting the following points in the order stated:

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>MN1</td>
<td>40°28.1′</td>
<td>74°00.0′ (NJ shoreline)</td>
</tr>
<tr>
<td>MN2</td>
<td>40°30.0′</td>
<td>74°00.0′</td>
</tr>
<tr>
<td>MN3</td>
<td>40°30.0′</td>
<td>73°20.0′</td>
</tr>
<tr>
<td>MN4</td>
<td>40°05.0′</td>
<td>73°20.0′</td>
</tr>
<tr>
<td>MN5</td>
<td>40°05.0′</td>
<td>74°22.0′ (NJ shoreline)</td>
</tr>
</tbody>
</table>

(i) Closures. From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh gillnet gear from the Mudhole North Management Area. In addition, from April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh gillnet gear from the Mudhole North Management Area.

(ii) Gear limitations and requirements—large mesh gillnet gear. From January 1 through April 30, except during February 15 through March 15 and April 1 through April 20 as described in paragraph (b)(2)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh gillnet gear in the Mudhole North Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(i)(A) through (F) of this section. During this period, no vessel may enter or remain in the Mudhole North Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(i)(A) through (F) of this section, or is stowed in accordance with §229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) Floatline length. The floatline is not more than 3,900 ft (1,188.7 m).

(B) Twine size. The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) Size of nets. Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) Number of nets. The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) Number of nets per string. The total number of nets or net panels in a net string does not exceed 13.

(F) Tie-down system. The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) Gear limitations and requirements—small mesh gillnet gear. From January 1 through April 30, except during February 15 through March 15 as described in paragraph (b)(2)(i) of this section, no person may fish with, set,
prohibited.

§ 229.2, or fail to remove any large or small mesh gillnet gear in the Mudhole North Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(iii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Mudhole North Management Area with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(iii)(A) through (F) of this section, or is stowed in accordance with §229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) Floatline length. The floatline is not more than 3,000 ft (914.4 m) in length.

(B) Twine size. The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) Size of nets. Individual nets or net panels are not more than 300 ft (91.44 m or 50 fathoms) in length.

(D) Number of nets. The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) Number of nets per string. The total number of nets or net panels in a net string does not exceed 10.

(F) Tie-down system. Tie-downs are prohibited.

(3) Mudhole South Management Area. The Mudhole South Management Area is bounded by straight lines connecting the following points in the order stated:

MUDHOLE SOUTH MANAGEMENT AREA

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>MS1</td>
<td>40°05’.0”</td>
<td>72°31’.0”</td>
</tr>
<tr>
<td>MS2</td>
<td>40°05’.0”</td>
<td>72°00’.0”</td>
</tr>
<tr>
<td>MS3</td>
<td>39°51’.0”</td>
<td>72°00’.0”</td>
</tr>
<tr>
<td>MS4</td>
<td>39°51’.0”</td>
<td>72°31’.0”</td>
</tr>
<tr>
<td>MS5</td>
<td>40°05’.0”</td>
<td>72°31’.0”</td>
</tr>
</tbody>
</table>

(i) Closures. From February 1 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large or small mesh gillnet gear in the Mudhole South Management Area. In addition, from April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh gillnet gear from the Mudhole South Management Area.

(ii) Gear limitations and requirements—large mesh gillnet gear. From January 1 through April 30, except during February 1 through March 15 and April 1 through April 20 as described in paragraph (b)(3)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh gillnet gear in the Mudhole South Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(3)(ii)(A) through (F) of this section, or is stowed in accordance with §229.2.

In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) Floatline length. The floatline is not more than 3,900 ft (1,188.7 m).

(B) Twine size. The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) Size of nets. Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) Number of nets. The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) Number of nets per string. The total number of nets or net panels in a net string does not exceed 10.

(F) Tie-down system. The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.9 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) Gear limitations and requirements—small mesh gillnet gear. From January 1 through April 30 of each year, except during February 1 through March 15 as described in paragraph (b)(3)(i) of this section, no person may
§229.34  

fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any small mesh gillnet gear in the Mudhole South Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(4)(i)(A) through (F) of this section. During this period, no vessel may enter or remain in the Mudhole South Management Area with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics described in paragraphs (b)(3)(iii)(A) through (F) of this section, or is stowed in accordance with §229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) **Floatline length.** The floatline is not more than 3,000 ft (914.4 m) in length.

(B) **Twine size.** The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) **Size of nets.** Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) **Number of nets.** The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) **Number of nets per string.** The total number of nets or net panels in a net string does not exceed 10.

(F) **Tie-down system.** Tie-downs are prohibited.

(4) **Southern Mid-Atlantic Management Area.** The Southern Mid-Atlantic Management Area is bounded by straight lines connecting the following points in the order stated:

<table>
<thead>
<tr>
<th>Point</th>
<th>N. Lat.</th>
<th>W. Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMA1</td>
<td>38°47.0</td>
<td>75°35.0</td>
</tr>
<tr>
<td>SMA2</td>
<td>38°47.0</td>
<td>72°30.0</td>
</tr>
<tr>
<td>SMA3</td>
<td>33°51.1</td>
<td>72°30.0</td>
</tr>
<tr>
<td>SMA4</td>
<td>33°51.1</td>
<td>78°32.5</td>
</tr>
</tbody>
</table>

(i) **Closures.** From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh gillnet gear from the Southern Mid-Atlantic Management Area.

(ii) **Gear limitations and requirements—large mesh gillnet gear.** From February 1 through April 30, except during February 15 through March 15 as described in paragraph (b)(4)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh gillnet gear in the Southern Mid-Atlantic Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(4)(i)(A) through (F) of this section. During this period, no vessel may enter or remain in the Southern Mid-Atlantic Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(4)(i)(A) through (F) of this section, or is stowed in accordance with §229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) **Floatline length.** The floatline is not more than 3,900 ft (1,188.7 m) in length.

(B) **Twine size.** The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) **Size of nets.** Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) **Number of nets.** The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) **Number of nets per string.** The total number of nets or net panels in a net string does not exceed 10.

(F) **Tie-down system.** Tie-downs are prohibited.
in paragraphs (b)(4)(iii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Southern Mid-Atlantic Management Area with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(4)(iii)(A) through (F) of this section, or is stowed in accordance with §229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) Floatline length. The floatline is no longer than 2,118 ft (645.6 m).

(B) Twine size. The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) Size of nets. Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) Number of nets. The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) Number of nets per string. The total number of nets or net panels in a net string does not exceed 7.

(F) Tie-down system. Tie-downs are prohibited.

(c) Research permits. An exemption to the requirements set forth in this section may be acquired for the purposes of conducting scientific or gear research within the restricted areas described in this section. A scientific research permit must be acquired through NMFS' existing permit application process, administered by NMFS.

(d) Other special measures. The Assistant Administrator may revise the requirements of this section through notification published in the Federal Register if NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications are not reducing bycatch to below the stock’s PBR level.

(75 FR 7399, Feb. 19, 2010)

§ 229.35 Bottlenose Dolphin Take Reduction Plan.

(a) Purpose and scope. The purpose of this section is to implement the Bottlenose Dolphin Take Reduction Plan to reduce incidental mortality and serious injury of the western North Atlantic coastal bottlenose dolphin stock in specific Category I and Category II commercial fisheries from New Jersey through Florida. Specific Category I and II commercial fisheries within the scope of the BDTRP are identified and updated in the annual List of Fisheries. Gear restricted by this section includes small, medium, and large mesh gillnets. The geographic scope of the BDTRP is all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras southward to, and including, the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in §600.105 of this title).

(b) Definitions. In addition to the definitions contained in the Act, §216.3 and §229.2 of this chapter, the terms defined in this section shall have the following definitions, even if a contrary definition exists in the Act, §216.3, or §229.2:

Beach means landward of and including the mean low water line.

Beach/water interface means the mean low water line.

Large mesh gillnet means a gillnet constructed with a mesh size greater than or equal to 7-inches (17.8 cm) stretched mesh.

Medium mesh gillnet means a gillnet constructed with a mesh size of greater than 5-inches (12.7 cm) to less than 7-inches (17.8 cm) stretched mesh.

New Jersey, Delaware, and Maryland State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 40° 30′ N. (New York/New Jersey border at the coast) and on the south by 38° 01.6′ N. (Maryland/Virginia border at the coast).

Night means any time between one hour after sunset and one hour prior to sunrise.

Northeast North Carolina State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 36° 33′ N. (Virginia/North Carolina border at the coast) and on the south by 34° 35.4′ N. (Cape Lookout, North Carolina).
§ 229.35  Northern Virginia State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 38° 01.6′ N. (Virginia/Maryland border at the coast) and on the south by 37° 07.23′ N. (Cape Charles Light on Smith Island in the Chesapeake Bay mouth).

Small mesh gillnet means a gillnet constructed with a mesh size of less than or equal to 5-inches (12.7 cm) stretched mesh.

South Carolina, Georgia, and Florida waters means the area consisting of all marine and tidal waters, within 14.6 nautical miles (27 km) of shore, between 33° 52′ N. (North Carolina/South Carolina border at the coast) and the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in §600.105 of this title).

Southern North Carolina State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 34° 35.4′ N. (Cape Lookout, North Carolina) and on the south by 33° 52′ N. (North Carolina/South Carolina border at the coast).

Southern Virginia State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 37° 07.23′ N. (Cape Charles Light on Smith Island in the Chesapeake Bay mouth) and on the south by 36° 33′ N. (Virginia/North Carolina border at the coast).

(c) Regulated waters. The regulations in this section apply to New Jersey, Delaware, and Maryland State waters; Northern North Carolina State waters; Northern Virginia State waters; South Carolina, Georgia, and Florida waters; Southern North Carolina State waters; and Southern Virginia State waters as defined in §229.35(b), except for the waters identified in §229.34(a)(2), with the following modification and addition. From Chincoteague to Ship Shoal Inlet in Virginia (37° 52′ N. 75° 24.30′ W. to 37° 11.90′ N. 75° 48.30′ W) and Southern North Carolina State waters, no person may fish with any small mesh gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(ii) [Reserved]

(ii) [Reserved]

(i) Medium and large mesh. From June 1 through October 31, in Southern Virginia State waters and Northern Virginia State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(ii) [Reserved]

(ii) [Reserved]

(i) Large mesh gillnets. From November 1 through December 31, in Southern Virginia State waters, no person may fish with, possess on board a vessel unless stowed, or fail to remove from the water, any large mesh gillnet gear at night.

(ii) [Reserved]

(i) Medium mesh gillnets. From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

(ii) Medium mesh gillnets. From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

(iii) Large mesh gillnets. From April 15 through December 15, in Northern North Carolina State waters, no person may fish with any large mesh gillnet.
(B) From December 16 through April 14 of the following year, in Northern North Carolina State waters, no person may fish with any large mesh gillnet without tie-downs at night.

(5) Southern North Carolina State waters—

(i) Medium Mesh Gillnets. From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

(ii) Large mesh gillnets. (A) From April 15 through December 15, in Southern North Carolina State waters, no person may fish with any large mesh gillnet.

(B) From December 16 through April 14 of the following year, in Southern North Carolina State waters, no person may fish, possess on board unless stowed, or fail to remove from the water, any large mesh gillnet at night.

(6) South Carolina, Georgia, and Florida waters—

(i) Gillnets. Year-round, in South Carolina, Georgia, and Florida waters, no person may fish with any gillnet gear unless such person remains within 0.25 nautical miles (0.46 km) of the closest portion of the gillnet. Gear shall be removed from the water and stowed on board the vessel before the vessel returns to port.

(ii) [Reserved]

§ 229.36 Atlantic Pelagic Longline Take Reduction Plan (PLTRP).

(a) Purpose and scope. The purpose of this section is to implement the PLTRP to reduce incidental mortality and serious injury of long-finned and short-finned pilot whales and Risso’s dolphins in the Atlantic pelagic longline fishery off the U.S. east coast, a component of the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery.

(1) Persons subject to this section. The regulations in this section apply to the owner and operator of any vessel that has been issued or is required to be issued an Atlantic HMS tunas, swordfish, or shark permit under § 635.4 of this title and that has pelagic longline gear onboard as described under § 635.21(c) of this title.

(2) Geographic scope. The geographic scope of the PLTRP is the Atlantic Federal EEZ off the U.S. East Coast. The regulations specified in paragraphs (b) through (d) of this section apply throughout the Atlantic Federal EEZ off the U.S. East Coast. The regulation specified in paragraph (e) of this section applies to all U.S. Atlantic pelagic longline vessels operating in the EEZ portion of the Mid-Atlantic Bight.

(b) Definitions. In addition to the definitions contained in the MMPA and §§ 216.3 and 229.2 of this chapter, the following definitions apply.

(1) Cape Hatteras Special Research Area (CHSRA) means all waters inside and including the rectangular boundary described by the following lines: 35° N. lat., 75° W. long., 36° 25’ N. lat., and 74° 35’ W. long.

(2) 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.

(3) Observer means an individual authorized by NMFS, or a designated contractor, placed aboard a commercial fishing vessel to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data; to collect biological specimens; and to perform other scientific investigations.

(4) Pelagic longline has the same meaning as in § 635.2 of this title.

(c) Marine Mammal Handling and Release Placard. The placard, “Marine Mammal Handling/Release Guidelines: A Quick Reference for Atlantic Pelagic Longline Gear,” must be kept posted inside the wheelhouse and on the working deck. You may contact the NMFS Southeast Regional Office at (727) 824–5312 to request additional copies of the placard.

(d) CHSRA—(1) Special observer requirements. If you deploy or fish with pelagic longline gear in the CHSRA, or intend to do so, you must call NMFS Southeast Fisheries Science Center (SEFSC), 1–888–254–2558, at least 48 hours, but no more than 96 hours, prior to embarking on your fishing trip. This
requirement is in addition to any existing selection and notification requirement for observer coverage by the Pelagic Observer Program. If, upon calling in, you are informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip, then you need not wait until your stated date and time of departure and may depart on your fishing trip immediately. If you are assigned an observer, you must take the observer during that fishing trip. If you do not take the observer, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip.

(2) Special research requirements. In addition to observing normal fishing activities, observers may conduct additional scientific investigations aboard your vessel designed to support the goals of the PLTRP. The observer will inform you of the specific additional investigations that may be conducted during your trip. An observer may direct you to modify your fishing behavior, gear, or both. Instead of carrying an observer, you may be required to carry and deploy gear provided by NMFS or an observer or modify your fishing practices. By calling in per §229.36(d)(1), you are agreeing to take an observer. You are also acknowledging you are both willing and able to participate in research, as per this paragraph, in the CHSRA consistent with the PLTRP without any compensation. If you are assigned any special research requirements, you must participate in the research for the duration of the assignment. If you do not participate in the research, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip.

(3) Exception for transit. If pelagic longline gear is appropriately stowed, a vessel may transit through the CHSRA without meeting the observer and research requirements specified in §229.36(d)(1) and §229.36(d)(2). For the purpose of this paragraph, transit means non-stop progression through the area. Pelagic longline gear is appropriately stowed if all gangions, hooks, and buoys are disconnected from the mainline; hooks are not baited; longline left on the drum is covered with a tarp; and all other gear components are either stowed below deck or secured on deck and covered with a tarp.

(e) Gear restrictions. No person may deploy a pelagic longline that exceeds 20 nautical miles (nm) (37.04 km) in length in the Mid-Atlantic Bight, including in the CHSRA, unless they have a written letter of authorization from the Director, NMFS Southeast Fishery Science Center to use a pelagic longline exceeding 20 nm (37.04 km) in the CHSRA in support research for reducing bycatch of marine mammals in the pelagic longline fishery.

[74 FR 23358, May 19, 2009]
SUBCHAPTER D—WHALING

PART 230—WHALING PROVISIONS

Sec. 230.1 Purpose and scope.
230.2 Definitions.
230.3 General prohibitions.
230.4 Aboriginal subsistence whaling.
230.5 Licenses for aboriginal subsistence whaling.
230.6 Quotas and other restrictions.
230.7 Salvage of stinkers.
230.8 Reporting by whaling captains.

AUTHORITY: 16 U.S.C. 916 et seq.
SOURCE: 61 FR 29631, June 11, 1996, unless otherwise noted.

§ 230.1 Purpose and scope.


§ 230.2 Definitions.

Aboriginal subsistence whaling means whaling authorized by paragraph 13 of the Schedule annexed to and constituting a part of the Convention.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

Authorized officer means:
(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
(2) Any special agent or enforcement officer of the National Marine Fisheries Service;
(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary of Commerce or the Commandant of the Coast Guard to enforce the provisions of the Whaling Convention Act; or
(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Calf means any whale less than 1 year old or having milk in its stomach.

Convention means the International Whaling Commission established by article III of the Convention.

Cooperative agreement means a written agreement between the National Oceanic and Atmospheric Administration and a Native American whaling organization for the cooperative management of aboriginal subsistence whaling operations.

Landing means bringing a whale or any parts thereof onto the ice or land in the course of whaling operations.

Native American whaling organization means an entity recognized by the National Oceanic and Atmospheric Administration as representing and governing Native American whalers for the purposes of cooperative management of aboriginal subsistence whaling.

Regulations of the Commission means the regulations in the Schedule annexed to and constituting a part of the Convention, as modified, revised, or amended by the Commission from time to time.

Stinker means a dead, unclaimed whale found upon a beach, stranded in shallow water, or floating at sea.

Strike means hitting a whale with a harpoon, lance, or explosive device.

Wasteful manner means a method of whaling that is not likely to result in the landing of a struck whale or that does not include all reasonable efforts to retrieve the whale.

Whale products means any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

Whaling means the scouting for, hunting, striking, killing, flensing, or landing of a whale, and the processing of whales or whale products.
§ 230.6 Quotas and other restrictions.

(a) Quotas for aboriginal subsistence whaling shall be set in accordance with the regulations of the Commission. Quotas shall be allocated to each whaling village or captain by the appropriate Native American whaling organization. The Assistant Administrator shall publish in the Federal Register, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the Commission. These quotas and restrictions shall also be incorporated in the relevant cooperative agreements.
§ 230.7 Salvage of stinkers.

(a) Any person salvaging a stinker shall submit to the Assistant Administrator or his/her representative an oral or written report describing the circumstances of the salvage within 12 hours of such salvage. He/she shall provide promptly to the Assistant Administrator or his/her representative each harpoon, lance, or explosive dart found in or attached to the stinker. The device shall be returned to the owner thereof, unless it is retained as evidence of a possible violation.

(b) There shall be a rebuttable presumption that a stinker has been struck by the captain whose mark appears on the harpoon, lance, or explosive dart found in or attached thereto, and, if no strike has been reported by such captain, such strike shall be deemed to have occurred at the time of recovery of the device.

§ 230.8 Reporting by whaling captains.

(a) The relevant Native American whaling organization shall require each whaling captain licensed pursuant to §230.5 to provide a written statement of his/her name and village of domicile and a description of the distinctive marking to be placed on each harpoon, lance, and explosive dart.

(b) Each whaling captain shall provide to the relevant Native American whaling organization an oral or written report of whaling activities including but not limited to the striking, attempted striking, or landing of a whale and, where possible, specimens from landed whales. The Assistant Administrator is authorized to provide technological assistance to facilitate prompt reporting and collection of specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. The report shall include at least the following information:

1. The number, dates, and locations of each strike, attempted strike, or landing.
2. The length (taken as the straight-line measurement from the tip of the upper jaw to the notch between the tail flukes) and the sex of the whales landed.
3. The length and sex of a fetus, if present in a landed whale.
4. An explanation of circumstances associated with the striking or attempted striking of any whale not landed.

(c) If the relevant Native American whaling organization fails to provide the National Marine Fisheries Service the required reports, the Assistant Administrator may require the reports to be submitted by the whaling captains directly to the National Marine Fisheries Service.
SUBCHAPTER F—AID TO FISHERIES

PART 253—FISHERIES ASSISTANCE PROGRAMS

Subpart A—General

Sec. 253.1 Purpose.

Subpart B—Fisheries Obligation Guarantee Program

253.10 Definitions.
253.11 Guarantee policy.
253.13 Ability and experience requirements.
253.14 Economic and financial requirements.
253.15 Miscellaneous.
253.16 Fees.
253.17 Demand and payment.
253.18 Program operating guidelines.
253.19 Default and liquidation.

Subpart C—Interjurisdictional Fisheries

253.20 Definitions.
253.21 Apportionment.
253.22 State projects.
253.23 Other funds.
253.24 Administrative requirements.


Source: 61 FR 19172, May 1, 1996, unless otherwise noted.

Subpart B—Fisheries Obligation Guarantee Program

§ 253.10 Definitions.

The terms used in this subpart have the following meanings:

Act means Title XI of the Merchant Marine Act, 1936, as amended.

Actual cost means project cost (less a 10-percent salvage value), depreciated (excluding land) on a straightline basis at 1-year intervals over the project property’s useful life including architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Division requires.

Applicant means the one applying for a guarantee (the prospective notemaker).

Application means an application for a guarantee.

Application fee means 0.5 percent of the dollar amount of an application.

Aquacultural facility means land, land structures, water structures, water craft built in the U.S., and equipment for hatching, caring for, or growing fish under controlled circumstances and for its unloading, receiving, holding, processing, or distribution for commercial purposes.

CCF means Capital Construction Fund.

(1) To promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) To promote and encourage management of interjurisdictional fishery resources throughout their range.

(3) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resources in both the exclusive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

Subpart B—Fisheries Obligation Guarantee Program

§ 253.10 Definitions.

The terms used in this subpart have the following meanings:

Act means Title XI of the Merchant Marine Act, 1936, as amended.

Actual cost means project cost (less a 10-percent salvage value), depreciated (excluding land) on a straightline basis at 1-year intervals over the project property’s useful life including architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Division requires.

Applicant means the one applying for a guarantee (the prospective notemaker).

Application means an application for a guarantee.

Application fee means 0.5 percent of the dollar amount of an application.

Aquacultural facility means land, land structures, water structures, water craft built in the U.S., and equipment for hatching, caring for, or growing fish under controlled circumstances and for its unloading, receiving, holding, processing, or distribution for commercial purposes.

CCF means Capital Construction Fund.
§ 253.10

Citizen means a citizen or national of the U.S. who is otherwise also a citizen for the purpose of documenting a vessel in the coastwise trade under section 2 of the Shipping Act, 1916, as amended.

Contributory project means any project that contributes to developing the U.S. fishing industry by: Causing any vessel to catch less overutilized species than before; applying new technology; improving safety or fuel efficiency; making project property more efficient, productive, or competitive; potentially increasing fisheries exports; helping develop an underutilized fishery; or enhancing financial stability, financial performance, growth, productivity, or any other business attribute.

Demand means a noteholder’s request that the guarantor pay a guaranteed note’s full principal and interest balance.


Dual Use CCF means a CCF agreement whose qualified vessel is project property and whose deposits are pledged to repayment of the U.S. note.

Facility means a fisheries facility or aquacultural facility.

Financing means the first permanent debt placed on project property for financing its project cost.

Fish means all forms of aquatic animal and plant life, except marine mammals and birds.

Fishery facility means land, land structures, water craft that do not fish, and equipment used for transporting, unloading, receiving, holding, processing, or distributing fish for commercial purposes (including any fishery facility for passenger fishing).

Fishing means catching wild fish for commercial purposes (including passenger fishing).

Guarantee means the guarantor’s contractual promise, backed by the full faith and credit of the United States, to repay a guaranteed note if a notemaker fails to repay it as agreed.

Guarantee fee means 1 percent of a guaranteed note’s average annual unpaid principal balance.

Guaranteed note means a promissory note from a notemaker to a noteholder whose repayment the guarantor guarantees.

Guarantor means the U.S., acting, under the Act, by and through the Secretary of Commerce.

Industry means the fisheries and/or aquacultural industry.

Noteholder means a guaranteed note payee.

Notemaker means a guaranteed note payor.

Passenger fishing means carrying in vessels for commercial purposes passengers who catch fish.

Program means the Fisheries Obligation Guarantee Program.

Project means the construction of new project property or the refurbishing or purchase of used project property including architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Division requires.

Project property means the vessel or facility involved in a project whose actual cost is eligible under the Act for guarantee and controls the dollar amount of a guaranteed note.

Property means the project property and all other property pledged as security for a U.S. note.

Qualified means acceptable, in the Division’s credit risk judgment, and otherwise meeting the Division’s requirements for guarantee.

Refinancing means newer debt that either replaces older debt or reimburses applicants for previous expenditures.

Refinancing/assumption fee means 0.25 percent of the principal amount of a guaranteed note to be refinanced or assumed.

Refurbishing means any reconstruction, reconditioning, or other improvement of used project property involving more than routine repair or maintenance.

Security documents mean all collateral securing the U.S. note’s repayment and all other assurances, undertakings, and contractual arrangements associated with the U.S. note.

Underutilized fishery means:

(1) For a vessel, any fish species harvested below its sustainable yield.
National Marine Fisheries Service/NOAA, Commerce  § 253.12

(2) For a fisheries facility, any facility using that species or any for which aggregate facilities are inadequate to best use harvests of that or any other species.

U.S. means the United States of America and, for citizenship purposes, includes the Commonwealth of Puerto Rico; American Samoa; the U.S. Virgin Islands; Guam; the Republic of the Marshall Islands; the Federated States of Micronesia; the Commonwealth of the Northern Mariana Islands; any other commonwealth, territory, or possession of the United States; or any political subdivision of any of them.

U.S. note means a promissory note payable by the notemaker to the guarantor.

Useful life means the period during which project property will, as determined by the Division, remain economically productive.

Vessel means any vessel documented under U.S. law and used for fishing.

Wise use means the wise use of fisheries resources and their development, advancement, management, conservation, and protection.

§ 253.11 Guarantee policy.

(a) A guarantee financing or refinancing up to 80 percent of a project’s actual cost shall be available to any qualified citizen otherwise eligible under the Act and these rules, except:

(1) Vessel construction. The Program will not finance this project cost. The Program will only refinance this project cost for an existing vessel whose previous construction cost has already been financed (or otherwise paid). Refinancing this project cost for a vessel that already exists is not inconsistent with wise use, but financing it may be.

(2) Vessel refurbishing that materially increases an existing vessel’s harvesting capacity. The Program will not finance this project cost. The Program will only refinance this project cost for a vessel whose previous refurbishing cost has already been financed (or otherwise paid). Refinancing this project cost is not inconsistent with wise use, but financing it may be.

(3) Purchasing a used vessel or used fishery facility. The Program will neither finance nor refinance this project cost (except for a used vessel or fishery facility that the Program purchased and is reselling), unless the used vessel or fishery facility will be refurbished in the United States and will be a contributory project or it will be used in an underutilized fishery.

(b) Every project, other than those specified in paragraphs (a) (1) and (2) of this section, is consistent with wise use and every project, other than those specifically precluded in paragraphs (a) (1) and (2) of this section, may be financed, as well as refinanced.


(a) Guaranteed note—(1) Principal. This may not exceed 80 percent of actual cost, but may, in the Division’s credit judgment, be less.

(2) Maturity. This may not exceed 25 years, but shall not exceed the project property’s useful life and may, in the Division’s credit judgment, be less.

(3) Interest rate. This may not exceed the amount the Division deems reasonable.

(4) Prepayment penalty. The Division will allow a reasonable prepayment penalty, but the guarantor will not guarantee a notemaker’s payment of it.

(5) Form. This will be the simple promissory note (with the guarantee attached) the Division prescribes, promising only to pay principal, interest, and prepayment penalty.

(6) Sole security. The guaranteed note and the guarantee will be the noteholder’s sole security.

(b) U.S. note and security documents—

(1) Form. The U.S. note and security documents will be in the form the Division prescribes.

(2) U.S. note. This exists to evidence the notemaker’s actual and contingent liability to the guarantor (contingent if the guarantor does not pay the guaranteed note (including any portion of it), on the notemaker’s behalf or if the guarantor does not advance any other amounts or incur any other expenses on the notemaker’s behalf to protect the U.S. or accommodate the notemaker; actual if, and to the same monetary extent that, the guarantor does). Payment of the guaranteed note
by anyone but the guarantor will amor-
tize the original principal balance
(and interest accruing on it) of the U.S.
note to the same extent that it amor-
tizes the guaranteed note. The U.S
note will, among other things, contain
provisions for adding to its principal
balance all amounts the Program ad-
ances, or expenses it incurs, to pro-
tect the U.S. or accommodate the
notemaker.
(3) Security documents. The Division
will, at a minimum, require a pledge of
all project property (or adequate sub-
stitute collateral). The Division will
require such other security as it deems
the circumstances of each notemaker
and project require to protect the U.S.
All security documents will secure the
U.S. note. The security documents will,
among other things, contain provisions
for adding to the U.S. note all Program
advances, expenditures, and expenses
required to protect the U.S. or accom-
modate the notemaker.
(4) Recourse. Significant Program re-
liance, as a secondary means of repay-
ment, on the net worths of parties
other than the notemaker will ordi-
narily require secured recourse against
those net worths. Recourse may be by
a repayment guarantee or irrevocable
letter of credit. Ordinarily, the Divi-
sion will require recourse against: All
major shareholders of a closely-held
corporate notemaker, the parent cor-
poration of a subsidiary corporate
notemaker without substantial pledged
assets other than the project property,
and all major limited partners. The Di-
vision may also require recourse
against others it deems necessary to
protect the U.S. The principal parties
in interest, who ultimately stand most
to benefit from the project, should or-
dinarily be held financially account-
able for the project’s performance.
Where otherwise appropriate recourse
is unavailable, the conservatively pro-
jected net liquidating value of the
notemaker’s assets pledged to the Pro-
gram must, in the Division’s credit
judgment, substantially exceed all pro-
jected Program exposure.
(c) Dual-use CCF. For a vessel, the Di-
vision may require annually depositing
some portion of the project property’s
net income into a dual-use CCF. A
dual-use CCF provides the normal CCF
tax-deferral benefits, but also both
gives the Program control of CCF with-
drawals and recourse against CCF de-
posits and ensures an emergency refur-
bishing reserve (tax-deferred) for
project property.
§ 253.13 Ability and experience re-
quirements.
A notemaker and the majority of its
principals must generally have the
ability, experience, resources, char-
acter, reputation, and other qualifica-
tions the Division deems necessary for
successfully operating the project
property and protecting the U.S. The
Program will ordinarily not provide
guarantees: For venture capital pur-
poses; to a notemaker whose principals
are all from outside the industry; or for
a notemaker the majority of whose
principals cannot document successful
industry ability and experience of a du-
rade, degree, and nature consistent
with protecting the U.S.
§ 253.14 Economic and financial re-
quirements.
(a) Income and expense projections. The
Division’s conservative income and ex-
pense projections for the project prop-
erty’s operation must prospectively in-
dicate net earnings that can service all
debt, properly maintain the project
property, and protect the U.S. against
the industry’s cyclical economics and
other risks of loss.
(b) Working capital. The Division’s
conservative assessment of an appli-
cant’s financial condition must indi-
cate initial working capital prospec-
tively sufficient to provide for the
project property to achieve net earn-
ings projections, fund all foreseeable
contingencies, and protect the U.S. At
the Division’s discretion, some portion
of projected working capital needs may
be met by something other than cur-
rent assets minus current liabilities
(i.e., by a line or letter of credit, non-
current assets readily capable of gener-
ating working capital, a guarantor
with sufficient financial resources,
etc.).
(c) Audited financial statements. These
will ordinarily be required for any
notemaker with large or financially ex-
tensive operations whose financial con-
dition the Division believes it cannot
otherwise assess with reasonable certainty.

(d) **Consultant services.** Infrequently, expert consulting services may be necessary to help the Division assess a project’s economic, technical, or financial feasibility. The Division will select and employ the necessary consultant, but require the applicant to reimburse the Division. A subsequently approved application will not be closed until the applicant reimburses the Division. This cost may, at the Division’s discretion, be included in a guaranteed note’s amount. For a declined application, the Division may reimburse itself from the remaining 25 percent of the application fee.

§ 253.15 Miscellaneous.

(a) **Applicant.** Only the legal title holder of project property (or the lessee of an appropriate long-term financing lease) may apply for a guarantee. Applicants must submit an “Application for Fisheries Obligation Program Guarantee” to the appropriate NMFS Regional Financial Services Branch to be considered for a guaranteed loan.

(b) **Investigation and approval.** The Division shall do a due diligence investigation of every application it accepts and determine if, in the Division’s sole judgment, the application is eligible and qualified. Applications the Division deems ineligible or unqualified will be declined. The Division will approve eligible and qualified applications based on the applicability of the information obtained during the application and investigation process to the programmatic goals and financial requirements of the program and under terms and conditions that, in the Division’s sole discretion, protect the U.S. The Division will state these terms and conditions in its approval in principal letter.

(c) **Insurance.** All property and other risks shall be continuously insured during the term of the U.S. note. Insurers must be acceptable to the Division. Insurance must be in such forms and amounts and against such risks as the Division deems necessary to protect the U.S. Insurance must be endorsed to include the requirements the U.S., as respects its interest only, deems necessary to protect the U.S. (e.g., the Program will ordinarily be an additional insured as well as the sole loss payee for the amount of its interest; cancellation will require 20 days’ advance written notice; vessel seaworthiness will be admitted, and the Program will be adequately protected against other insureds’ breaches of policy warranties, negligence, omission, etc.)

(d) **Property inspections.** The Division will require adequate condition and valuation inspection of all property as the basis for assessing the property’s worth and suitability for guarantee. The Division may also require these at specified periods during guarantee life. These must be conducted by competent and impartial inspectors acceptable to the Division. Inspection cost will be at an applicant’s expense. Those occurring before application approval may be included in actual cost.

(e) **Guarantee terms and conditions.** The Division’s approval in principle letter shall specify the terms and conditions of the guarantor’s willingness to guarantee. These shall be incorporated in closing documents that the Division prepares. Terms and conditions are at the Division’s sole discretion. An applicant’s nonacceptance will result in disqualification for guarantee.

(f) **Noteholder.** The Division will, as a gratuitous service, request parties interested in investing in guaranteed notes to submit offers to fund each prospective guaranteed note. The Division and the applicant will, by mutual consent, choose the responsive bidder, which ordinarily will be the prospective noteholder whose bid represents the lowest net effective annual cost of capital. Until the Division has closed the guarantee, arrangements between an applicant and a prospective noteholder are a matter of private contract between them, and the Program is not responsible to either for nonperformance by the other.

(g) **Closing—(1) Approval in principle letters.** Every closing will be in strict accordance with a final approval in principle letter.

(2) **Contracts.** The guaranteed note, U.S. note, and security documents will ordinarily be on standard Program forms that may not be altered without Divisional approval. The Division will
ordinarily prepare all contracts, except certain pledges involving real property, which will be prepared by each notemaker’s attorney at the direction and approval of the Division’s attorney.

(3) Closing schedules. The Division will ordinarily close guarantee transactions with minimal services from applicants’ attorneys, except where real property pledges or other matters appropriate for private counsel are involved. Real property services required from an applicant’s attorney may include: Title search, mortgage and other document preparation, execution and recording, escrow and disbursement, and a legal opinion and other assurances. An applicant’s attorney’s expense, and that of any other private contractor required, is for applicant’s account. Attorneys and other contractors must be satisfactory to the Division. The Division will attempt to meet reasonable closing schedules, but will not be liable for adverse interest-rate fluctuations, loss of commitments, or other consequences of being unable to meet an applicant’s and a prospective noteholder’s closing schedule. These parties should work closely with the Division to ensure a closing schedule the Division can meet.

§ 253.16 Fees.

(a) Application fee. The Division will not accept an application without the application fee. Fifty percent of the application fee is fully earned at application acceptance, and is not refundable. The rest is fully earned when the Division issues an approval in principal letter, and it is refundable only if the Division declines an application or an applicant requests refund before the Division issues an approval in principal letter.

(b) Guarantee fee. Each guarantee fee will be due in advance and will be based on the guaranteed note’s repayment provisions for the prospective year. The first annual guarantee fee is due at guarantee closing. Each subsequent one is due and payable on the guarantee closing’s anniversary date. Each is fully earned when due, and shall not subsequently be refunded for any reason.

(c) Refinancing or assumption fee. This fee applies only to refinancing or assuming existing guaranteed notes. It is due upon application for refinancing or assuming a guaranteed note. It is fully earned when due and shall be non-refundable. The Division may waive a refinancing or assumption fee’s payment when the refinancing or assumption’s primary purpose is to protect the U.S.

(d) Where payable. Fees are payable by check made payable to “NMFS/FSFF.” Other than those collected at application or closing, fees are payable by mailing checks to: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, P.O. Box 73004, Chicago, Ill. 60673. To ensure proper crediting, each check must include the official case number the Division assigns to each guarantee.

§ 253.17 Demand and payment.

Every demand must be delivered in writing to the Division. Each must include the noteholder’s certified record of the date and amount of each payment made on the guaranteed note and the manner of its application. Should the Division not acknowledge receipt of a timely demand, the noteholder must possess evidence of the demand’s timely delivery.

§ 253.18 Program operating guidelines.

The Division may issue Program operating guidelines, as the need arises, governing national Program policy and administrative issues not addressed by these rules.

§ 253.19 Default and liquidation.

Upon default of the security documents, the Division shall take such remedial action (including, where appropriate, liquidation) as it deems best able to protect the U.S.’ interest.

Subpart C—Interjurisdictional Fisheries

§ 253.20 Definitions.

The terms used in this subpart have the following meanings:

Adopt means to implement an interstate fishery management plan by State action or regulation.

Commercial fishery failure means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

(1) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise; or

(2) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

Enforcement agreement means a written agreement, signed and dated, between a state agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and state laws pertaining to the protection of interjurisdictional fishery resources.

Federal fishery management plan means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

Fisheries management means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

Fishery resource means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life, including habitat, other than marine mammals and birds.

Interjurisdictional fishery resource means:

(1) A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more states and the U.S. Exclusive Economic Zone; or

(2) A fishery resource for which an interstate or a Federal fishery management plan exists; or

(3) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

Interstate Commission means a commission or other administrative body established by an interstate compact.

Interstate compact means a compact that has been entered into by two or more states, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

Interstate Fisheries Research Program means research conducted by two or more state agencies under a formal interstate agreement.

Interstate fishery management plan means a plan for managing a fishery resource developed and adopted by the member states of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the States to conserve and manage the fishery resource.

Landed means the first point of off-loading fishery resources.

NMFS Regional Director means the Director of any one of the five National Marine Fisheries Service regions.

Project means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

Research means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

Secretary means the Secretary of Commerce or his/her designee.

State means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

State Agency means any department, agency, commission, or official of a state authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

Value means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.

Volume means the weight of the fishery resource as landed, at the first point of landing.
§ 253.21 Apportionment.

(a) Apportionment formula. The amount of funds apportioned to each state is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such state during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and landed within all of the states during those calendar years.

(1) The equally weighted average value is determined by the following formula:

\[
\frac{\text{Volume of A percent}}{\text{Volume of all States}} = A \%
\]

\[
\frac{\text{Value of B percent}}{\text{Value of all States}} = B \%
\]

\[\left(\frac{A + B}{2}\right) = \text{State percentage used to determine state's share of the total available funds}\]

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

(i) Determine each state’s share according to the apportionment formula.

(ii) Certify the funds to the respective NMFS Regional Director.

(iii) Instruct NMFS Regional Directors to promptly notify states of funds’ availability.

(b) No state, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of 1 percent or higher may receive an apportionment for any fiscal year that is less than 1 percent of the total amount of funds available for apportionment for such fiscal year.

(c) If a State’s ratio under the apportionment formula in paragraph (b) of this section is less than one-third of 1 percent, that state may receive funding if the state:

(1) Is signatory to an interstate fishery compact;

(2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior for a fishery that is managed under an interstate fishery management plan;

(3) Borders one or more of the Great Lakes;

(4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research program; or

(5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any state that has a ratio of less than one-third of 1 percent and meets any of the requirements set forth in paragraphs (c) (1) through (5) of this section may receive an apportionment for any fiscal year that is not less than 0.5 percent of the total amount of funds available for apportionment for such fiscal year.

(e) No state may receive an apportionment under this section for any fiscal year that is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) Unused apportionments. Any part of an apportionment for any fiscal year to any state:

(1) That is not obligated during that year;

(2) With respect to which the state notifies the Secretary that it does not wish to receive that part; or

(3) That is returned to the Secretary by the state, may not be considered to be appropriated to that state and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a state referred to in this section is irrevocable.

§ 253.22 State projects.

(a) General—(1) Designation of state agency. The Governor of each state shall notify the Secretary of which agency of the state government is authorized under its laws to regulate commercial fisheries and is, therefore, designated to receive financial assistance awards. An official of such agency shall certify which official(s) is authorized to commit the state to participation under the Act, to sign project documents, and to receive payments.

(2) States that choose to submit proposals in any fiscal year must so notify the Secretary.
§ 253.23 Other funds.

(a) Funds for disaster assistance. (1) The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he or she has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the states’ amount under the apportionment formula in §253.21(a) will qualify for funding under this section. The Federal share of the cost of any activity conducted under the disaster provision of the Act shall be limited to 75 percent of the total cost.

(2) In addition, pursuant to section 308(d) of the Act, the Secretary is authorized to award grants to persons engaged in commercial fisheries, for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster.

(b) Evaluation of projects. The Secretary, before approving any proposal for a project, will evaluate the proposal as to its applicability, in accordance with 16 U.S.C. 4104(a)(2).

(c) State matching requirements. The Federal share of the costs of any project conducted under this subpart, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The state has adopted an interstate fishery management plan for the fishery resource to which the project applies;

(2) The state has adopted fishery regulations that the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies, in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(d) Financial assistance award. If the Secretary approves or disapproves a proposal for a project, he or she will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval.

(e) Restrictions. (1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the state as a part of its contribution to the total cost of the project.

(2) The expenditure of funds under this subpart may be applied only to projects for which a proposal has been evaluated under paragraph (b) of this section and approved by the Secretary, except that up to $25,000 each fiscal year may be awarded to a state out of the state’s regular apportionment to carry out an “enforcement agreement.” An enforcement agreement does not require state matching funds.

(f) Prosecution of work. All work must be performed in accordance with applicable state laws or regulations, except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.
Funds may be distributed by the Secretary only after notice and opportunity for public comment of the appropriate limitations, terms, and conditions for awarding assistance under this section. Assistance provided under this section is limited to 75 percent of an uninsured loss to the extent that such losses have not been compensated by other Federal or State programs.

(b) Funds for interstate commissions. Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions.

§ 253.24 Administrative requirements.
Federal assistance awards made as a result of this Act are subject to all Federal laws, Executive Orders, Office of Management and Budget Circulars as incorporated by the award; Department of Commerce and NOAA regulations; policies and procedures applicable to Federal financial assistance awards; and terms and conditions of the awards.

PART 259—CAPITAL CONSTRUCTION FUND

JOINT TAX REGULATIONS

§ 259.1 Execution of agreements and deposits made in a Capital Construction Fund.
In the case of a taxable year of a taxpayer beginning after December 31, 1969, and before January 1, 1972, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

(a) A capital construction fund agreement executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years will be deemed to be effective on the date of the execution of such agreement or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(b) Notwithstanding the provisions of paragraph (a) of this section, where:

(1) For taxable years beginning after December 31, 1969, and prior to January 1, 1971, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1972, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1972, and

(2) For taxable years beginning after December 31, 1970, and prior to January 1, 1972, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1973, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1973 (or, if earlier, 60 days after the publication of final joint regulations under section 607 of the Merchant Marine Act, 1936, as amended); then such a capital construction fund agreement will be deemed to be effective as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates.

(c)(1) Deposits made in a capital construction fund pursuant to such an agreement within 60 days after the date of execution of the agreement, or on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years, whichever date shall be later, shall be deemed to have been made on
The phrase "existing capital and special reserve funds" does not refer to the Capital Construction Fund program but rather to funds established with the Maritime Administration prior to the amendment of the Merchant Marine Act, 1936, which authorized the Capital Construction Fund program.

(2) Notwithstanding paragraph (c)(1) of this section, for taxable years beginning after December 31, 1970, and ending prior to January 1, 1972, deposits made later than the last date permitted under paragraph (c)(1) of this section but on or before January 9, 1973, in a capital construction fund pursuant to an agreement with the Secretary of Commerce, acting by and through the Administrator of the National Oceanic and Atmospheric Administration, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(d) Nothing in this section shall alter the rules and regulations governing the timing of deposits with respect to existing capital and special reserve funds or with respect to the treatment of deposits for any taxable year or years other than a taxable year or years beginning after December 31, 1969, and before January 1, 1972.¹

[37 FR 25025, Nov. 25, 1972, as amended at 38 FR 8163, Mar. 29, 1973]

CAPITAL CONSTRUCTION FUND AGREEMENT

SOURCE: Sections 259.30 to 259.38 appear at 39 FR 33675, Sept. 19, 1974, unless otherwise noted.

§ 259.30 Application for Interim Capital Construction Fund Agreement ("Interim CCF Agreement").

(a) General qualifications. To be eligible to enter into an Interim CCF Agreement an applicant must:

(i) Be a citizen of the United States (citizenship requirements are those for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended);

(ii) Own or lease one or more eligible vessels (as defined in section 607(k)(2) of the Act) operating in the foreign or domestic commerce of the United States.

(iii) Have an acceptable program for the acquisition, construction, or reconstruction of one or more qualified vessels (as defined in section 607(k)(2) of the Act). Qualified vessels must be for commercial operation in the fisheries of the United States. If the qualified vessel is 5 net tons or over, it must be documented in the fisheries of the United States. Dual documentation in both the fisheries and the coastwise trade of the United States is permissible. Any vessel which will carry fishing parties for hire must be inspected and certified (under 46 CFR part 176) by the U.S. Coast Guard as qualified to carry more than six passengers or demonstrate to the Secretary's satisfaction that the carrying of fishing parties for hire will constitute its primary activity. The program must be a firm representation of the applicant's actual intentions. Vague or contingent objectives will not be acceptable.

(b) Content of application. Applicants seeking an Interim CCF Agreement may make application by letter providing the following information:

(i) Proof of U.S. citizenship;

(ii) The first taxable year for which the Interim CCF Agreement is to apply (see § 259.33 for the latest time at which applications for an Interim CCF Agreement relating to a previous taxable year may be received);

(iii) The following information regarding each "eligible vessel" which is to be incorporated in Schedule A of the Interim CCF Agreement:

(A) Name of vessel,

(B) Official number, or, in the case of vessels under 5 net tons, the State registration number where required,

(C) Type of vessel (i.e., catching vessel, processing vessel, transporting vessel, charter vessel, barge, passenger carrying fishing vessel, etc.),

(D) General characteristic (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of
§ 259.31 Acquisition, construction, or reconstruction.

(a) Acquisition. No vessel having previously been operated in a fishery of the United States prior to its acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, except in the cases specified in paragraphs (a)(1) and (2) of this section:

(1) A vessel not more than 5 years old, at the time of its acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if each acquisition in this category becomes a Schedule A vessel and there exists for each acquisition in this category (on a one-for-one basis) an additional Schedule B construction or reconstruction. The sole consideration for permitting an acquisition in this category is that it will enable the party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the additional Schedule B construction or

(7) Fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common name—of fish, shellfish, or other living marine resources),

(vii) Area of operation (which in this section means the general geographic areas in which each vessel will operate for each species or group of species of fish, shellfish, or other living marine resources).

(c) Filing. The application must be signed and submitted in duplicate to the Regional Office of the National Marine Fisheries Service's Financial Assistance Division corresponding to the region in which the party conducts its business. As a general rule, the Interim CCF Agreement must be executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of the Federal tax return in order to be effective for the tax year to which that return relates. It is manifestly in the Applicant's best interest to file at least 45 days in advance of such date.

reconstruction. Should this consideration materially fail, the Secretary shall, at his discretion, disqualify previously qualified withdrawals in this category, seek liquidated damages as provided for in paragraph (a)(4) of this section and/or terminate the Interim CCF Agreement.

(2) A vessel more than 5 years old, but not more than 25 years old (special showing required if more than 25 years old, see paragraph (b) of this section), at the time of acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if that same vessel becomes a Schedule A vessel and (in addition to being a Schedule B vessel for the purpose of its acquisition) becomes a Schedule B vessel for the purpose of that same vessel’s reconstruction to be accomplished ordinarily within 7 years from the date of acquisition. The sole consideration for permitting an acquisition in this category is that it will enable a party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the Schedule B reconstruction of the vessel so acquired. Should this consideration materially fail, the same penalty prescribed in paragraph (a)(1) of this section applies.

(3) Reserved for minimum deposits under this section.

(4) Reserved for liquidated damages.

(b) Reconstruction. No reconstruction project costing less than $100,000 shall qualify a vessel for reconstruction, unless the reconstruction project costs, or will cost, 20 percent or more of the reconstructed vessel’s acquisition cost (in its unreconstructed state) to the party seeking CCF withdrawal therefor. If the reconstruction project meets the $100,000 test, then the 20 percent test does not apply. Conversely, if the reconstruction project does not meet the $100,000 test, then the 20 percent test applies.

(1) Reconstruction may include rebuilding, replacing, reconditioning, converting and/or improving any portion of a vessel. A reconstruction project must, however, substantially prolong the useful life of the reconstructed vessel, increase its value, or adapt it to a different commercial use in the fishing trade or industry.

(2) All, or the major portion (ordinarily, not less than 80 percent), of a reconstruction project’s actual cost must (for the purpose of meeting the above dollar or percentage tests) be classifiable as a capital expenditure for Internal Revenue Service (IRS) purposes. That otherwise allowable (i.e., for the purpose of meeting the above dollar or percentage tests) portion of a reconstruction project’s actual cost which is not classifiable as a capital expenditure shall, however, be excluded from the amount qualified for withdrawal as a result of the reconstruction project.

(3) No vessel more than 25 years old at the time of withdrawal or request for withdrawal shall be a qualified vessel for the purpose of reconstruction unless a special showing is made, to the Secretary’s discretionary satisfaction, that the type and degree of reconstruction intended will result in an efficient and productive vessel with an economically useful life at least 10 years beyond the date reconstruction is completed.

(c) Time permitted for construction or reconstruction. Construction or reconstruction must be completed within 18 months from the date construction or reconstruction first commences, unless otherwise consented to by the Secretary.

(d) Energy saving improvements. An improvement made to a vessel to conserve energy shall, regardless of cost, be treated as a reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure and shall be exempted from having to meet conditional fishery requirements for reconstruction as set forth in §259.32 and from all qualifying tests for reconstruction set forth in paragraph (b) of this section with the following exceptions:

(1) An energy saving improvement shall be required to meet both conditional fishery requirements and the qualifying tests for reconstruction if it serves the dual purpose of saving energy and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel.

(2) That portion of the actual cost of an energy saving improvement which is
§ 259.32 Conditional fisheries.

(a) The Secretary may from time-to-time establish certain fisheries in which CCF benefits will be restricted. The regulatory mechanism for so doing is part 251 of this chapter. Each fishery so restricted is termed a “conditional fishery”. Subpart A of part 251 of this chapter establishes the procedure to be used by the Secretary in proposing and adopting a fishery as a conditional fishery. Subpart B of part 251 of this chapter enumerates each fishery actually adopted as a conditional fishery (part 251 of this chapter should be referred to for details). The purpose of this §259.32 is to establish the effect of conditional fishery adoption upon Interim CCF Agreements.

(b) If a written request for an otherwise permissible action under an Interim CCF Agreement is submitted prior to the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the subsequent adoption of a conditional fishery (even, if that adoption occurs before the Secretary gives his consent or issues an Interim CCF Agreement or amendment thereto, all as the case may be). Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(c) If a written request for an otherwise permissible action under an Interim CCF Agreement, or an application for an Interim CCF Agreement, is submitted after the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the previous adoption of a conditional fishery provided, however, that this paragraph shall apply only to construction or reconstruction for which a binding contract has been reduced to writing prior to the date upon which conditional fishery adoption occurred. Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(d) Conditional fishery adoption shall have no effect whatsoever upon a

to be paid for from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes.

(e) Safety projects. The acquisition and installation of safety equipment for a qualified vessel and vessel modifications whose central purpose is materially increasing the safety of a qualified vessel or the acquisition and installation of equipment required by law or regulation that materially increases the safety of a qualified vessel shall, regardless of cost, be treated as reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure, shall be exempt from having to meet conditional fishery requirements for reconstruction as set forth in §259.32, and shall be exempt from all qualifying tests for reconstruction set forth in paragraph (b) of this section, with the following exceptions:

(1) A safety improvement shall be required to meet both conditional fishery requirements and all qualifying tests for reconstruction if it serves the dual purpose of safety and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel;

(2) That portion of the actual cost of a safety improvement that is to be paid for from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes;

(3) Safety improvements projects whose clear and central purpose is restricted to complying with the requirements of the Commercial Fishing Industry Vessel Safety Act of 1988 (Public Law 100–424 Sec. 1, 102 stat. 1585 (1988) (codified in scattered sections of 46 U.S.C.)) shall, without further documentation, be considered to fall within this paragraph (e). Satisfactory documentation will be required for all other projects proposed to be considered as falling within this paragraph (e). Projects not required by law or regulation whose central purpose clearly involves something other than an improvement that materially increases the safety of a vessel will not be considered to fall within this paragraph (e).

Schedule B objective whose qualification for withdrawal (which may be in an amount equal to the total cost over time of a Schedule B objective, i.e., a series of withdrawals) has been, prior to the date of conditional fishery adoption, either consented to by the Secretary or requested in accordance with paragraph (b) or (c) of this section. This extends to past, present, and future withdrawals in an amount representing up to 100 percent of the cost of a Schedule B objective. Commencement of any project in these categories shall, however, be started not later than 6 months from the date of conditional fishery adoption and shall be completed within 24 months from the date of conditional fishery adoption, unless for good and sufficient cause shown the Secretary, at his discretion, consents to a longer period for either project commencement or completion. Consent to the qualification of withdrawal for any project in these categories not commenced or completed within the periods allowed shall be revoked at the end of the periods allowed.

(e) Conditional fishery adoption shall have no effect whatsoever upon Schedule B objectives which will not result in significantly increasing harvesting capacity in a fishery adopted as a conditional fishery.

(1) Construction of a new vessel (vessel “Y”) for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the party causing the “Y” vessel to be constructed causes (within 1 year after the delivery of vessel “Y”) to be permanently removed from all fishing, or placed permanently in a fishery not then adopted as a conditional fishery, under such conditions as the Secretary may deem necessary or desirable, a vessel (vessel “Z”) which has during the previous 18 months operated substantially in the same fishery as the “Y” vessel and which has a fishing capacity substantially equivalent to the “Y” vessel. Failure to remove a vessel could subject all withdrawals to be treated as nonqualified and may be cause for termination of the CCF. What constitutes substantially equivalent fishing capacity shall be a matter for
the Secretary’s discretion. Ordinarily, in exercising his discretion about what does or does not constitute substantially equivalent fishing capacity, the Secretary will take into consideration
(i) the average size of vessels constructed for the adopted conditional fishery at the time vessel “Z” entered it, (ii) the average size of vessels constructed for the adopted conditional fishery at the time vessel “Y” was or will be constructed, and (iii) such other factors as the Secretary may deem material and equitable, including the length of time the party had owned or leased vessel “Z” and the length of time the vessel has operated in the conditional fishery. The Secretary will consider these factors, and exercise his discretion, in such a way as to encourage use of this program by established fishermen who have owned or leased for substantial periods vessels which need to be replaced, even though a “Z” vessel may have been constructed at a time which dictated a lesser fishing capacity than dictated for a “Y” vessel at the time of its construction.

(2) Acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the vessel to be acquired and/or reconstructed had during the previous 3 years operated substantially in the same fishery as the adopted conditional fishery in which it will operate after acquisition and/or reconstruction. If less than 3 years, then acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless there occurs vessel removal or permanent placement elsewhere under the same conditions specified for construction in paragraph (e)(1) of this section.

(3) Construction of a new vessel or the acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall not be deemed to significantly increase the harvesting capacity where the vessel
§ 259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which Interim CCF Agreement is effective.

(a) Periods controlling permissibility. For the purpose of this §259.33, the period between the beginning and the end of a party’s tax year is designated “Period (aa)”; the period between the

§ 259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary’s consent; first tax year for which Interim CCF Agreement is effective.

(a) Periods controlling permissibility. For the purpose of this §259.33, the period between the beginning and the end of a party’s tax year is designated “Period (aa)”; the period between the

§ 259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary’s consent; first tax year for which Interim CCF Agreement is effective.

(a) Periods controlling permissibility. For the purpose of this §259.33, the period between the beginning and the end of a party’s tax year is designated “Period (aa)”; the period between the
end of a party’s tax year and the party’s tax due date for that tax year is designated “Period (bb)”; the period between the party’s tax due date and the date on which ends the party’s last extension (if any) of that tax due date is designated “Period (cc)”.

(b) Constructive deposits and withdrawals (before Interim CCF Agreement effectiveness date). Constructive deposits and withdrawals shall be permissible only during the Period (aa) during which a written application for an interim CCF Agreement is submitted to the Secretary and so much of the next succeeding Period (aa), if any, which occurs before the Secretary executes the Interim CCF Agreement previously applied for. All otherwise qualified expenditures of eligible ceilings during Period (aa) may be consented to by the Secretary as constructive deposits and withdrawals: Provided, The applicant’s application for an Interim CCF Agreement and for consent to constructive deposit and withdrawal qualification (together with sufficient supporting data to enable the Secretary’s execution or issuance of consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc). If, however, the Secretary receives the completed application in proper form so close to the latest permissible period that the consent cannot be given before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the applicant to negotiate with the Internal Revenue Service (IRS) for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless issue his consent however long past the party’s Period (bb) or Period (cc), whichever applies, the Secretary’s administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party’s having failed to apply in a more timely fashion.

(c) Constructive deposits (after Interim CCF Agreement effectiveness date). The Secretary shall not permit constructive deposits or withdrawals after the effective date of an Interim CCF Agreement. Eligible ceilings must, after the effective date of an interim CCF Agreement, be physically deposited in money or kind in scheduled depositories before the last date eligible ceilings for any Period (aa) of any party become ineligible for deposit (the last date being Period (bb) or Period (cc), whichever applies).

(d) Ratification of withdrawals (as qualified) made without first having obtained Secretary’s consent. The Secretary may ratify as qualified any withdrawal made without first having obtained the Secretary’s consent therefor, provided the withdrawal was such as would have resulted in the Secretary’s consent had it been requested before withdrawal, and provided further that the party’s request for consent (together with sufficient supporting data to enable issuance of the Secretary’s consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc).

(1) If, however, the Secretary receives the request in proper form so close to the latest permissible period that the consent cannot be given before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless issue his consent however long past the party’s Period (bb) or Period (cc), whichever applies, the Secretary’s administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party’s having failed to apply in a more timely fashion.

(2) All parties shall be counseled that it is manifestly in their best interest to request the Secretary’s consent 45 days in advance of the expected date of withdrawal. Withdrawals made without the Secretary’s consent, in reliance on obtaining the Secretary’s consent, are made purely at a party’s own risk. Should any withdrawal made without the Secretary’s consent prove, for any reason, to be one to which the Secretary will not or cannot consent by
ratification, then the result will be either, or both, at the Secretary's discretion, an unqualified withdrawal or an involuntary termination of the Interim CCF Agreement.

(3) Should the withdrawal made without having first obtained the Secretary's consent be made in pursuance of a project not then an eligible Schedule B objective, then the Secretary may entertain an application to amend the Interim CCF Agreement's Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal, all under the same time constraints and conditions as otherwise specified herein.

(4) Any withdrawals made, after the effective date of an Interim CCF Agreement, without the Secretary's consent are automatically non-qualified withdrawals unless the Secretary subsequently consents to them by ratification as otherwise specified herein.

(5) Redeposit of that portion of the ceiling withdrawn without the Secretary's consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If such a non-qualified withdrawal adversely affects the Interim CCF Agreement's general status in any wise deemed by the Secretary, at his discretion, to be significant and material, the Secretary may involuntarily terminate the Interim CCF Agreement.

(e) First tax year for which Interim CCF Agreement is effective. An Agreement, to be effective for any party's Period (aa), must be executed and entered into by the party, and submitted to the Secretary, before the end of Period (bb) or Period (cc), whichever applies, for such Period (aa). If executed and entered into by the party, and/or received by the Secretary, after the end of Period (bb) or Period (cc), whichever applies, then the Agreement will be first effective for the next succeeding Period (aa).

(1) If, however, the Secretary receives an Agreement executed and entered into by the party in proper form so close to the latest permissible period that the Secretary cannot execute the Agreement before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Agreement however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely manner.

(2) All parties shall be counseled that it is manifestly in their best interest to enter into and execute an Agreement, and submit the same to the Secretary, at least 45 days in advance of the Period (bb) or Period (cc), whichever applies, for the Period (aa) for which the Agreement is first intended to be effective.

§ 259.34 Minimum and maximum deposits; maximum time to deposit.

(a) Minimum annual deposit. The minimum annual (based on each party's taxable year) deposit required by the Secretary in order to maintain an Interim CCF Agreement shall be an amount equal to 2 percent of the total anticipated cost of all Schedule B objectives unless such 2 percent exceeds during any tax year 50 percent of a party's Schedule A taxable income, in which case the minimum deposit for that year shall be 50 percent of the party's Schedule A taxable income.

(1) Minimum annual deposit compliance shall be audited at the end of each party's taxable year unless any one or more of the Schedule B objectives is scheduled for commencement more than 3 taxable years in advance of the taxable year in which the agreement is effected, in which case minimum annual deposit compliance shall be audited at the end of each 3 year taxable period. In any taxable year, a Party may apply any eligible amount in excess of the 2 percent minimum annual deposit toward meeting the party's minimum annual deposit requirement in past or future years: Provided, however, At the end of each 3 year period, the aggregate amount in the fund must be in compliance with 2 percent minimum annual deposit rule (unless the
§ 259.36 CCF accounts.

(a) General: Each CCF account in each scheduled depository shall have an account number, which must be reflected on the reports required by §259.33. All CCF accounts shall be reserved only for CCF transactions. There shall be no intermingling of CCF

given includes all deposit and withdrawal activity for the year and the account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity. If the party’s tax year is the same as the calendar year, and if the final deposit and withdrawal report required under paragraph (a)(2) of this section is submitted before the due date for this preliminary report, then this report is not required.

(2) A final deposit and withdrawal report at the end of the tax year, which shall be submitted not later than 30 days after expiration of the due date, with extensions (if any), for filing the party’s Federal Income tax return. The report must be made on a form prescribed by the Secretary using a separate form for each FVCCF depository. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity.

(b) Failure to submit the required annual deposit and withdrawal reports shall be cause after due notice for either, or both, disqualification of withdrawals or involuntary termination of the Interim CCF Agreement, at the Secretary’s discretion.

(c) Additionally, the Secretary shall require from each Interim CCF Agreement holder, not later than 30 days after expiration of the party’s tax due date, with extensions (if any), a copy of the party’s Federal Income Tax Return filed with IRS for the preceding tax year. Failure to submit shall after due notice be cause for the same adverse action specified in the paragraph above.

§ 259.37 Conditional consents to withdrawal qualification.

The Secretary may conditionally consent to the qualification of withdrawal, such consent being conditional upon the timely submission to the Secretary of such further proofs, assurances, and advices as the Secretary, in his discretion, may require. Failure of a party to comply with the conditions of such a consent within a reasonable time and after due notice shall, at the Secretary’s discretion, be cause for either, or both, nonqualification of withdrawal or involuntary Interim CCF Agreement termination.

§ 259.38 Miscellaneous.

(a) Wherever the Secretary prescribes time constraints herein for the submission of any CCF transactions, the postmark date shall control if mailed or, if personally delivered, the actual date of submission. All required materials may be submitted to any Financial Assistance Division office of the National Marine Fisheries Service.

(b) All CCF information received by the Secretary shall be held strictly confidential, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of any fundholder.

(c) While recognizing that precise regulations are necessary in order to treat similarly situated parties similarly, the Secretary also realizes that precision in regulations can often cause inequitable effects to result from unavoidable, unintended, or minor discrepancies between the regulations and the circumstances they attempt to govern. The Secretary will, consequently, at his discretion, as a matter of privilege and not as a matter of right, attempt to afford relief to parties where literal application of the purely procedural, as opposed to substantive, aspects of these regulations would otherwise work an inequitable hardship. This privilege will be sparingly granted and no party should before the fact attempt to act in reliance on its being granted after the fact.

(d) These §§ 259.30 through 259.38 are applicable absolutely to all Interim CCF Agreements first entered into (or the amendment of all then existing Interim CCF Agreements, which amendment is first entered into) on or after the date these §§ 259.30 through 259.38 are adopted. These §§ 259.30 through 259.38 are applicable to all Interim CCF Agreements entered into before the date these §§ 259.30 through 259.38 are adopted, with the following exceptions only:
(1) The vessel age limitations imposed by §259.31 shall not apply to already scheduled Schedule B objectives.

(2) The minimum deposits imposed by §259.34 shall not apply to any party’s tax year before that party’s tax year next following the one in which these §§259.30 through 259.38 are adopted.

(e) These §§259.30 through 259.38 are specifically incorporated in all past, present, and future Interim CCF Agreements by reference thereto made in Whereas Clause number 2 of all such Interim CCF Agreements.
SUBCHAPTER G—PROCESSED FISHERY PRODUCTS, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

PART 260—INSPECTION AND CERTIFICATION

Subpart A—Inspection and Certification of Establishments and Fishery Products for Human Consumption

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§ 260.6 Terms defined.

Words in the regulations in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand. For the purposes of the regulations in this part, unless the context otherwise requires, the following terms shall have the following meanings:

Acceptance number. “Acceptance number” means the number in a sampling plan that indicates the maximum number of deviants permitted in a sample of a lot that meets a specific requirement.


Applicant. “Applicant” means any interested party who requests inspection service under the regulations in this part.

Case. “Case” means the number of containers (cased or uncased) which, by the particular industry are ordinarily packed in a shipping container.

Certificate of loading. “Certificate of loading” means a statement, either written or printed, issued pursuant to the regulations in this part, relative to check-loading of a processed product subsequent to inspection thereof.

Certificate of sampling. “Certificate of sampling” means a statement, either written or printed issued pursuant to the regulations in this part, identifying officially drawn samples and may include a description of condition of containers and the condition under which the processed product is stored.

Class. “Class” means a grade or rank of quality.

Condition. “Condition” means the degree of soundness of the product which may affect its merchantability and includes, but is not limited to those factors which are subject to change as a result of age, improper preparation and processing, improper packaging, improper storage, or improper handling.

Department. “Department” means the U.S. Department of Commerce.

Deviant. “Deviant” means a sample unit affected by one or more deviations or a sample unit that varies in a specifically defined manner from the requirements of a standard, specification, or other inspection document.

Deviation. “Deviation” means any specifically defined variation from a particular requirement.

Director. “Director” means the Director of the National Marine Fisheries Service.
Establishment. "Establishment" means any premises, buildings, structures, facilities, and equipment (including vehicles) used in the processing, handling, transporting, and storage of fish and fishery products.

Inspection certificate. "Inspection certificate" means a statement, either written or printed, issued pursuant to the regulations in this part, setting forth in addition to appropriate descriptive information relative to a processed product, and the container thereof, the quality and condition, or any part thereof, of the product and may include a description of the conditions under which the product is stored.

Inspection service. "Inspection service" means:

1. The sampling pursuant to the regulations in this part;
2. The determination pursuant to the regulations in this part of:
   i. Essential characteristics such as style, type, size, or identity of any processed product which differentiates between major groups of the same kind;
   ii. The class, quality, and condition of any processed product, including the condition of the container thereof, by the examination of appropriate samples;
3. The issuance of any certificate of sampling, inspection certificates, or certificates of loading of a processed product, or any report relative to any of the foregoing; or
4. Performance by an inspector of any related services such as to observe the preparation of the product from its raw state through each step in the entire process; or observe conditions under which the product is being harvested, prepared, handled, stored, processed, packed, preserved, transported, or held; or observe sanitation as a prerequisite to the inspection of the processed product, either on a contract basis or periodic basis; or checkload the inspected processed product in connection with the marketing of the product, or any other type of service of a consultative or advisory nature related herewith.

Inspector. "Inspector" means any employee of the Department authorized by the Secretary to investigate, sample, inspect, and certify in accordance with the regulations in this part to any interested party the class, quality and condition of processed products covered in this part and to perform related duties in connection with the inspection service.

Interested party. "Interested party" means any person who has a financial interest in the commodity involved.

Licensed sampler. "Licensed sampler" means any person who is authorized by the Secretary to draw samples of processed products for inspection service, to inspect for identification and condition of containers in a lot, and may, when authorized by the Secretary, perform related services under the act and the regulations in this part.

Lot. "Lot" has the following meanings:

1. For the purpose of charging fees and issuing certificates, "Lot" means any number of containers of the same size and type which contain a processed product of the same type and style located in the same or adjacent warehouses and which are available for inspection at any one time: Provided, That:
   i. Processed products in separate piles which differ from each other as to grade or other factors may be deemed to be separate lots;
   ii. Containers in a pile bearing an identification mark different from other containers in that pile, if determined to be of lower grade or deficient in other factors, may be deemed to be a separate lot; and
   iii. If the applicant requests more than one inspection certificate covering different portions of such processed product, the quantity of the product covered by each certificate shall be deemed to be a separate lot.
2. For the purpose of sampling and determining the grade or compliance with a specification, "Lot" means each pile of containers of the same size and type containing a processed product of the same type and style which is separated from other piles in the same warehouse, but containers in the same pile bearing an identification mark different from other containers in that
§ 260.7 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946 provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:
§ 260.12 Official certificate. “Official certificate” means any form of certification, either written or printed, including those defined in §260.6, used under this part to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

Official device. “Official device” means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Director for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

Official identification. “Official identification” means any United States (U.S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Director and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

Official mark. “Official mark” means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, including those prescribed in §260.66, approved by the Secretary and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U.S. Grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part.

Official memorandum. “Official memorandum” means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

§ 260.13 Who may obtain inspection service.

An application for inspection service may be made by any interested party, including, but not limited to, the United States and any instrumentality or agency thereof, any State, county, municipality, or common carrier, and any authorized agent in behalf of the foregoing.

§ 260.14 How to make application.

An application for inspection service may be made to the officer of inspection or to any inspector, at or nearest the place where the service is desired. An up-to-date list of the Inspection Field Offices of the Department may be obtained upon request to the Director. Satisfactory proof that the applicant is an interested party shall be furnished.

§ 260.15 Information required in connection with application.

Application for inspection service shall be made in the English language and may be made orally (in person or by telephone), in writing, or by telegraph. If an application for inspection service is made orally, such application shall be confirmed promptly in writing. In connection with each application for inspection service, there shall be furnished such information as may be necessary to perform an inspection on the processed product for which application for inspection is made, including but not limited to, the name of the product, name and address of the packer or plant where such product was packed, the location of the product, its lot or car number, codes or other identification marks, the number of containers, the type and size of the containers, the interest of the applicant in the product, whether the lot has been inspected previously to the application by any Federal agency and the purpose for which inspection is desired.
§ 260.16 Filing of application.
An application for inspection service shall be regarded as filed only when made in accordance with the regulations in this part.

§ 260.17 Record of filing time.
A record showing the date and hour when each application for inspection or for an appeal inspection is received shall be maintained.

§ 260.18 When application may be rejected.
An application for inspection service may be rejected by the Secretary (a) for noncompliance by the applicant with the regulations in this part, (b) for nonpayment for previous inspection services rendered, (c) when the product is not properly identifiable by code or other marks, or (d) when it appears that to perform the inspection service would not be to the best interests of the Government. Such applicant shall be promptly notified of the reason for such rejection.

§ 260.19 When application may be withdrawn.
An application for inspection service may be withdrawn by the applicant at any time before the inspection is performed: Provided, That, the applicant shall pay at the hourly rate prescribed in § 260.70 for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph or other expenses which have been incurred by the inspection service in connection with such application.


§ 260.20 Disposition of inspected sample.
Any sample of a processed product that has been used for inspection may be returned to the applicant, at his request and expense; otherwise it shall be destroyed, or disposed of to a charitable institution.

§ 260.21 Basis of inspection and grade or compliance determination.
(a) Inspection service shall be performed on the basis of the appropriate U.S. standards for grades of processed products, Federal, Military, Veterans Administration or other government agency specifications, written contract specification, or any written specification or instruction which is approved by the Secretary.

(b) Unless otherwise approved by the Director, compliance with such grade standards, specifications, or instructions shall be determined by evaluating the product, or sample, in accordance with the requirements of such standards, specifications, or instructions: Provided, That when inspection for quality is based on any U.S. grade standard which contains a scoring system the grade to be assigned to a lot is the grade indicated by the average of the total scores of the sample units: Provided further, That:

(1) Such sample complies with the applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act;

(2) Such sample complies with the product description;

(3) Such sample meets the indicated grade with respect to factors of quality which are not rated by score points; and

(4) With respect to those factors of quality which are rated by score points, each of the following requirements is met:

(i) None of the sample units falls more than one grade below the indicated grade because of any quality factor to which a limiting rule applies;

(ii) None of the sample units falls more than 4 score points below the minimum total score for the indicated grade; and

(iii) The number of sample units classed as deviants does not exceed the applicable acceptance number indicated in the sampling plans contained in § 260.61. A “deviant,” as used in this paragraph, means a sample unit that falls into the next grade below the indicated grade but does not score more than 4 points below the minimum total score for the indicated grade.

(5) If any of the provisions contained in paragraphs (b)(3) and (4) of this section are not met the grade is determined by considering such provisions in connection with succeedingly lower grades.
§ 260.22 Order of inspection service.

Inspection service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any such applications which are made by the United States (including, but not being limited to, any instrumentality or agency thereof) and to any application for an appeal inspection.

§ 260.23 Postponing inspection service.

If the inspector determines that it is not possible to accurately ascertain the quality or condition of a processed product immediately after processing because the product has not reached equilibrium in color, or drained weight, or for any other substantial reason, he may postpone inspection service for such period as may be necessary.

§ 260.24 Financial interest of inspector.

No inspector shall inspect any processed product in which he is directly or indirectly financially interested.

§ 260.25 Forms of certificates.

Inspection certificates, certificates of sampling or loading, and other memoranda concerning inspection service shall be issued on forms approved by the Secretary.

§ 260.26 Issuance of certificates.

(a) An inspection certificate may be issued only by an inspector: Provided, That, another employee of the inspection service may sign any such certificate covering any processed product inspected by an inspector when given power of attorney by such inspector and authorized by the Secretary to affix the inspector’s signature to a certificate of loading which has been prepared in accordance with the facts set forth in the notes made by the inspector or licensed sampler in connection with the checkloading of a specific lot of processed products.

§ 260.27 Issuance of corrected certificates.

A corrected inspection certificate may be issued by the inspector who issued the original certificate after distribution of a certificate if errors, such as incorrect dates, code marks, grade statements, lot or car numbers, container sizes, net or drained weights, quantities, or errors in any other pertinent information require the issuance of a corrected certificate. Whenever a corrected certificate is issued, such certificate shall supersede the inspection certificate which was issued in error and the superseded certificate shall become null and void after the issuance of the corrected certificate.

§ 260.28 Issuance of an inspection report in lieu of an inspection certificate.

A letter report in lieu of an inspection certificate may be issued by an inspector when such action appears to be more suitable than an inspection certificate: Provided, That, the issuance of such report is approved by the Secretary.

§ 260.29 Disposition of inspection certificates.

The original of any inspection certificate, issued under the regulations in this part, and not to exceed four copies thereof, if requested prior to issuance, shall be delivered or mailed promptly to the applicant, or person designated by the applicant. All other copies shall
be filed in such manner as the Secretary may designate. Additional copies of any such certificates may be supplied to any interested party as provided in §260.78.

§ 260.30 Report of inspection results prior to issuance of formal report.

Upon request of any interested party, the results of an inspection may be telegraphed or telephoned to him, or to any other person designated by him, at his expense.

APPEAL INSPECTION

§ 260.36 When appeal inspection may be requested.

An application for an appeal inspection may be made by any interested party who is dissatisfied with the results of an inspection as stated in an inspection certificate, if the lot of processed products can be positively identified by the inspection service as the lot from which officially drawn samples were previously inspected. Such application shall be made within thirty (30) days following the day on which the previous inspection was performed, except upon approval by the Secretary the time within which an application for appeal inspection may be made, may be extended.

§ 260.37 Where to file for an appeal inspection and information required.

(a) Application for an appeal inspection may be filed with:

(1) The inspector who issued the inspection certificate on which the appeal covering the processed product is requested; or

(2) The inspector in charge of the office of inspection at or nearest the place where the processed product is located.

(b) The application for appeal inspection shall state the location of the lot of processed products and the reasons for the appeal; and date and serial number of the certificate covering inspection of the processed product on which the appeal is requested, and such application may be accompanied by a copy of the previous inspection certificate and any other information that may facilitate inspection. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If made orally, written confirmation shall be made promptly.

§ 260.38 When an application for an appeal inspection may be withdrawn.

An application for appeal inspection may be withdrawn by the applicant at any time before the appeal inspection is performed: Provided, That the applicant shall pay at the hourly rate prescribed in §260.70, for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph, or other expenses which have been incurred by the inspection service in connection with such application.


§ 260.39 When appeal inspection may be refused.

An application for an appeal inspection may be refused if:

(a) The reasons for the appeal inspection are frivolous or not substantial;

(b) The quality or condition of the processed product has undergone a material change since the inspection covering the processed product on which the appeal inspection is requested;

(c) The lot in question is not, or cannot be made accessible for the selection of officially drawn samples;

(d) The lot relative to which appeal inspection is requested cannot be positively identified by the inspector as the lot from which officially drawn samples were previously inspected; or

(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

§ 260.40 Who shall perform appeal inspection.

An appeal inspection shall be performed by an inspector or inspectors (other than the one from whose inspection the appeal is requested) authorized for this purpose by the Secretary and, whenever practical, such appeal inspection shall be conducted jointly by two such inspectors: Provided, That the inspector who made the inspection on which the appeal is requested may be authorized to draw the samples when
§ 260.41 Appeal inspection certificate.

After an appeal inspection has been completed, an appeal inspection certificate shall be issued showing the results of such appeal inspection; and such certificate shall supersede the inspection certificate previously issued for the processed product involved. Each appeal inspection certificate shall clearly identify the number and date of the inspection certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appeal inspection certificate and shall no longer represent the quality or condition of the processed product described therein. The inspector or inspectors issuing an appeal inspection certificate shall forward notice of such issuance to such persons as he considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the inspector or inspectors issuing the appeal inspection certificate. The provisions in the regulations in this part concerning forms of certificates, issuance of certificates, and disposition of certificates shall apply to appeal inspection certificates, except that copies of such appeal inspection certificates shall be furnished all interested parties who received copies of the superseded certificate.

§ 260.48 Application to become a licensed sampler.

Application to become a licensed sampler shall be made to the Secretary on forms furnished for that purpose. Each such application shall be signed by the applicant in his own handwriting, and the information contained therein shall be certified by him to be true, complete, and correct to the best of his knowledge and belief, and the application shall contain or be accompanied by:
(a) A statement showing his present and previous occupations, together with names of all employers for whom he has worked, with periods of service, during the 10 years previous to the date of his application;
(b) A statement that, in his capacity as a licensed sampler, he will not draw samples from any lot of processed products with respect to which he or his employer is an interested party;
(c) A statement that he agrees to comply with all terms and conditions of the regulations in this part relating to duties of licensed samplers; and
(d) Such other information as may be requested.

§ 260.49 Inspectors.

Inspections will ordinarily be performed by employees under the Secretary who are employed as Federal Government employees for that purpose. However, any person employed under any joint Federal-State inspection service arrangement may be licensed, if otherwise qualified, by the Secretary to make inspections in accordance with this part on such processed products as may be specified in his license. Such license shall be issued only in a case where the Secretary is satisfied that the particular person is qualified to perform adequately the inspection service for which such person is to be licensed. Each such license shall bear the printed signature of the Secretary and shall be countersigned by an authorized employee of the Department. An inspector shall perform his duties pursuant to the regulations in this part as directed by the Director.
§ 260.50 Suspension or revocation of license of licensed sampler or licensed inspector.

Pending final action by the Secretary, the Director may, whenever he deems such action necessary, suspend the license of any licensed sampler, or licensed inspector, issued pursuant to the regulations in this part, by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons by such licensee, he may file an appeal, in writing, with the Secretary supported by any argument or evidence that he may wish to offer as to why his license should not be suspended or revoked. After the expiration of the aforesaid 7 day period and consideration of such argument and evidence, the Secretary shall take such action as he deems appropriate with respect to such suspension or revocation.

§ 260.51 Surrender of license.

Upon termination of his services as a licensed sampler or licensed inspector, or suspension or revocation of his license, such licensee shall surrender his license immediately to the office of inspection serving the area in which he is located. These same provisions shall apply in a case of an expired license.

§ 260.57 How samples are drawn by inspectors or licensed samplers.

An inspector or a licensed sampler shall select samples, upon request, from designated lots of processed products which are so placed as to permit thorough and proper sampling in accordance with the regulations in this part. Such person shall, unless otherwise directed by the Secretary, select sample units of such products at random, and from various locations in each lot in such manner and number, not inconsistent with the regulations in this part, as to secure a representative sample of the lot. Samples drawn for inspection shall be furnished by the applicant at no cost to the Department.

§ 260.61 Sampling plans and procedures for determining lot compliance.

(a) Except as otherwise provided for in this section in connection with in-plant inspection and unless otherwise approved by the Secretary, samples shall be selected from each lot in the exact number of sample units indicated for the lot size in the applicable single sampling plan or, at the discretion of the inspection service, any comparable multiple sampling plan: Provided, That at the discretion of the inspection service the number of sample units selected may be increased to the exact number of sample units indicated for any one of the larger sample sizes provided for in the appropriate plans.

(b) Under the single sampling plans with respect to any specified requirement:

§ 260.58 Accessibility for sampling.

Each applicant shall cause the processed products for which inspection is requested to be made accessible for proper sampling. Failure to make any lot accessible for proper sampling shall be sufficient cause for postponing inspection service until such time as such lot is made accessible for proper sampling.

§ 260.59 How officially drawn samples are to be identified.

Officially drawn samples shall be marked by the inspector or selected sampler so such samples can be properly identified for inspection.

§ 260.60 How samples are to be shipped.

Unless otherwise directed by the Secretary, samples which are to be shipped to any office of inspection shall be forwarded to the office of inspection serving the area in which the processed products from which the samples were drawn is located. Such samples shall be shipped in a manner to avoid, if possible, any material change in the quality or condition of the sample of the processed product. All transportation charges in connection with such shipments of samples shall be at the expense of the applicant and wherever practicable, such charges shall be prepaid by him.
§ 260.61  

(1) If the number of deviants (as defined in connection with the specific requirements) in the sample does not exceed the acceptance number prescribed for the sample size the lot meets the requirement;  

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample exceeds the acceptance number prescribed for the sample size the lot fails the requirement.  

(c) Under the multiple sampling plans inspection commences with the smallest sample size indicated under the appropriate plan and with respect to any specified requirement:  

(1) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered does not exceed the acceptance number prescribed for that sample size the lot meets the requirement;  

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered equals or exceeds the rejection number prescribed for that sample size the lot fails the requirement; or  

(3) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered falls between the acceptance and rejection numbers of the plan, additional sample units are added to the sample so that the sample thus cumulated equals the next larger cumulative sample size in the plan. It may then be determined that the lot meets or fails the specific requirement by considering the cumulative sample and applying the procedures outlined in paragraphs (c)(1) and (2) of this section or by considering successively larger samples cumulated in the same manner until the lot meets or fails the specific requirement.  

(d) If in the conduct of any type of in-plant inspection the sample is examined before the lot size is known and the number of sample units exceeds the prescribed sample size for such lot but does not equal any of the prescribed larger sample sizes the lot may be deemed to meet or fail a specific requirement in accordance with the following procedure:  

(1) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample does not exceed the acceptance number of the next smaller sample size the lot meets the requirements;  

(2) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample equals the acceptance number prescribed for the next larger sample size additional sample units shall be selected to increase the sample to the next larger prescribed sample size;  

(3) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample exceeds the acceptance number prescribed for the next larger sample size the lot fails the requirement.  

(e) In the event that the lot compliance determination provisions of a standard or specification are based on the number of specified deviations instead of deviants the procedures set forth in this section may be applied by substituting the word “deviation” for the word “deviant” wherever it appears.  

(f) Sampling plans referred to in this section are those contained in Tables I, II, III, IV, V, and VI which follow or any other plans which are applicable. For processed products not included in these tables, the minimum sample size shall be the exact number of sample units prescribed in the table, container group, and lot size that, as determined by the inspector, most closely resembles the product, type, container size and amount of product to be samples.
<table>
<thead>
<tr>
<th>Container size group</th>
<th>Notes</th>
<th>Lot size (number of containers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1</td>
<td>Any type of container of less volume than that of a No. 300 size can.</td>
<td>3,600 or below</td>
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<td></td>
<td></td>
<td>3,601-14,400</td>
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<td></td>
<td></td>
<td>14,401-96,000</td>
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<td></td>
<td>96,001-156,000</td>
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<tr>
<td></td>
<td></td>
<td>156,001-228,000</td>
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<tr>
<td></td>
<td></td>
<td>228,001-428,000</td>
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<tr>
<td></td>
<td></td>
<td>Over 428,000</td>
</tr>
<tr>
<td>Group 2</td>
<td>Any type of container of a volume equal to or exceeding that of a No. 300 size, but not exceeding that of a No. 3 cylinder size can.</td>
<td>2,400 or below</td>
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<td>2,401-12,000</td>
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<td>12,001-24,000</td>
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<td>24,001-48,000</td>
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<td>48,001-72,000</td>
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<td>72,001-108,000</td>
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<td></td>
<td></td>
<td>108,001-168,000</td>
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<td>168,001-320,000</td>
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<td>Over 320,000</td>
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<tr>
<td>Group 3</td>
<td>Any type of container of a volume exceeding that of a No. 3 cylinder size, but not exceeding that of a No. 12 size can.</td>
<td>1,200 or below</td>
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<td>1,201-7,200</td>
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<td>7,201-15,000</td>
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<td>15,001-24,000</td>
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<td>24,001-36,000</td>
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<td>36,001-60,000</td>
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<td>60,001-84,000</td>
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<td>84,001-120,000</td>
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<td></td>
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<td>Over 120,000</td>
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<tr>
<td>Group 4</td>
<td>Any type of container of a volume exceeding that of a No. 12 size, but not exceeding that of a 5-gallon container.</td>
<td>200 or below</td>
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<td>201-800</td>
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<td>801-1,600</td>
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<td>1,601-2,400</td>
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<td>2,401-3,600</td>
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<td>3,601-6,000</td>
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<td>6,001-8,000</td>
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<td>168,001-280,000</td>
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<td>Over 280,000</td>
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<tr>
<td>Group 5</td>
<td>Any type of container of a volume exceeding that of a 5-gallon container.</td>
<td>25 or below</td>
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<td>26-80</td>
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<td>81-200</td>
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<td>201-400</td>
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<td>801-1,600</td>
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<td>168,001-320,000</td>
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<td>Over 320,000</td>
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### SINGLE SAMPLING PLANS AND ACCEPTANCE LEVELS—Continued

#### TABLE I—CANNED OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

<table>
<thead>
<tr>
<th>Container size group</th>
<th>Lot size (number of containers)</th>
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<tbody>
<tr>
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<table>
<thead>
<tr>
<th>Single sampling plans 1</th>
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<tbody>
<tr>
<td>Sample size (number of sample units) 2</td>
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<tr>
<td>Acceptance number</td>
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<td>3</td>
</tr>
</tbody>
</table>

1 For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

2 The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 2 pounds of product. When determined by the inspector that a 2-pound sample unit is inadequate, a larger sample unit may be substituted.

#### TABLE II—FROZEN OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

<table>
<thead>
<tr>
<th>Container size group</th>
<th>Lot size (number of containers)</th>
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<tbody>
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<table>
<thead>
<tr>
<th>GROUP 1</th>
</tr>
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<tbody>
<tr>
<td>Any type of container of 1 pound or less net weight</td>
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<thead>
<tr>
<th>GROUP 2</th>
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<tbody>
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<td>Any type of container over 1 pound but not over 4 pounds net weight</td>
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<tr>
<th>GROUP 3</th>
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<tbody>
<tr>
<td>Any type of container over 4 pounds but not over 10 pounds net weight</td>
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<table>
<thead>
<tr>
<th>GROUP 4</th>
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<tbody>
<tr>
<td>Any type of container over 10 pounds but not over 100 pounds net weight</td>
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<tr>
<td>GROUP 5</td>
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</tbody>
</table>

1 For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

2 The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 3 pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

<p>| TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FISHERY AND RELATED PRODUCTS, AND PRODUCTS THEREOF OF A COMMINUTED, FLUID, OR HOMOGENEOUS STATE |</p>
<table>
<thead>
<tr>
<th>Container size group</th>
<th>Lot size (number of containers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>GROUP 1</td>
<td></td>
</tr>
<tr>
<td>Any type of container of 12 ounces or less</td>
<td>5,400 or less</td>
</tr>
<tr>
<td>GROUP 2</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 12 ounces but not over 60 ounces</td>
<td>3,600 or less</td>
</tr>
<tr>
<td>GROUP 3</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 60 ounces but not over 160 ounces</td>
<td>1,800 or less</td>
</tr>
<tr>
<td>GROUP 4</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 160 ounces but not over 10 gallons or 100 pounds whichever is applicable</td>
<td>200 or less</td>
</tr>
<tr>
<td>GROUP 5</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 10 gallons or 100 pounds whichever is applicable</td>
<td>25 or less</td>
</tr>
</tbody>
</table>
### TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FISHERY AND RELATED PRODUCTS, AND PRODUCTS THEREOF OF A COMMINUTED, FLUID, OR HOMOGENEOUS STATE—Continued

<table>
<thead>
<tr>
<th>Container size group</th>
<th>Lot size (number of containers)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Single sampling plans

<table>
<thead>
<tr>
<th>Sample size (number of sample units)</th>
<th>Acceptance number</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>0 1 2 3 4 5 6 7 8</td>
</tr>
</tbody>
</table>

1 Ounces pertain to either fluid ounces of volume or avoirdupois ounces of net weight whichever is applicable for the product involved.
2 For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.
3 The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. A smaller sample unit may be substituted in group 3 at the inspector's discretion. Groups 4, 5, and 6—approximately 16 ounces of product. When determined by the inspector that a 16-ounce sample unit is inadequate, a larger sample unit may be substituted.

### TABLE IV—DEHYDRATED FISHERY AND RELATED PRODUCTS

<table>
<thead>
<tr>
<th>Container size group</th>
<th>Lot size (number of containers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>GROUP 1</td>
<td></td>
</tr>
<tr>
<td>Any type of container of 1 pound or less net weight</td>
<td>1,800 or less</td>
</tr>
<tr>
<td>GROUP 2</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 1 pound but not over 6 pounds net weight</td>
<td>900 or less</td>
</tr>
<tr>
<td>GROUP 3</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 6 pounds but not over 20 pounds net weight</td>
<td>200 or less</td>
</tr>
<tr>
<td>GROUP 4</td>
<td></td>
</tr>
<tr>
<td>Any type of container over 20 pounds but not over 100 pounds net weight</td>
<td>48 or less</td>
</tr>
</tbody>
</table>
Any type of container over 100 pounds net weight ............... 16 or less  17±80  81±200  201±400  401±800  801±1,200  1,201±2,000  2,001±3,200  Over 3,200

Single sampling plans 1

<table>
<thead>
<tr>
<th>Sample size (number of sample units)</th>
<th>Acceptance number</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>21</td>
<td>3</td>
</tr>
<tr>
<td>29</td>
<td>4</td>
</tr>
<tr>
<td>38</td>
<td>5</td>
</tr>
<tr>
<td>48</td>
<td>6</td>
</tr>
<tr>
<td>60</td>
<td>7</td>
</tr>
<tr>
<td>72</td>
<td>8</td>
</tr>
</tbody>
</table>

1 For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

2 The sample units for the various container size groups are as follows: Group 1—1 container and its entire contents. Groups 2, 3, 4, and 5—1 container and its entire contents or a smaller sample unit when determined by the inspector to be adequate.

### Table V—Single Sampling Plans for Use in Increasing Sample Size Beyond 72 Sample Units

<table>
<thead>
<tr>
<th>Sample size, n</th>
<th>Acceptance numbers, c</th>
</tr>
</thead>
<tbody>
<tr>
<td>84 96 108 120 132 144 156 168 180 192 204 216 230 244 258 272 286 300 314 328 342 356 370 384 400</td>
<td>9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33</td>
</tr>
</tbody>
</table>

### Table VI—Multiple Sampling Plans Comparable to the Indicated Single Sampling Plans

<table>
<thead>
<tr>
<th>Indicated single sampling plan:</th>
<th>Acceptance numbers, c</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single sample size, n</td>
<td>1 2 3 4 5 6 7 8</td>
</tr>
<tr>
<td>6 13 21 29 38 48 60 72</td>
<td>6 13 21 29 38 48 60 72</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cumulative sample sizes, n, and acceptance numbers, c, and rejection numbers, r, for multiple sampling.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 0 2 8 0 3 10 0 3 12 0 4 14 0 4 16 0 4 18 0 5 22 0 5</td>
</tr>
<tr>
<td>6 0 2 10 0 3 14 1 4 16 0 4 20 0 5 24 1 5 28 1 6 32 1 7</td>
</tr>
<tr>
<td>8 1 2 12 1 3 18 1 4 20 1 5 26 1 6 32 2 6 38 2 7 42 2 8</td>
</tr>
<tr>
<td>14 2 3 22 2 5 24 2 5 32 2 6 40 3 8 48 3 8 52 3 9</td>
</tr>
<tr>
<td>26 4 5 28 3 6 38 3 7 48 4 8 58 4 8 62 5 10</td>
</tr>
<tr>
<td>32 3 6 44 6 7 56 7 8 68 8 9 72 6 10</td>
</tr>
<tr>
<td>36 5 6 82</td>
</tr>
</tbody>
</table>

1 These multiple sampling plans may be used in lieu of the single sampling plans listed at the heading of each column.
§ 260.62 Issuance of certificate of sampling.

Each inspector and each licensed sampler shall prepare and sign a certificate of sampling to cover the samples drawn by the respective person, except that an inspector who inspects the samples which he has drawn need not prepare a certificate of sampling. One copy of each certificate of sampling prepared shall be retained by the inspector or licensed sampler (as the case may be) and the original and all other copies thereof shall be disposed of in accordance with the instructions of the Secretary.

§ 260.63 Identification of lots sampled.

Each lot from which officially drawn samples are selected shall be marked in such manner as may be prescribed by the Secretary, if such lots do otherwise possess suitable identification.

FEES AND CHARGES

§ 260.69 Payment fees and charges.

Fees and charges for any inspection service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of the regulations in this part, and, if so required by the person in charge of the office of inspection serving the area where the services are to be performed, an advance of funds prior to rendering inspection service in an amount suitable to the Secretary, may be required as a guarantee of payment for the services rendered. All fees and charges for any inspection service, performed pursuant to the regulations in this part shall be paid by check, draft, or money order made payable to the National Marine Fisheries Service. Such check, draft, or money order shall be remitted to the appropriate regional or area office serving the geographical area in which the services are performed, within ten (10) days from the date of billing, unless otherwise specified in a contract between the applicant and the Secretary, in which latter event the contract provisions shall apply.

[36 FR 21038, Nov. 3, 1971]

§ 260.70 Schedule of fees.

(a) Unless otherwise provided in a written agreement between the applicant and the Secretary, the fees to be charged and collected for any inspection service performed under the regulations in this part at the request of the United States, or any other agency or instrumentality thereof, will be published as a notice in the Federal Register and will be in accordance with § 260.81.

(b) Fees are reviewed annually to ascertain that the hourly fees charged are adequate to recover the costs of the services rendered.

(1) The TYPE I (Contract Inspection) hourly fee is determined by dividing the estimated annual costs by the estimated annual billable hours.

(2) The TYPE II (Lot Inspection) hourly fee is determined by adding a factor of 50 percent to the TYPE I fee, to cover additional costs (down-time, etc.) associated with conducting lot inspection services.

(3) The TYPE III (Miscellaneous and Consulting) hourly fee is determined by adding a factor of 25 percent to the TYPE I fee, to cover the additional costs (down-time, etc.) associated with conducting miscellaneous inspection services.

[48 FR 24901, June 3, 1983]

§ 260.71 [Reserved]

§ 260.72 Fees for inspection service performed under cooperative agreement.

The fees to be charged and collected for any inspection or similar service performed under cooperative agreement shall be those provided for by such agreement.

§ 260.73 Disposition of fees for inspections made under cooperative agreement.

Fees for inspection under a cooperative agreement with any State or person shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may be due the United States shall be remitted in accordance with § 260.69.
§ 260.74 Fee for appeal inspection.

The fee to be charged for an appeal inspection shall be at the rates prescribed in this part for other inspection services: Provided, That, if the result of any appeal inspection made for any applicant, other than the United States or any agency or instrumentality thereof, discloses that a material error was made in the inspection on which the appeal is made, no inspection fee shall be assessed.

§ 260.76 [Reserved]

§ 260.77 Fees for score sheets.

If the applicant for inspection service requests score sheets showing in detail the inspection of each container or sample inspected and listed thereon, such score sheets may be furnished by the inspector in charge of the office of inspection serving the area where the inspection was performed; and such applicant shall be charged at the rate of $2.75 for each 12 sampled units, or fraction thereof, inspected and listed on such score sheets.

§ 260.78 Fees for additional copies of inspection certificates.

Additional copies of any inspection certificate other than those provided for in § 260.29, may be supplied to any interested party upon payment of a fee of $2.75 for each set of five (5) or fewer copies.

§ 260.79 Travel and other expenses.

Charges may be made to cover the cost of travel and other expenses incurred in connection with the performance of any inspection service, including appeal inspections: Provided, That, if charges for sampling or inspection are based on an hourly rate, an additional hourly charge may be made for travel time including time spent waiting for transportation as well as time spent traveling, but not to exceed 8 hours of travel time for any one person for any one day: And provided further, That, if travel is by common carrier, no hourly charge may be made for travel time outside the employee’s official work hours.

§ 260.80 Charges for inspection service on a contract basis.

Irrespective of fees and charges prescribed in the foregoing sections, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with any administrative agency charged with the administration of a marketing order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as revised (16 U.S.C. 661 et seq.) for the making of inspections pursuant to said agreement or order on such basis as will reimburse the National Marine Fisheries Service of the Department for the full cost of rendering such inspection service as may be determined by the Secretary. Likewise, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with an administrative agency charged with the administration of a similar program operated pursuant to the laws of any State.

[36 FR 21038, Nov. 3, 1971]

§ 260.81 Readjustment and increase in hourly rates of fees.

(a) When Federal Pay Act increases occur, the hourly rates for inspection fees will automatically be increased on the effective date of the pay act by an amount equal to the increase received by the average GS grade level of fishery product inspectors receiving such pay increases.

(b) The hourly rates of fees to be charged for inspection services will be subject to review and reevaluation for possible readjustment not less than every 3 years: Provided, That, the hourly rates of fees to be charged for inspection services will be immediately reevaluated as to need for readjustment with each Federal Pay Act increase.

[35 FR 15925, Oct. 9, 1970]

MISCELLANEOUS

§ 260.84 Policies and procedures.

The policies and procedures pertaining to any of the inspection services are contained within the NMFS Fishery Products Inspection Manual.
§ 260.86

The policies and procedures are available from the Secretary to any interested party by writing to Document Approval and Supply Services Branch, Inspection Services Division, P.O. Drawer 1207, 3207 Frederic St., Pascagoula, MS 39568–1207.

[61 FR 9369, Mar. 8, 1996]

§ 260.86 Approved identification.

(a) Grade marks: The approved grade mark or identification may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and

(2) has been certified by an inspector as meeting the requirements of such grade, quality or classification.

The grade marks approved for use shall be similar in form and design to the examples of Figures 1 to 5 of this section.

Shield using red, white, and blue background or other colors appropriate for label.

(b) Inspection marks: The approved inspection marks may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and

(2) has been certified by

Shield with plain background.
an inspector as meeting the requirements of such quality or grade classification as may be approved by the Secretary.

The inspection marks approved for use shall be similar in form and design to the examples in Figures 6, 7, and 8 of this section.

Statement enclosed within a circle.

(Figure 6)
STATEMENT
PACKED UNDER FEDERAL INSPECTION
UNITED STATES OF AMERICA

(Figure 7)
PACKED UNDER FEDERAL INSPECTION
U.S. DEPARTMENT OF COMMERCE

(Figure 8)
(c) Combined grade and inspection marks: The grade marks set forth in paragraph (a) of this section, and the inspection marks, Figures 7 and 8, set forth in paragraph (b) of this section, may be combined into a consolidated grade and inspection mark for use on processed products that have been packed under inspection as provided in this part.

(d) Products not eligible for approved identification: Processed products which have not been packed under inspection as provided in this part shall not be identified by approved grade or inspection marks, but such products may be inspected on a lot inspection basis as provided in this part and identified by an authorized representative of the Department by stamping the shipping cases and inspection certificate(s) covering such lot(s) as appropriate, with marks similar in form and design to the examples in Figures 9 and 10 of this section.

(Figure 9)
OFFICIALLY SAMPLED
OCT. 3, 1970
U.S. DEPARTMENT OF COMMERCE


(e) Removal of labels bearing inspection marks: At the time a lot of fishery products is found to be mislabeled and the labels on the packages are not removed within ten (10) consecutive calendar days, the following procedure shall be applicable:

1. The processor, under the supervision of the inspector, shall clearly and conspicuously mark all master cases in the lot by means of a "rejected by USDC Inspector" stamp provided by the Department.

2. The processor shall be held accountable to the Department for all mislabeled products until the products are properly labeled.

3. Clearance for the release of the relabeled products shall be obtained by the processor from the inspector.

(f) Users of inspection services having an inventory of labels which bear official approved identification marks stating "U.S. Department of the Interior" or otherwise referencing the Interior Department, will be permitted to use such marks until December 31, 1971, except that upon written request the Director, National Marine Fisheries Service, may extend such period for the use of specific labels.

[36 FR 4609, Mar. 10, 1971]

§ 260.88 Political activity.

All inspectors and licensed samplers are forbidden, during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, are prohibited. This applies to all appointees or licensees, including, but not limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 260.90 Compliance with other laws.

None of the requirements in the regulations in this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to the operation of food processing establishments and to processed food products.

§ 260.91 Identification.

Each inspector and licensed sampler shall have in his possession at all times and present upon request, while on duty, the means of identification furnished by the Department to such person.

§ 260.93 Debarment and suspension.

(a) Debarment. Any person may be debarred from using or benefiting from the inspection service provided under the regulations of this subchapter or under the terms of any inspection contract, and such debarment may apply to one or more plants under his control, if such person engages in one or more of the following acts or activities:

1. Misrepresenting, misstating, or withholding any material or relevant facts or information in conjunction with any application or request for an inspection contract, inspection service, inspection appeal, lot inspection, or other service provided for under the regulations of this subchapter.

2. Using on a processed product any label which displays any official identification, official device, or official mark, when the label is not currently approved for use by the Director or his delegate.
(3) Using on a processed product any label which displays the words “Packed Under Federal Inspection, U.S. Department of Commerce”, or which displays any official mark, official device, or official identification, or which displays a facsimile of the foregoing, when such product has not been inspected under the regulations of this subchapter.

(4) Making any statement or reference to the U.S. Grade of any processed product or any inspection service provided under the regulations of this subchapter on the label or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(5) Making, using, issuing or attempting to use in conjunction with the sale, shipment, transfer or advertisement of a processed product any certificate of loading, certificate of sampling, inspection certificate, official device, official identification, official mark, official document, or score sheet which has not been issued, approved, or authorized for use with such product by an inspector.

(6) Using any of the terms “United States”, “Officially graded”, “Officially inspected”, “Government inspected”, “Federally inspected”, “Officially sampled”, or words of similar import or meanings, or using any official device, official identification, or official mark on the label, on the shipping container, or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(7) Using, attempting to use, altering or reproducing any certificate, certificate form, design, insignia, mark, shield, device, or figure which simulates in whole or in part any official mark, official device, official identification, certificate of loading, certificate of sampling, inspection certificate or other official certificate issued pursuant to the regulations of this subchapter.

(8) Assaulting, harassing, interfering, obstructing or attempting to interfere or obstruct any inspector or sampler in the performance of his duties under the regulations of this subchapter.

(9) Violating any one or more of the terms of any inspection contract or the provisions of the regulations of this subchapter.

(10) Engaging in acts or activities which destroy or interfere with the purposes of the inspection program or which have the effect of undermining the integrity of the inspection program.

(b) Temporary suspension. (1) Whenever the Director has reasonable cause to believe that any person has engaged in any act or activity described in paragraph (a) of this section, and in such act or activity, in the judgment of the Director, would cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter, the Director may, without a hearing, temporarily suspend, either before or after the institution of a debarment hearing, the inspection service provided under the regulations of this subchapter or under any inspection contract for one or more plants under the control of such person. Notice of suspension shall be served by registered or certified mail, return receipt requested, and the notice shall specifically state those acts or activities of such person which are the bases for the suspension. The suspension shall become effective five (5) days after receipt of the notice.

(2) Once a person has received a notice of a temporary suspension, a debarment hearing will be set for 30 days after the effective date of the suspension. Within 60 days after the completion of the debarment hearing, the Hearing Examiner shall determine, based upon evidence of record, whether the temporary suspension shall be continued or terminated. A temporary suspension shall be terminated by the Hearing Examiner if he determines that the acts or activities, which were the bases for the suspension, did not occur or will not cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter. This determination of the Hearing Examiner on the continuation or termination of the temporary suspension shall be final and there shall be no appeal of this determination. The initial decision by the Hearing Examiner on the debarment shall be made in accordance with
paragraph (b)(1), Decisions, of this section.

(3) After a debarment hearing has been instituted against any person by a suspension, such suspension will remain in effect until a final decision is rendered on the debarment in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(4) When a debarment hearing has been instituted against any person not under suspension, the Director may, in accordance with the regulations of this paragraph (b) temporarily suspend such person, and the suspension will remain in effect until a final decision on the debarment is rendered in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(c) Hearing Examiner. All hearing shall be held before a Hearing Examiner appointed by the Secretary or the Director.

(d) Hearing. If one or more of the acts or activities described in paragraph (a) of this section have occurred, the Director may institute a hearing to determine the length of time during which the person shall be debarred and those plants to which the debarment shall apply. No person may be debarred unless there is a hearing, as prescribed in this section, and it has been determined by the Hearing Examiner, based on evidence of record, that the one or more of the activities described in paragraph (a) of this section have occurred. Any debarment or suspension must be instituted within two (2) years of the time when such acts or activities described in paragraph (a) of this section have occurred.

(e) Notice of hearing. The Director shall notify such person of the debarment hearing by registered or certified mail, return receipt requested. The notice shall set forth the time and place of the hearing, the specific acts or activities which are the basis for the debarment hearing, the time period of debarment being sought, and those plants to which the debarment shall apply. Except for the debarment hearing provided for in paragraph (b) of this section the hearing will be set for a time not longer than 120 days after receipt of the notice of hearing.

(f) Time and place of hearing. The hearing shall be held at a time and place fixed by the Director: Provided, however, The Hearing Examiner may, upon a proper showing of inconvenience, change the time and place of the hearing. Motions for change of time or place of the hearing must be mailed to or served upon the Hearing Examiner no later than 10 days before the hearing.

(g) Right to counsel. In all proceedings under this section, all persons and the Department of Commerce shall have the right to be represented by counsel, in accordance with the rules and regulations set forth in title 43, Code of Federal Regulations, part 1.

(h) Form, execution, and service of documents. (1) All papers to be filed under the regulations in this section shall be clear and legible; and shall be dated, signed in ink, contain the docket description and title of the proceeding, if any, and the address of the signatory. Five copies of all papers are required to be filed. Documents filed shall be executed by:

(i) The person or persons filing same,
(ii) by an authorized officer thereof if it be a corporation or,
(iii) by an attorney or other person having authority with respect thereto.

(2) All documents, when filed, shall show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first-class mail, properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service on such attorney or other representative will be deemed service upon the party. The date of service of document shall be the day when the matter served is deposited in the U.S. mail, shown by the postmark thereon, or is delivered in person, as the case may be.

(3) A person is deemed to have appeared in a hearing by the filing with the Director a written notice of his appearance or his authority in writing to appear on behalf of one of the persons to the hearing.

(4) The original of every document filed under this section and required to
be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by: (1) Mailing postage prepaid, (2) delivering in person, a copy to each party.

Dated at _______________ this ______ day of _______________ 19__

Signature _______________

(i) Procedures and evidence. (1) All parties to a hearing shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Hearing Examiner at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary.

(j) Duties of Hearing Examiner. The Hearing Examiner shall have the authority and duty to:

(1) Take or cause depositions to be taken.
(2) Regulate the course of the hearings.
(3) Prescribe the order in which evidence shall be presented.
(4) Dispose of procedural requests or similar matters.
(5) Hear and initially rule upon all motions and petitions before him.
(6) Administer oaths and affirmations.
(7) Rule upon offers of proof and receive competent, relevant, material, reliable, and probative evidence.
(8) Control the admission of irrelevant, immaterial, incompetent, unreliable, repetitious, or cumulative evidence.
(9) Hear oral arguments if the Hearing Examiner determined such requirement is necessary.
(10) Fix the time for filing briefs, motions, and other documents to be filed in connection with hearings.

(11) Issue the initial decision and dispose of any other pertinent matters that normally and properly arise in the course of proceedings.
(12) Do all other things necessary for an orderly and impartial hearing.

(k) The record. (1) The Director will designate an official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and briefs filed therewith, shall be filed with the Director. Transcripts of testimony will be available in any proceeding under the regulations of this section, at rates fixed by the contract between the United States of America and the reporter. If the reporter is an employee of the Department of Commerce, the rate will be fixed by the Director.

(2) The transcript of testimony and exhibits, together with all briefs, papers, and all rulings by the Hearing Examiner shall constitute the record. The initial decision will be predicated on the same record, as will be final decision.

(l) Decisions. (1) The Hearing Examiner shall render the initial decision in all debarment proceedings before him. The same Hearing Examiner who presides at the hearing shall render the initial decision except when such Examiner becomes unavailable to the Department of Commerce. In such case, another Hearing Examiner will be designated by the Secretary or Director to render the initial decision. Briefs, or other documents, to be submitted after the hearing must be received not later than twenty (20) days after the hearing, unless otherwise extended by the Hearing Examiner upon motion by a party. The initial decision shall be made within sixty (60) days after the receipt of all briefs. If no appeals from the initial decision is served upon the Director within ten (10) days of the date of the initial decision, it will become the final decision on the 20th day following the date of the initial decision. If an appeal is received, the appeal will be transmitted to the Secretary who will render the final decision after considering the record and the appeal.

(2) All initial and final decisions shall include a statement of findings and conclusions, as well as the reasons or bases therefore, upon the material
§ 260.96 Application for fishery products inspection service on a contract basis at official establishments.

Any person desiring to process and pack products in an establishment under fishery products inspection service on a contract basis, must receive approval of such buildings and facilities as an official establishment prior to the inauguration of such service. An application for inspection service to be rendered in an establishment shall be approved according to the following procedure:

(a) Initial survey: When application has been filed for inspection service as aforesaid, NMFS inspector(s) shall examine the buildings, premises, and facilities according to the requirements of the fishery products inspection service and shall specify any additional facilities required for the service.

(b) Final survey and establishment approval: Prior to the inauguration of the fishery products inspection service, a final survey of the buildings, premises, and facilities shall be made to verify that the buildings are constructed and facilities are in accordance with the approved drawings and the regulations in this part.

(c) Drawings and specifications of new construction or proposed alterations of existing official establishments shall be furnished to the Director in advance of actual construction for prior approval with regard to compliance with requirements for facilities.

[36 FR 21039, Nov. 3, 1971]

§ 260.97 Conditions for providing fishery products inspection service at official establishments.

(a) The determination as to the inspection effort required to adequately provide inspection service at any establishment will be made by NMFS. The man-hours required may vary at different official establishments due to factors such as, but not limited to, size and complexity of operations, volume and variety of products produced, and adequacy of control systems and cooperation. The inspection effort requirement may be reevaluated when the contracting party or NMFS deems there is sufficient change in production, equipment and change of quality control input to warrant reevaluation. Inspectors will not be available to perform any of employee or management duties, however, they will be available for consultation purposes. NMFS reserves the right to reassign inspectors as it deems necessary.

(b) NMFS shall not be held responsible:

(1) For damages occurring through any act of commission or omission on the part of its inspectors when engaged in performing services; or

(2) For production errors, such as processing temperatures, length of process, or misbranding of products; or

(3) For failure to supply enough inspection effort during any period of service.

(c) The contracting party will:

(1) Use only wholesome raw material which has been handled or stored under sanitary conditions and is suitable for processings; maintain the official establishment(s), designated on the contract in such sanitary condition and to employ such methods of handling raw
materials for processing as may be necessary to conform to the sanitary requirements prescribed or approved by NMFS;

(2) Adequately code each primary container and master case of products sold or otherwise distributed from a manufacturing, processing, packing, or repackaging activity to enable positive lot identification to facilitate, where necessary, the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use;

(3) Not permit any labels on which reference is made to Federal inspection, to be used on any product which is not packed under fishery products inspection service nor permit any labels on which reference is made to any U.S. Grade to be used on any product which has not been officially certified as meeting the requirements of such grade; nor supply labels bearing reference to Federal inspection to another establishment unless the products to which such labels are to be applied have been packed under Federal inspection at an official establishment;

(4) Not affix any label on which reference is made to Federal inspection to any container of processed foods, produced in any designated official establishment, with respect to which the grade of such product is not certified because of adulteration due to the presence of contaminants in excess of limits established in accordance with the regulations or guidelines issued pursuant to the Food, Drug, and Cosmetic Act, as amended;

(5) Not, with respect to any product for which U.S. Grade Standards are in effect, affix any label on which reference is made to Federal inspection to any container of processed food which is substandard: Provided, That such label may be affixed to any container of such substandard quality product if such label bears a statement to indicate the substandard quality;

(6) Not, with respect to any product for which U.S. Grade Standard are not in effect, affix any label on which reference is made to the Federal inspection to containers of processed foods, except with the approval of NMFS;

(7) Furnish such reports of processing, packaging, grading, laboratory analyses, and output of products inspected, processed, and packaged at the designated official establishment(s) as may be requested by NMFS, subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942;

(8) Make available for use by inspectors, adequate office space in the designated official establishment(s) and furnish suitable desks, office equipment, and files for the proper care and storage of inspection records;

(9) Make laboratory facilities and necessary equipment available for the use of inspectors to inspect samples of processed foods and/or components thereof;

(10) Furnish and provide laundry service, as required by NMFS, for coats, trousers, smocks, and towels used by inspectors during performance of duty in official establishment(s);

(11) Furnish stenographic and clerical assistance as may be necessary in the typing of certificates and reports and the handling of official correspondence, as well as furnish the labor incident to the drawing and grading of samples and other work required to facilitate adequate inspection procedures whenever necessary;

(12) Submit to NMFS, three (3) copies of new product specifications in a manner prescribed by NMFS, and three (3) end-product samples for evaluation and/or laboratory analysis on all products for approval, for which U.S. Grade Standards are not available, when inspection is to be applied to such products. If requested of NMFS, such new specifications and end-product samples shall be considered confidential;

(13) Submit, as required by NMFS, for approval, proofs prior to printing and thereafter four (4) copies of any finished label which may or may not bear official identification marks, when such products are packed under Federal inspection on a contract basis;

(14) Not make deceptive, fraudulent, or unauthorized use in advertising, or otherwise, of the fishery products inspection service, the inspection certificates or reports issued, or the containers on which official identification marks are embossed or otherwise identified, in connection with the sale of any processed products;
§ 260.98 Premises.

(a) The premises about an official establishment shall be free from conditions which may result in the contamination of food including, but not limited to, the following:

(b) Improperly stored equipment, litter, waste, refuse, and uncut weeds or grass within the immediate vicinity of the buildings or structures that may constitute an attractant, breeding place, or harborage for rodents, insects, and other pests;

(c) Excessively dusty roads, yards, or parking lots that may constitute a

(15) Submit to NMFS, four (4) copies of each label which may or may not bear official identification marks, when such labels are to be withdrawn from inspection or when approved labels are disapproved for further use under inspection;

(16) Notify NMFS in advance of the proposed use of any labels which require obliteration of any official identification marks, and all reference to the inspection service on approved labels which have been withdrawn or disapproved for use;

(17) Accord representatives of NMFS at all reasonable times free and immediate access to establishment(s) and official establishment(s) under applicant’s control for the purpose of checking codes, coded products, coding devices, coding procedures, official identification marks obliteration, and use of withdrawn or disapproved labels.

(d) Termination of inspection services:

(1) The fishery products inspection service, including the issuance of inspection reports, shall be rendered from the date of the commencement specified in the contract and continue until suspended or terminated:

(i) By mutual consent;

(ii) by either party giving the other party sixty (60) days’ written notice specifying the date of suspension or termination;

(iii) by one (1) day’s written notice by NMFS in the event the applicant fails to honor any invoice within ten (10) days after date of receipt of such invoice covering the full costs of the inspection service provided, or in the event the applicant fails to maintain its designated plants in a sanitary condition or to use wholesome raw materials for processing as required by NMFS, or in the event the applicant fails to comply with any provisions of the regulations contained in this part;

(iv) by automatic termination in case of bankruptcy, closing out of business, or change in controlling ownership.

(2) In case the contracting party wishes to terminate the fishery products inspection service under the terms of paragraph (d)(1)(i) or (ii) of this section, either the service must be continued until all unused containers, labels, and advertising material on hand or in possession of his supplier bearing official identification marks, or reference to fishery products inspection service have been used, or said containers, labels, and advertising material must be destroyed, or official identification marks, and all other reference to the fishery products inspection service on said containers, labels, advertising material must be obliterated, or assurance satisfactory to NMFS must be furnished that such containers, labels, and advertising material will not be used in violation of any of the provisions of the regulations in the part.

(3) In case the fishery products inspection service is terminated for cause by NMFS under the terms of paragraph (d)(1)(iii) of this section, or in case of automatic termination under terms of paragraph (d)(1)(iv) of this section, the contracting party must destroy all unused containers, labels, and advertising material on hand bearing official identification marks, or reference to fishery products inspection service, or must obliterate official identification marks, and all reference to the fishery products inspection service on said containers, labels and advertising material.

After termination of the fishery products inspection service, NMFS may, at such time or times as it may determine to be necessary, during regular business hours, enter the establishment(s) or other facilities in order to ascertain that the containers, labels, and advertising material have been altered or disposed of in the manner provided herein, to the satisfaction of NMFS.

[36 FR 21039, Nov. 3, 1971]
source of contamination in areas where food is exposed;
(d) Inadequately drained areas that may contribute contamination to food products through seepage or foot-borne filth and by providing a breeding place for insects or micro-organisms;

If the grounds of an official establishment are bordered by grounds not under the official establishment operator’s control of the kind described in paragraphs (b) through (d) of this section, care must be exercised in the official establishment by inspection, extermination, or other means to effect exclusion of pests, dirt, and other filth that may be a source of food contamination.

[36 FR 21040, Nov. 3, 1971]

The buildings and structures shall be properly constructed and maintained in a sanitary condition, including, but not limited to the following requirements:
(a) Lighting. There shall be sufficient light (1) consistent with the use to which the particular portion of the building is devoted, and (2) to provide for efficient cleaning. Belts and tables on which picking, sorting, or trimming operations are carried on shall be provided with sufficient nonglaring light to insure adequacy of the respective operation. Light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation shall be of the safety type or otherwise protected to prevent food contamination in case of breakage.
(b) Ventilation. There shall be sufficient ventilation in each room and compartment thereof to prevent excessive condensation of moisture and to insure sanitary and suitable processing and operating conditions. If such ventilation does not prevent excessive condensation, the Director may require that suitable facilities be provided to prevent the condensate from coming in contact with equipment used in processing operations and with any ingredient used in the manufacture or production of a processed product.
(c) Drains and gutters. All drains and gutters shall be properly installed with approved traps and vents. The drainage and plumbing system must permit the quick runoff of all water from official establishment buildings, and surface water around buildings and on the premises; and all such water shall be disposed of in such a manner as to prevent a nuisance or health hazard. Tanks or other equipment whose drains are connected to the waste system must have such screens and vacuum breaking devices affixed so as to prevent the entrance of waste water, material, and the entrance of vermin to the processing tanks or equipment.
(d) Water supply. There shall be ample supply of both hot and cold water; and the water shall be of safe and sanitary quality with adequate facilities for its (1) distribution throughout buildings, and (2) protection against contamination and pollution.

Sea water of safe suitable and sanitary quality may be used in the processing of various fishery products when approved by NMFS prior to use.
(e) Construction. Roofs shall be weather tight. The walls, ceilings, partitions, posts, doors, and other parts of all buildings and structures shall be of such materials, construction, and finish as to permit their efficient and thorough cleaning. The floors shall be constructed of tile, cement, or other equally impervious material, shall have good surface drainage, and shall be free from openings or rough surfaces which would interfere with maintaining the floors in a clean condition.
(f) Processing rooms. Each room and each compartment in which any processed products are handled, processed, or stored (1) shall be so designed and constructed as to insure processing and operating conditions of a clean and orderly character; (2) shall be free from objectional odors and vapors; and (3) shall be maintained in a clean and sanitary condition.
(g) Prevention of animals and insects in official establishment(s). Dogs, cats, birds, and other animals (including, but not being limited to rodents and insects) shall be excluded from the rooms from which processed products are being prepared, handled, or stored and from any rooms from which ingredients (including, but not being limited to salt, sugar, spices, flour, batter, breading, and fishery products) are handled and stored. Screens, or other
§ 260.100 Facilities.

Each official establishment shall be equipped with adequate sanitary facilities and accommodations, including, but not being limited to, the following:

(a) Containers approved for use as containers for processed products shall not be used for any other purpose.

(b) No product or material not intended for human food or which creates an objectionable condition shall be processed, handled, or stored in any room, compartment, or place where any fishery product is manufactured, processed, handled, or stored.

(c) Suitable facilities for cleaning and sanitizing equipment (e.g., brooms, brushes, mops, clean cloths, hose, nozzles, soaps, detergent, sprayers) shall be provided at convenient locations throughout the plant.

36 FR 21040, Nov. 3, 1971

§ 260.101 Lavatory accommodations.

Modern lavatory accommodations, and properly located facilities for cleaning and sanitizing utensils and hands, shall be provided.

(a) Adequate lavatory and toilet accommodations, including, but not being limited to, running hot water (135 °F. or more) and cold water, soap, and single service towels, shall be provided. Such accommodations shall be in or near toilet and locker rooms and also at such other places as may be essential to the cleanliness of all personnel handling products.

(b) Sufficient containers with covers shall be provided for used towels and other wastes.

(c) An adequate number of hand washing facilities serving areas where edible products are prepared shall be operated by other than hand-operated controls, or shall be of a continuous flow type which provides an adequate flow of water for washing hands.

(d) Durable signs shall be posted conspicuously in each toilet room and locker room directing employees to wash hands before returning to work.

(e) Toilet facilities shall be provided according to the following formula:

<table>
<thead>
<tr>
<th>Number of persons</th>
<th>Toilet bowls required</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 15, inclusive</td>
<td>1</td>
</tr>
<tr>
<td>16 to 35, inclusive</td>
<td>2</td>
</tr>
<tr>
<td>36 to 55, inclusive</td>
<td>3</td>
</tr>
<tr>
<td>56 to 80, inclusive</td>
<td>4</td>
</tr>
</tbody>
</table>

For each additional 30 persons in excess of 80, 1

1 Urinals may be substituted for toilet bowls but only to the extent of one-third of the total number of bowls required.

All toilet equipment shall be kept operative, in good repair, and in a sanitary condition.

36 FR 21041, Nov. 3, 1971

§ 260.102 Equipment.

All equipment used for receiving, washing, segregating, picking, processing, packaging, or storing any processed products or any ingredients used in the manufacture or production thereof, shall be of such design, material, and construction as will:

(a) Enable the examination, segregation, preparation, packaging, and other processing operations applicable to
processed products, in an efficient, clean, and sanitary manner, and
(b) Permit easy access to all parts to insure thorough cleaning and effective bactericidal treatment. Insofar as is practicable, all such equipment shall be made of smooth impermeable corrosion-resistant material that will not adversely affect the processed product by chemical action or physical contact. Such equipment shall be kept in good repair and sanitary condition. Such equipment shall be cleaned and sanitized at a frequency as is necessary or required in accordance with Good Manufacturing Practice Regulations, 21 CFR part 128.

§ 260.103 Operations and operating procedures shall be in accordance with an effective sanitation program.

(a) All operators in the receiving, transporting, holdings, segregating, preparing, processing, packaging, and storing of processed products and ingredients, used as aforesaid, shall be strictly in accord with clean and sanitary methods and shall be conducted as rapidly as possible and at temperatures that will inhibit and retard the growth of bacterial and other micro-organisms and prevent any deterioration or contamination of such processed products or ingredients thereof. Mechanical adjustments or practices which may cause contamination of foods by oil, dust, paint, scale, fumes, grinding materials, decomposed food, filth, chemicals, or other foreign materials shall not be conducted during any manufacturing or processing operation.

(b) All processed products, raw materials, ingredients, and components thereof shall be subject to inspection during each manufacturing or processing operation. To assure a safe, wholesome finished product, changes in processing methods and procedures as may be required by the Director shall be effectuated as soon as practicable. All processed products which are not manufactured or prepared in accordance with the requirements contained in §260.96 to §260.104 or are unwholesome or otherwise not fit for human food shall be removed and segregated prior to any further processing operation.

(c) Official establishments operating under Federal inspection should have an effective quality control program as appropriate for the nature of the products and processing operations.

(d) All ingredients used in the manufacture or processing of any processed product shall be wholesome and fit for human food.

(e) The methods and procedures employed in the receiving, segregating, handling, transporting, and processing of ingredients in official establishment(s) shall be adequate to result in a satisfactory processed product. Such methods and procedures include, but are not limited to, the following requirements:

(1) Containers, utensils, pans, and buckets used for the storage or transporting of partially processed food ingredients shall not be nested unless re-washed and sanitized before each use;

(2) Containers which are used for holding partially processed food ingredients shall not be stacked in such manner as to permit contamination of the partially processed food ingredients;

(3) Packages or containers for processed products shall be clean when being filled with such products; and all reasonable precautions shall be taken to avoid soiling or contaminating the surface of any package or container liner which is, or will be, in direct contact with such products.

(f) Retention tags: (1) Any equipment such as, but not limited to, conveyors, tillers, sorters, choppers, and containers which fail to meet appropriate and adequate sanitation requirements will be identified by the inspector in an appropriate and conspicuous manner with the word “RETAINED.” Following such identification, the equipment shall not be used until the discrepancy has been resolved, the equipment reinspected and approved by the inspector and the “RETAINED” identification removed by the inspector.

(2) Lot(s) of processed products that may be considered to be mislabeled and/or unwholesome by reason of contaminants or which may otherwise be in such condition as to require further evaluation or testing to determine that
the product properly labeled and/or wholesome will be identified by the inspector in an appropriate and conspicuous manner with the word “RETIRED.” Such lot(s) of product shall be held for reinspection or testing. Final disposition of the lot(s) shall be determined by NMFS and the removal of the “RETIRED” identification shall be performed by the inspector.

[36 FR 21041, Nov. 3, 1971]

§ 260.104 Personnel.

The establishment management shall be responsible for taking all precautions to assure the following:

(a) Disease control. No person affected by disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall work in a food plant in any capacity in which there is a reasonable possibility of food ingredients becoming contaminated by such person, or of disease being transmitted by such person to other individuals.

(b) Cleanliness. All persons, while working in direct contact with food preparation, food ingredients, or surfaces coming into contact therewith shall:

(1) Wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty, to the extent necessary to prevent contamination of food products.

(2) Wash and sanitize their hands thoroughly to prevent contamination by undesirable microorganisms before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

(3) Remove all insecure jewelry and, when food is being manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

(4) If gloves are used in food handling, maintain them in an intact, clean, and sanitary condition. Such gloves shall be of an impermeable material except where their usage would be inappropriate or incompatible with the work involved.

(5) Wear hair nets, caps, masks, or other effective hair restraints. Other persons that may incidentally enter the processing areas shall comply with this requirement.

(6) Not store clothing or other personal belongings, eat food, drink beverages, chew gum, or use tobacco in any form in areas where food or food ingredients are exposed or in areas used for washing equipment or utensils.

(7) Take any other necessary precautions to prevent contamination of foods with microorganisms or foreign substances including, but not limited to perspiration, hair, cosmetics, tobacco, chemicals, and medicants.

(c) Education and training. Personnel responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean wholesome food. Food handlers and supervisors should receive appropriate training in proper food-handling techniques and food-protection principles and should be cognizant of the danger of poor personal hygiene and unsanitary practices, and other vectors of contamination.

[36 FR 21041, Nov. 3, 1971]
other authorities delegated to the U.S. Department of Commerce.

§ 261.102 Publication and removal of U.S. Grade Standards.

(a) The voluntary U.S. Standards for Grades adopted pursuant to this part shall be issued as Program policies and contained within the NMFS Fishery Products Inspection Manual. Compliance with voluntary standards issued as Program policies within the manual shall satisfy the requirements of this part. Compliance with a voluntary standard issued as a Program policy does not relieve any party from the responsibility to comply with the provisions of the Federal Food, Drug, and Cosmetic Act; or other Federal laws and regulations.

(b) Notification of an application for a new grade standard shall be published in the Federal Register. If adopted, the grade standard shall be issued as a Program policy and contained in the NMFS Fishery Products Inspection Manual.

(c) Revision and revision of a U.S. Standard for Grades will be made a Program policy amendment and contained in the NMFS Fishery Products Inspection Manual.

(d) The NMFS Fishery Products Inspection Manual is available to interested parties.

§ 261.103 Basis for determination of a U.S. Standard for Grades.

(a) To address the inherently distinct and dissimilar attributes found in the fishery product groups, each standard for grades should have a different scope and product description, product forms, sample sizes, definition of defects, etc. The Secretary will make the final determination regarding the content of a U.S. Standard for Grades.

(b) A proposal for a new or revised U.S. grade standard may include the following:

(1) Scope and product description, which describes the products that are eligible for grading using the standard (e.g., fish portion, fish fillet).

(2) Product forms, which describe the types, styles and market forms covered by the standard (e.g., skin-off, tail-on, headless).

(3) Grade and inspection marks, which describe the grades and inspection mark criteria for each grade category (e.g., Grade A ≤ 15 points).

(4) Grade determination, which describes the means by which the grade is determined (i.e., the factors rated by score points and those that are not). Standards may contain defect grouping limiting rules that contain additional provisions that must be met.

(5) Sampling, which describes the method of sampling and sample unit sizes (e.g., 10 portions, 8 ounces, etc.).

(6) Procedures that describe the process used to determine the product grade (e.g., label declarations, sensory evaluation).

(7) Definitions of defects, which outline the defects associated with the products covered by the standard, defines them, and describes the method of counting or measuring the defects. This section may provide associated defect points or reference a defect table (e.g., bruises, blood spots, bones, black spots, coating defects, 1-inch squares, percent by weight, ratios).

(8) Defect point assessment, which describes how to assess points and provides any special guidance that may be necessary to the particular standard (e.g., defect points for certain categories are added together and divided by the weight of the sample unit; the number of instances are counted to determine if it is slight, moderate, or excessive defect).

(9) Tolerances for lot certification, which provide the sections from Title 50 CFR that regulate lot certification.

(10) Hygiene, which specifies the sections of applicable Federal regulations regulating the safe, wholesome production of food for human consumption.

(11) Methods of analysis, which describe the methods of analysis that will be used in the evaluation of the products covered by the standard for grades (e.g., net weight, deglazing, debreading).

(12) Defect table, which is the table of defects and associated points to be assessed for each defect.
SUBCHAPTER H—FISH AND SEAFOOD PROMOTION

PART 270—SPECIES-SPECIFIC SEAFOOD MARKETING COUNCILS

§ 270.1 Scope.
This part 270 describes matters pertaining to the establishment, representation, organization, practices, procedures, and termination of Seafood Marketing Councils.

§ 270.2 Definitions.
The following terms and definitions are in addition to or amplify those contained in the Fish and Seafood Promotion Act of 1986:

- **Act** means the Fish and Seafood Promotion Act of 1986 (Public Law 99–659) and any subsequent amendments.
- **Consumer education** means actions undertaken to inform consumers of matters related to the consumption of fish and fish products.
- **Council** means a Seafood Marketing Council for one or more species of fish and fish products of that species established under section 210 of the Act (16 U.S.C. 4009).
- **Expenditure** means monetary or material worth of fishery products. Expenditure is determined at the point a receiver obtains product from a harvester or an importer obtains product from a foreign supplier. Value may be expressed in monetary units (the price a receiver pays to a harvester or an importer pays to a foreign supplier).
- **Fiscal year** means any 12-month period as NMFS may determine for each Council.
- **Fish** means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds.
- **Harvester** means any person in the business of catching or growing fish for purposes of sale in domestic or foreign markets.
- **Importer** means any person in the business of importing fish or fish products from another country into the United States and its territories, as defined by the Act, for commercial purposes, or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or for other commercial purposes in the United States.
- **Marketer** means any person in the business of selling fish or fish products in the wholesale, export, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale.
- **Marketing and promotion** means any activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products.
- **Member** means any person serving on any Council.
- **Participant** means a member of a sector or business identified in an application for a Council charter as being subject to the referendum or assessment process.
- **Person** means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing...
under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

Processor means any person in the business of preparing or packaging fish or fish products (including fish of the processor’s own harvesting) for sale in domestic or foreign markets.

Receiver means any person who owns fish processing vessels and any person in the business of acquiring (taking title to) fish directly from harvesters.

Research means any type of research designed to advance the image, desirability, usage, marketability, production, quality and safety of fish and fish products.

Secretary means the Secretary of Commerce, or the Secretary’s designee.

Sector means
(1) The sector consisting of harvesters;
(2) The sector consisting of importers;
(3) The sector consisting of marketers;
(4) The sector consisting of processors;
(5) The sector consisting of receivers; or
(6) The consumer sector consisting of persons professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products.

Sector participant means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

Species means a fundamental category of taxonomic classification, ranking after genus, and consisting of animals that possess common characteristic(s) distinguishing them from other similar groups.

Value means monetary or material worth of fishery products. Value is the difference between what a receiver is willing to pay for a product provided by a harvester and its market price or an importer is willing to pay for a product from a foreign supplier and its market price. Value may be expressed in monetary units representing consumer surplus or producer surplus.

§ 270.3 Submission of application.
(a) Persons who meet the minimum requirements for sector participants as described in the proposed charter may file an application with NMFS for a charter for a Seafood Marketing Council for one or more species of fish and fish products of that species. One signed original and two copies of the completed application package must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Applications should not be bound.
(b) The application consists of four parts:
(1) A document requesting NMFS to establish a Council;
(2) A proposed charter under which the proposed Council will operate;
(3) A list of eligible referendum participants; and
(4) Analytical documentation addressing requirements of applicable law.
(c) Content of application—(1) Application or requesting document. The application or requesting document submitted by the applicants to NMFS requesting that the Council be established, to the extent practicable, must include the signatures or corporate certifications, of no less than three sector participants representing each sector identified in accordance with paragraph (c)(2)(v) of this section and who, according to the available data, collectively accounted for, in the 12-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products specified in the charter that were handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the application. The application must also include a statement that, if established, the Council will have sufficient resources (e.g., cash, donated office space, services, supplies,
§ 270.3

(2) Proposed charter. A proposed charter must contain, at a minimum, the following information:

(i) The name of the Council and a provision proclaiming its establishment;

(ii) A declaration of the purposes and objectives of the Council;

(iii) A description of the species of fish and fish products, including the scientific and common name(s), for which the Council will implement marketing and promotion plans under the Act. (The American Fisheries Society’s “List of Common and Scientific Names of Fishes from the United States and Canada” (latest edition) or where available, an appropriate volume of its “List of Common and Scientific Names of Aquatic Invertebrates of the United States and Canada” (latest edition) should be used as the authority for all scientific and common names.);

(iv) A description of the geographic area (state(s)) within the United States covered by the Council;

(v) The identification of each sector and the number and terms of representatives for each sector that will be voting members on the Council. (The number of Council members should be manageable, while ensuring equitable geographic representation. The term for members will be 3 years. Initially, to ensure continuity, half of the members’ terms will be 2 years and half will be 3 years. Reappointments are permissible.);

(vi) The identification of those sectors (which must include a sector consisting of harvesters, a sector consisting of receivers, and, if subject to assessment, a sector consisting of importers), eligible to vote in the referendum to establish the Council;

(vii) For each sector described under paragraph (c)(2)(v) of this section, a threshold level specifying the minimum requirements, as measured by income, volume of sales, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;

(viii) A description of the rationale and procedures for determining assessment rates as provided in § 270.18, based on a fixed amount per unit of weight or measure, or on a percentage of value of the product handled;

(ix) The proposed rate or rates that will be imposed by the Council on receivers and, if subject to assessment, importers during its first year of operation;

(x) The maximum amount by which an assessment rate for any period may be raised above the rate applicable for the immediately preceding period;

(xi) The maximum rate or rates that can be imposed by a Council on receivers or importers during the operation of the Council;

(xii) The maximum limit on the amount any one sector participant may be required to pay under an assessment for any period;

(xiii) The procedures for providing refunds to sector participants subject to assessment who request the same in accordance with the time limits specified § 270.22;

(xiv) A provision setting forth the voting procedures by which votes may be cast by proxy;

(xv) A provision that the Council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors;

(xvi) A provision setting forth the definition of a quorum for making decisions on Council business and the procedures for selecting a chairperson of the Council;

(xvii) A provision that members of the Council will serve without compensation, but will be reimbursed for reasonable expenses incurred in performing their duties as members of the Council;

(xviii) A provision containing a requirement for submission to NMFS the criteria and supporting data for evaluating the annual and/or multi-year performance of proposed marketing plans and the Council’s performance;

(xix) A provision containing a requirement for submission of documentation as requested by NMFS for purposes of evaluating performance of proposed marketing plans and the Council’s related performance;

(xx) Where adequate funds are not available, a provision containing the
§ 270.4 Review of application.

Within 180 days of receipt of the application to establish a Council, NMFS will:

(a) Determine if the application is complete and complies with all of the requirements set out in §270.3 and complies with all provisions of the Act and other applicable laws.

(b) Identify, to the extent practicable, those sector participants who meet the requirements for eligibility to participate in the referendum to establish the Council. NMFS may require additional information from the applicants or proposed participants in order to verify eligibility. NMFS may add names to or delete names from the list of sector participants believed eligible by the applicants until the time of the referendum based on additional information received.

(c) If NMFS finds minor deficiencies in an application that can be corrected within the 180-day review period, NMFS will advise the applicants in writing of what must be submitted by a specific date to correct the minor deficiencies.

(d) If NMFS makes a final negative determination, on an application, NMFS will advise the applicant in writing of the reason for the determination. The applicant may submit another application at any time thereafter. NMFS then has 180 days from receipt of the new application to render a final determination on its acceptability.

§ 270.5 Conduct of referendum.

(a) Upon making affirmative determinations under §270.4, NMFS, within 90 days after the date of the last affirmative determination, will conduct a referendum on the adoption of the proposed charter.

(b) NMFS will estimate the cost of conducting the referendum, notify the applicants, and request that applicants post a bond or provide other applicable security, such as a cashier's check, to cover costs of the referendum.

(c) NMFS will initially pay all costs of a referendum to establish a Council. Within two years after establishment, the Council must reimburse NMFS for the total actual costs of the referendum from assessments collected by
§ 270.6 Sector participants eligible to vote.

(a) Any participant who meets the minimum requirements as measured by income, volume of sales or other relevant factors specified in the approved charter may vote in a referendum.

(b) Only one vote may be cast by each participant who is eligible to vote, regardless of the number of individuals that make up such “participant” and how many sectors the participant is engaged in. The vote may be made by any responsible officer, owner, or employee representing a participant.

§ 270.7 Results of referendum.

(a) Favorable vote to establish a Council. NMFS will, by order of publication in the Federal Register, establish the Council and approve an acceptable proposed charter, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each and every sector. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the proposed charter was filed, at least 66 percent of the value of the fish and fish products described in the proposed charter handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the applicants.

(b) Unfavorable vote to establish a Council. If a referendum fails to pass in any sector of the proposed Council, NMFS will not establish the Council or approve the proposed charter. NMFS will immediately recover the cost of conducting the referendum according to §270.5(c).

(c) Notification of referendum results. NMFS will notify the applicants of the results of the referendum and publish the results of the referendum in the Federal Register.

§ 270.8 Nomination and appointment of Council members.

(a) Within 30 days after a Council is established, NMFS will solicit nominations for Council members from the sectors represented on the Council in accordance with the approved charter. If the harvesters and receivers represented on the Council are engaged in business in two or more states, but within the geographic area of the Council, the nominations made under this section must, to the extent practicable, result in equitable representation for those states. Nominees must be knowledgeable and experienced with regard to the activities of, or have been actively engaged in the business of, the sector that such person will represent on the Council. Therefore, a resume will be required for each nominee.

(b) In accordance with 16 U.S.C. 4009(f), NMFS will, within 60 days after the end of the 30-day period, appoint the members of the Council from among the nominees.

§ 270.9 Terms, vacancies, and removal of Council members.

(a) A Council term is for 3 years, except for initial appointments to a newly established Council where:

(1) Half of the Council member terms will be 2 years; and

(2) Half of the Council member terms will be 3 years.

(b) A vacancy on a Council will be filled, within 60 days after the vacancy occurs, in the same manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the
term for which the member’s predecessor was appointed will be appointed only for the remainder of such term.

(c) Any person appointed under the Act who consistently fails or refuses to perform his or her duties properly and/or participates in acts of dishonesty or willful misconduct with respect to responsibilities under the Act will be removed from the Council by NMFS if two-thirds of the members of the Council recommend action. All requests from a Council to NMFS for removal of a Council member must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

§ 270.10 Responsibilities of a Council.

(a) Each Council will:

(1) Implement all terms of its approved charter;

(2) Prepare and submit to NMFS, for review and approval under § 270.11(a)(1), a marketing and promotion plan and amendments to the plan which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the Council;

(3) Implement and administer an approved marketing and promotion plan and amendments to the plan;

(4) Determine the assessment to be made under § 270.18 and administer the collection of such assessments to finance Council expenses described in paragraph (b) of this section;

5) Receive, investigate and report to NMFS accounts of violations of rules or orders relating to assessments collected under § 270.20, or quality standard requirements established under § 270.15;

6) Prepare and submit to NMFS, for review and approval a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the Council, including

(i) All administrative and contractual expenses;

(ii) The probable costs of consumer education, research, and other marketing and promotion plans or projects;

(iii) The costs of the collection of assessments; and

(iv) The expense of repayment of the costs of each referendum conducted in regard to the Council.

(7) Comply with NMFS requirements, and prepare and submit to NMFS for review, evaluation, and verification of results and analysis an annual market assessment and related analytical documentation that is based on economic, market, social, demographic, and biological information as deemed necessary by NMFS;

(8) Maintain books and records, prepare and submit to NMFS reports in accordance with respect to the receipt and disbursement of funds entrusted to it, and submit to NMFS a completed audit report conducted by an independent auditor at the end of each fiscal year;

(9) Reimburse NMFS for the expenses incurred for the conduct of the referendum to establish the Council or any subsequent referendum to terminate the Council that fails;

10) Prepare and submit to NMFS report or proposals as the Council determines appropriate to further the purposes of the Act.

(b) Funds collected by a Council under § 270.17 will be used by the Council for—

(1) Research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish projects;

(2) Other expenses, as described in § 270.10(a)(1);

(3) Such other expenses for the administration, maintenance, and functioning of the Council as may be authorized by NMFS; and

(4) Any reserve fund established under paragraph (e)(4) of this section and any administrative expenses incurred by NMFS specified as reimbursable under this Part.

(c) Marketing and promotion plans and amendments to such plans prepared by a Council under paragraph (a)(2) of this section will be designed to increase the general demand for fish and fish products described in accordance with § 270.3(c)(2)(iii) by encouraging, expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research,
§ 270.11 Responsibilities of NMFS.

(a) In addition to the duties prescribed under 16 U.S.C. 4009, NMFS will:

(1) Participate in Council meetings and review, for consistency with the provisions of 50 CFR part 270 and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within 60 days after their submission by a Council;

(2) Immediately notify a Council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;

(3) Issue orders and amendments to such orders that are necessary to implement quality standards under §270.15;

(4) Promulgate regulations necessary to carry out the purposes of this chapter;

(5) Enforce the provisions of the Act;

(6) Make all appointments to Councils in accordance with §270.8 and the approved Council charter;

(7) Approve the criteria and time frames under which a Council’s performance will be evaluated; and

(b) NMFS may provide, on a reimbursable or other basis, such administrative or technical assistance as a Council may request for purposes of the initial organization and subsequent operation of the Council. However, a Council is responsible for the cost of preparing and submitting information (e.g., reports, evaluation data, etc.) requested by NMFS.

§ 270.12 Notice of Council meetings.

The Council will give NMFS the same notice of its meetings as it gives to its members. NMFS will have the right to participate in all Council meetings.

§ 270.13 Books, records and reports.

(a) The Council must submit to NMFS the following documents according to the schedule approved in the Council’s charter:

(1) A marketing assessment and promotion plan;

(2) A financial report with respect to the receipt and disbursement of funds;

(3) An audit report conducted by an independent public accountant; and

(4) Other reports or data NMFS determines necessary to evaluate the Council’s performance and verify the results of the market assessment and promotion plan.

(b) All Council records, reports, and data must be maintained by the Council for a minimum of 3 years, even if the Council is terminated.
§ 270.14 Update of sector participant data.

The Council will submit to NMFS at the end of each fiscal year an updated list of sector participants who meet the minimum requirements for eligibility to participate in a referendum as stated in the approved charter.

§ 270.15 Quality standards.

(a) Each Council may develop and submit to NMFS for approval or, upon the request of a Council, NMFS will develop quality standards for the species of fish or fish products described in the approved charter. Any quality standard developed under this paragraph must be consistent with the purposes of the Act.

(b) A quality standard developed under paragraph (a) of this section may be adopted by a Council by a majority of its members following a referendum conducted by the Council among sector participants of the concerned sector(s). In order for a quality standard to be brought before Council members for adoption, the majority of the sector participants of the concerned sector(s) must vote in favor of the standard. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the referendum is held, not less than 66 percent of the value of the fish or fish products described in the charter that were handled during such period in that sector by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners.

(c) The Council must submit a plan to conduct the referendum on the quality standards to NMFS for approval at least 60 days in advance of such referendum date. The plan must consist of the following:

(1) Date(s) for conducting the referendum;

(2) Method (by mail or in person);

(3) Copy of the proposed notification to sector participants informing them of the referendum;

(4) List of sector participants eligible to vote;

(5) Name of individuals responsible for conducting the referendum;

(6) Copy of proposed ballot package to be used in the referendum; and

(7) Date(s) and location of ballot counting.

(d) An official observer appointed by NMFS will be allowed to be present at the ballot counting and any other phase of the referendum process, and may take whatever steps NMFS deems appropriate to verify the validity of the process and results of the referendum.

(e) Quality standards developed under this section of the regulations must, at a minimum, meet Food and Drug Administration (FDA) minimum requirements for fish and fish products for human consumption.

(f) Quality standards must be consistent with applicable standards of the U.S. Department of Commerce (National Oceanic and Atmospheric Administration) or other recognized Federal standards and/or specifications for fish and fish products.

(g) No quality standard adopted by a Council may be used in the advertising or promotion of fish or fish products as being inspected by the United States Government unless the standard requires sector participants to be in the U.S. Department of Commerce voluntary seafood inspection program.

(h) The intent of quality standards must not be to discriminate against importers who are not members of the Council.

(i) Quality standards must not be developed for the purpose of creating non-tariff barriers. Such standards must be compatible with U.S. obligations under the General Agreement on Tariffs and Trade, or under other international standards deemed acceptable by NMFS.

(j) The procedures applicable to the adoption and the operation of quality standards developed under this subchapter also apply to subsequent amendments or the termination of such standards.

(k) With respect to a quality standard adopted under this section, the Council must develop and file with NMFS an official identifier in the form of a symbol, stamp, label or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identifier is
§ 270.16 Deposit of funds.

All funds collected or received by a Council under this section must be deposited in an appropriate account in the name of the Council specified in its charter. Funds eligible to be collected or received by a Council must be limited to those authorized under the Act.

(a) Pending disbursement, under an approved marketing plan and budget, funds collected through assessments authorized by the Act must be deposited in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government.

(b) The Council may, however, pending disbursement of these funds, invest in risk-free, short-term, interest-bearing instruments.

(1) Risk-free. All investments must be insured or fully collateralized with Federal Government securities. In the absence of collateral, accounts established at financial institutions should, in aggregate, total less than $100,000 to assure both principal and interest are federally insured in full.

(2) Short-term. Generally, all investments should be for a relatively short time period (one year or less) to assure that the principal is maintained and readily convertible to cash.

(3) Collateralization. Investments exceeding the $100,000 insurance coverage level must be fully collateralized by the financial institution.

(i) Collateral must be pledged at face value and must be pledged prior to sending funds to the institution.

(ii) Government securities are acceptable collateral. Declining balance, mortgage backed securities such as Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) are not acceptable collateral.

(iii) If an account has been established, collateral may be held at the local Federal Reserve Bank. Otherwise, another depository must hold the collateral.

§ 270.17 Authority to impose assessments.

A Council will impose and administer the collection of the assessments that are necessary to pay for all expenses incurred by the Council in carrying out its functions under 50 CFR part 270.

§ 270.18 Method of imposing assessments.

Assessments will be imposed on sector participants in the receiving sector or the importing sector or both as specified in an approved Council charter. Assessment rates will be based on value that may be expressed in monetary units or units of weight or volume.

(a) An assessment on sector participants in the receiving sector will be in the form of a percentage of the value or a fixed amount per unit of weight or volume of the fish described in the charter when purchased by such receivers from fish harvesters.

(b) An assessment on sector participants who own fish processing vessels and harvest the fish described in the charter will be in the form of a percentage of the value or on a fixed amount per unit of weight or volume of the fish described in the charter that is no less than the value if such fish had been purchased by a receiver other than the owner of the harvesting vessel.

(c) An assessment on sector participants in the importing sector will be in the form of a percentage of the value that an importer pays to a foreign supplier, as determined for the purposes of the customs laws, or a fixed amount per unit of weight or volume, of the fish or fish products described in the charter when entered or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

(d) A Council may not impose an assessment on any person that was not eligible to vote in the referendum establishing the Council by reason of failure to meet the requirements specified under unless that person, after the date on which the referendum is held, meets the requirements of section.
§ 270.19 Notice of assessment.

(a) The Council must serve each person subject to assessment with notice that the assessment is due. The notice of assessment must contain:

1. A specific reference to the provisions of the Act, regulations, charter and referendum that authorize the assessment;
2. The amount of the assessment;
3. The period of time covered by the assessment;
4. The date the assessment is due and payable, which will not be earlier than 30 days from the date of the notice;
5. The form(s) of payment; and
6. To whom and where the payment must be made.

(b) The notice must advise such person of his or her right to seek review of the assessment by filing a written petition of objection with NMFS at any time during the time period to which the assessment applies, including the right to request a hearing on the petition. The notice must state that the petition of objection must be filed in accordance with the procedures in § 270.21.

(c) The notice must also advise such persons of his or her right to seek review of the assessment as provided in § 270.22. The notice must state that a refund may be requested for not less than 90 days from such collection, and provide that the Council will make the refund within 60 days after the request for the refund is requested.

§ 270.20 Payment of assessments.

Persons subject to an assessment would be required to pay the assessment on or before the date due, unless they have demanded a refund or filed a petition of objection with NMFS under § 270.21. However, persons who have demanded a refund under § 270.22 or filed a petition of objection under § 270.21 may submit proof of these actions in lieu of payment. In the case of a petition of objection, NMFS will inform the Council and the petitioner of its finding at which time petitioner must pay the revised assessment if applicable.

§ 270.21 Petition of objection.

(a) Filing a petition. Any person issued a notice of assessment under § 270.19 may request that NMFS modify or take other appropriate action regarding the assessment or promotion plan by filing a written petition of objection with NMFS. Petitions of objection may be filed:

1. Only if the petitioner determines one or more of the following criteria is not in accordance with the law:
   (i) The assessment;
   (ii) The plan upon which the assessment is based; or
   (iii) Any obligation imposed on the petitioner under the plan.
2. Only during the time period to which the assessment applies.

(b) Contents of the petition of objection. A petition must be addressed to Assistant Administrator for Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, and must contain the following:

1. The petitioner's correct name, address, and principal place of business. If the petitioner is a corporation, this must be stated, together with the date and state of incorporation, and the names, addresses, and respective positions of its officers; if a partnership, the date and place of formation and the name and address of each partner;
2. The grounds upon which the petition of objection is based, including the specific terms or provisions of the assessment, the marketing and promotion plan, or obligation imposed by the plan, to which the petitioner objects;
3. The grounds upon which the petition of objection is based, including the specific terms or provisions of the assessment, the marketing and promotion plan, or obligation imposed by the plan, to which the petitioner objects;
4. A full statement of the facts upon which the petition is based, set forth clearly and concisely, accompanied by any supporting documentation;
5. The specific relief requested; and
6. A statement as to whether or not the petitioner requests a hearing.

(c) Notice to Council. NMFS will promptly furnish the appropriate Council with a copy of the petition of objection.
(d) **Opportunity for informal hearing.**

(1) Any person filing a petition of objection may request an informal hearing on the petition. The hearing request must be submitted with the petition of objection.

(2) If a request for hearing is timely filed, or if NMFS determines that a hearing is advisable, NMFS will so notify the petitioner and the Council. NMFS will establish the applicable procedures, and designate who will be responsible for conducting a hearing. The petitioner, the Council, and any other interested party, may appear at the hearing in person or through a representative, and may submit any relevant materials, data, comments, arguments, or exhibits. NMFS may consolidate two or more hearing requests into a single proceeding.

(3) **Final decision.** Following the hearing, or if no hearing is held, as soon as practicable, NMFS will decide the matter and serve written notice of the decision on the petitioner and the Council. NMFS’s decision will be based on a consideration of all relevant documentation and other evidence submitted, and will constitute the final administrative decision and order of the agency. NMFS will have the discretion to waive collection of a contested assessment or revise, modify, or alter the assessment amount based on a Council method of assessment.

§ 270.22 **Refunds.**

(a) Notwithstanding any other provision of the Act, any person who pays an assessment under the Act may demand and must promptly receive from the Council a refund of such assessment. A demand for refund must be made in accordance with procedures in the approved charter and within such time as will be prescribed by the Council and approved by NMFS. Procedures to provide such a refund must be established before any such assessment may be collected. Such procedures must allow any person to request a refund 90 days or more from such collection, and provide that such refund must be made within 60 days after demand for such refund is made.

(b) Once a refund has been requested by a sector participant and paid by the Council, that sector participant may no longer participate in a referendum or other business of the Council during the remainder of the assessment rate period. Future assessments will only be sent to such a sector participant at the request of the sector participant. If assessments are paid during a future assessment rate period and no refund is requested, that sector participant may again participate in a referendum or other business of the Council.

§ 270.23 **Dissolution of Councils.**

(a) **Petition for termination.** (1) A petition to terminate a Council may be filed with NMFS by no less than three sector participants in any one sector. Any petition filed under this subsection must be accompanied by a written document explaining the reasons for such petition.

(2) If NMFS determines that a petition filed under paragraph (a)(1) of this section is accompanied by the signatures, or corporate certifications, of no less than three sector participants in the sector referred to in paragraph (a)(1) of this section who collectively accounted for, in the 12-month period immediately preceding the month in which the petition was filed, not less than 20 percent of the value of the fish or fish products described in §270.3(c)(2)(iii) that were handled by that sector during the period, NMFS within 90 days after the determination, will conduct a referendum for termination of the Council among all sector participants in that sector.

(3) Not less than 30 days prior to holding a referendum, NMFS will publish an announcement in the Federal Register of the referendum, including an explanation of the reasons for the petition for termination filed under paragraph (a)(1) of this section and any other relevant information NMFS considers appropriate.

(4) If the referendum votes which are cast in favor of terminating the Council constitute a majority of the sector participants voting and the majority, in the period in paragraph (a)(2) of this section, collectively accounted for not less than 66 percent of the value of such fish and fish products that were handled during such period by the sector in paragraph (a)(1) of this section,
NMFS will by order of publication terminate the Council effective as of a date by which the affairs of the Council may be concluded on an orderly basis.

(5) NMFS initially will pay all costs of a referendum conducted in §270.23. Prior to conducting such a referendum, NMFS will require petitioners to post a bond or other security acceptable to NMFS in an amount which NMFS determines to be sufficient to pay any expenses incurred for the conduct of the referendum.

(6) If a referendum conducted under §270.23 fails to result in the termination of the Council, NMFS will immediately recover the amount of the bond posted by the petitioners under §270.23(a)(5).

(7) If a referendum conducted under this subsection results in the termination of the Council, NMFS will recover the expenses incurred for the conduct of the referendum from the account established by the Council. If the amount remaining in such account is insufficient for NMFS to recover all expenses incurred for the conduct of the referendum, NMFS will recover the balance of the expenses from the petitioners that posted a bond under paragraph (a)(5) of this section.

(b) Payment of remaining funds. If a Council is terminated under section §270.23(a)(4), NMFS, after recovering all expenses incurred for the conduct of the referendum under paragraph (a) of this section, will take such action as is necessary and practicable to ensure that moneys remaining in the account established by the Council under §270.17 are paid on a prorated basis to the sector participants from whom those moneys were collected under §270.20.

SUBCHAPTER I–J [RESERVED]
SUBCHAPTER K—CONTINENTAL SHELF

PART 296—FISHERMEN’S CONTINGENCY FUND

Sec.
296.1 Purpose.
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SOURCE: 47 FR 49600, Nov. 1, 1982, unless otherwise noted.

§ 296.1 Purpose.
These regulations implement title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended (title IV). Title IV establishes a Fishermen’s Contingency Fund to compensate commercial fishermen for damage or loss caused by obstructions associated with oil and gas activities on the Outer Continental Shelf.

§ 296.2 Definitions.
Area affected by Outer Continental Shelf activities means the area within a 3-mile radius of any casualty site which:
(1) Includes any portion of a leased block, pipeline, easement, right-of-way, or other OCS oil and gas exploration, development, or production activity; or
(2) Is otherwise associated (as determined by the Chief, Financial Services Division) with OCS oil and gas activities, such as, for example, expired lease areas, relinquished rights-of-way or easements, and areas used extensively by surface vessels supporting OCS oil and gas activities (areas landward of the OCS are included when such areas meet this criterion).

Chief, FSD means Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713–2396.

Citizen of the United States means any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

Commercial fisherman means any citizen of the United States who owns, operates, or is employed on a commercial fishing vessel.

Commercial fishing vessel means any marine craft which is documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and used for commercial fishing or activities directly related to commercial fishing.

Easement means a right of use or easement granted under 30 CFR 250.18.

Fish means all forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

Fishing gear means any commercial fishing vessel, and any equipment of such vessel.

Fund means the Fishermen’s Contingency Fund established by title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

Holder means the owner of record of each lease, prelease exploratory drilling permit, easement, or right-of-way or any agent or assignee of an owner.

Lease means any authority under section 8 or section 6 of the OCS Lands Act to develop and produce or explore for oil or gas.

Negligence or fault includes, but is not limited to, failure to:
(1) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;
(2) Avoid obstructions recorded on nautical charts or in the Notice to Mariners or marked by a buoy or other surface marker (casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant);
§ 296.4 Claims eligible for compensation.

(a) Claimants. Damage or loss eligible for Fund compensation must be suffered by a commercial fisherman.

(b) Damage or loss of fishing gear. Damage or loss is eligible for Fund compensation if it was caused by materials, equipment, tools, containers, or other items associated with OCS oil and gas exploration, development, or production activities. Damage or loss
may be eligible for compensation even though it did not occur in OCS waters if the item causing the damage or loss was associated with oil and gas exploration, development, or production activities in OCS waters.

(c) Exceptions. Damage or loss is not eligible for Fund compensation:

(1) If the damage or loss was caused by the negligence or fault of the claimant;

(2) If the damage or loss occurred prior to September 18, 1978;

(3) To the extent that damage or loss exceeds the replacement value of the fishing gear involved;

(4) For any portion of the damage or loss which can be compensated by insurance;

(5) If the claim is not filed within 90 calendar days of the date the claimant or the claimant’s agent first became aware of the damage or loss (or such longer period as the Secretary may allow under unusual and extenuating circumstances); or

(6) If the damage or loss was caused by an obstruction unrelated to OCS oil and gas exploration, development, or production activities.


§ 296.5 Instructions for filing claims.

(a) Fifteen-day report required to gain presumption of causation—(1) General. Damages or losses are presumed to be qualified for compensation if certain requirements are satisfied. One requirement is that a report must be made to NMFS within fifteen (15) days after the date on which the vessel first returns to a port after discovering the damage or loss. Filing of a fifteen-day report must be followed up by filing a detailed claim.

(2) When and how to file a fifteen-day report. To qualify for the presumption of causation, a fifteen-day report must be made to NMFS within fifteen days after the date on which the vessel first returns to a port after discovering the damage or loss. Satisfaction of the fifteen-day requirement is determined by the postmark, if the report is mailed; by the date of a call, if the report is telephoned or radiotelephoned; or, by the date of appearance, if the report is made in person. The fifteen-day report must be made to the Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713–2996.

(b) Form of claim. Claims must be in writing. Claims may be submitted on NOAA form 88–164. This form may be obtained from any NMFS regional office or from the Chief, FSD. Although claimants are not required to use this claim form, it will probably be to their benefit to do so.

(c) Who must file and when and where to file claims. All claimants (including those who filed 15-day reports to gain the presumption of causation) must submit a claim application to the Chief, Financial Services Division, within 90 calendar days of the date the claimant or the claimant’s agent first became aware of the damage or loss. The Chief, FSD, may allow a longer period for filing claims if, in his discretion, unusual and extenuating circumstances justify a longer period. The term “filed” means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, Financial Services Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Washington, DC 20235. The Chief, FSD, suggests that mailed claims be sent by registered or certified mail, return receipt requested, so the claimant will have a record that the claim was received by the Chief, FSD.

(d) Aggregating claims. If more than one commercial fisherman suffers loss or damage from the same incident (for example, when several members of the
crew lost income due to loss of fishing time), all claims should be submitted on their behalf by the owner or operator of the commercial fishing vessel involved.

(e) Contents of claim. Each claim must be signed by the claimant and must accurately and completely provide the following information:

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel owner, operator, or crew member) of each claimant;

(2) The name and Coast Guard documentation number or State registration number of the commercial fishing vessel involved in the damage or loss;

(3) The home port, type, and size of the vessel involved in the casualty;

(4) A full statement of the circumstances of the damage or loss including:
   (i) The date when the casualty was first discovered by the claimant,
   (ii) The water depth (if known) and visibility at the time and location where the casualty occurred,
   (iii) The direction, speed, and activities of the claimant’s vessel immediately before, during, and after the casualty (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at retrieval of the gear),
   (iv) The names and addresses of all witnesses to the casualty,
   (v) The location where the casualty occurred in Loran C coordinates or the next most accurate method of position fixing available to the claimant,
   (vi) A description of the item or obstruction (if sighted or recovered) which caused the casualty, and whether or not any surface markers were attached to or near the obstruction. Submit any available photographs of the item or obstruction. State reasons for believing the obstruction is associated with OCS oil and gas activities.

(5) The amount claimed for property damage or loss and a full statement of the type and extent of damage or loss including:
   (i) An inventory of all components of fishing gear damaged or lost, and proof of its purchase (sales receipts, affidavits, or other evidence).
   (ii) One estimate from a commercial fishing gear repair or supply company of the present replacement or repair (whichever applies) cost of the damaged or lost fishing gear. If the gear will be repaired by the claimant himself, a detailed estimate by the claimant identifying the repair cost.
   (iii) One statement from a commercial fishing gear repair or supply company stating the type of fishing gear damaged or lost, the amount claimed for property damage or loss, the basis for that amount with supporting documentation, as follows:
      (i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.
      (ii) A statement of the amount of time involved on each of the vessel trips above (or if the casualty involves fixed gear, a statement of the number of gear units deployed on each of these trips).
      (iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.
      (iv) Documentation of the date replacement gear was ordered and received or the date gear repair began and ended. This documentation may consist of purchase orders, bills of lading, or statements from sellers or repairers.

(6) The amount claimed for economic loss and the basis for that amount with supporting documentation, as follows:
   (i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.
   (ii) A statement of the amount of time involved on each of the vessel trips above (or if the casualty involves fixed gear, a statement of the number of gear units deployed on each of these trips).
   (iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.
   (iv) Documentation of the date replacement gear was ordered and received or the date gear repair began and ended. This documentation may consist of purchase orders, bills of lading, or statements from sellers or repairers.

(7) The amount claimed for other consequential loss or costs (including fees for claim preparation, etc.) with suitable documentation of the amounts claimed (such as invoices, receipts, etc.).

§ 296.6 NMFS processing of claims.

(a) Action by NMFS. Upon receipt of a claim, the Chief, FSD, will:

(1) Send an abstract of the claim to the Secretary of the Interior;

(2) Send the reported location of any obstruction which was not recovered and retained to the National Ocean Survey, which will inform the Defense Mapping Agency Hydrographic/Topographic Center.

(b) Actions by the Interior Department. Upon receipt of an abstract of a claim,
the Interior Department will immediately:

(1) Plot the casualty site, and advise NMFS whether the site is in an area affected by OCS activities;

(2) make reasonable efforts to notify all persons known to have engaged in activities associated with OCS energy activity in the vicinity where the damage or loss occurred.

c) Responses to notice of claim. (1) Each person notified by the Interior Department will, within thirty days after receipt of the notice, advise the Chief, FSD, and the Interior Department whether he admits or denies responsibility for the damages claimed.

(2) Each person notified by the Interior Department who fails to give timely and proper advice of admission or denial of responsibility shall be presumed to deny responsibility for the damages claimed.

(3) If any person admits responsibility, the Chief, FSD, will initiate action to recover from that party any sums paid or to be paid for the claimed damages.

(4) Any person referred to in this section, including lessees or permittees or their contractors or subcontractors, may submit evidence about any claim to the Chief, FSD.

d) Failure to meet filing requirements. The Chief, FSD, may reject any claim that does not meet the filing requirements. The Chief, FSD, will give a claimant whose claim is rejected written notice of the reasons for rejection within 30 days after the date on which the claim was filed. If the claimant does not refile an acceptable claim within 30 days after the date of this written notice, the claimant is not eligible for Fund compensation unless there are extenuating circumstances.

e) Proceedings—(1) Location. Any required proceeding will be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Assistant Administrator, NMFS, or his designee, or if no agreement can be reached, within the United States judicial district in which the claimant’s home port is located.

(2) Powers. For purposes of any proceeding, the Assistant Administrator, NMFS, or his designee, shall have the power to administer oaths and subpoena witnesses and the production of books, records, and other evidence relative to the issues involved.

(3) Amendments to claims. A claimant may amend the claim at any time before the Chief, FSD, issues an initial determination.

(4) Criminal penalty for fraudulent claims. Any person who files a fraudulent claim is subject to prosecution under 18 U.S.C. sections 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a $10,000 fine and 5 years’ imprisonment, or both.

§ 296.7 Burden of proof and presumption of causation.

(a) Burden of proof. The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to qualify his claim, including:

(1) The identity or nature of the item which caused the damage or loss; and

(2) That the item is associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

(b) Presumption of causation. Notwithstanding the above, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant’s commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities; and

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was made within fifteen days after the date on which the vessel first returned to a port after discovering such damage;

(3) There was no record on the most recent nautical charts issued by the National Ocean Survey, NOAA, or in any weekly Notice to Mariners issued by the Defense Mapping Agency Hydrographic/Topographic Center, in effect at least 15 days before the date the
§ 296.12 Payment of costs.

(a) By person denying responsibility for damage. Any person who is notified by the Interior Department and fails to

(f) Insurance proceeds. An award will be reduced by the amount the claimant has, or reasonably would have, received under a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred.

(47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985)

§ 296.9 Initial determination.

The Chief, FSD will make an initial determination on a claim within 60 days after the day on which the claim is accepted for filing. The initial determination will state:

(a) If the claim is disapproved, the reason for disapproval, or

(b) If the claim is approved, the amount of compensation and the basis on which the amount was determined.

§ 296.10 Agency review.

(a) Within 30 days after the Chief, FDS, issues an initial determination, the claimant, or any other interested person who submitted evidence relating to the initial determination, may ask the Assistant Administrator, NMFS, or his designee, for a review of the initial determination.

(b) The petitioner may submit written or oral evidence within 30 days of filing the petition for review.

§ 296.11 Final determination.

(a) If a petition for review of an initial determination is filed within 30 days after the date the Chief, FSD, issues an initial determination, the Assistant Administrator, NMFS, or his designee will conduct a review of the initial determination, and will issue a final determination no later than 60 days after receipt of the request for review of the initial determination.

(b) If a petition for review of an initial determination is not filed within 30 days after the day on which the Chief, FSD, issues an initial determination, the initial determination will become a final determination.

§ 296.12 Payment of costs.

(a) By person denying responsibility for damage. Any person who is notified by the Interior Department and fails to

(c) Geographic exclusion from presumption of causation. Damage or loss occurring within a one-quarter mile radius of obstructions recorded on charts or in a Notice to Mariners, or properly marked, is presumed to involve the recorded or marked obstruction.

§ 296.8 Amount of award.

(a) Actual damages. The award for damaged fishing gear will be the lesser of the gear’s repair cost or replacement cost. The award for lost fishing gear will be the gear’s replacement cost.

(b) Consequential damages. An award may also include compensation for any damage or loss (except personal injury) that is incurred as a consequence of the fishing gear damage or loss.

(c) Resulting economic loss. An award may also include 50 percent of the resulting economic loss from damage to or loss of fishing vessels and gear.

(d) Attorney, CPA, consultant fees. An award may also include compensation for reasonable fees paid by the claimant to an attorney, CPA, or other consultant for the preparation or prosecution of a claim.

(e) Negligence of claimant. (1) An award will be reduced to the extent that the loss or damage was caused by the negligence or fault of the claimant. (For example, a claimant who sustained $10,000 in damages and whose negligence or fault was found to be responsible for 40% of the damage would receive $6,000 in compensation. If the same claimant were responsible for 90% of the negligence or fault that caused the damage, the claimant would receive $100 in compensation).

(2) Negligence of the owner or operator of the fishing vessel or gear will reduce crewmember awards to the same extent that it reduces an award to the vessel’s owner or operator.

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respond or denies responsibility for the damages claimed will pay the costs of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(b) By the claimant. Any claimant who files a claim will pay the cost of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(c) By person denying responsibility for damage and the claimant. If more than one party is found to have responsibility for the damage claimed, then the cost of the proceedings will be apportioned between them.

§ 296.13 Payment of award for claim.

(a) Upon an initial determination, the Chief, Financial Services Division, shall immediately disburse the claim awarded if the claimant signed as part of his/her application a statement agreeing to repay all or any part of the award if the award should for any reason be subsequently reduced.

(b) [Reserved]

[61 FR 6322, Feb. 20, 1996]

§ 296.14 Subrogation.

(a) The claim application will contain a subrogation statement signed by the claimant as a condition of payment of the claim which:

(1) Assigns to the Fund the claimant’s rights against third parties; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue those rights.

(b) Collection of subrogated rights. If a reasonable chance of successful collection exists, NMFS will refer any subrogated rights to the Justice Department for collection.

(c) Any moneys recovered through subrogation shall be deposited into the Fund.


§ 296.15 Judicial review.

Any claimant or other person who is aggrieved by a final determination may, no later than 30 days after the determination, seek judicial review of the determination in the United States District Court for such judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States District Court for the judicial district in which the claimant’s home port is located.
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Source: 61 FR 55550, July 5, 1996, unless otherwise noted.

Editorial Note: Nomenclature changes to part 300 appear at 64 FR 44431, Aug. 16, 1999.
§ 300.2 Definitions.

In addition to the definitions in each act, agreement, convention, or treaty specified in subparts B through K of this part, the terms used in this part have the following meanings:

**Assistant Administrator** means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or a designee. Address: Room 14555, 1315 East-West Highway, Silver Spring, MD 20910.

**Authorized officer** means:
1. Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard;
2. Any special agent or fisheries enforcement officer of NMFS; or
3. Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary of Commerce or the Commandant of the U.S. Coast Guard to enforce the provisions of any statute administered by the Secretary.

**CCAMLR inspector** means a person designated by a member of the Commission for the Conservation of Antarctic Marine Living Resources as an inspector under Article XXIV of the Convention on the Conservation of Antarctic Marine Living Resources to verify compliance with measures in effect under the Convention.

**Director, Alaska Region** means Director, Alaska Region, NMFS, 709 West Ninth Street, Suite 401, P.O. Box 21668, Juneau, AK 99802, or a designee.

**Director, Northeast Region** means Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

**Director, Northwest Region** means Director, Northwest Region, NMFS, 7600 Sand Point Way, N.E., Bldg. 1, Seattle, WA 98115, or a designee.

**Director, Southeast Fisheries Science Center** means Director, Science and Research, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, or a designee.

**Director, Southwest Region** means Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

**Director, Southeast Region** means Director, Southeast Region, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702, or a designee.

**Director, Northwest Region** means Director, Northwest Region, NMFS, 7600 Sand Point Way, N.E., Bldg. 1, Seattle, WA 98115, or a designee.

**Director, Alaska Region** means Director, Alaska Region, NMFS, 709 West Ninth Street, Suite 401, P.O. Box 21668, Juneau, AK 99802, or a designee.

**Exclusive Economic Zone** or **EEZ** means the zone established by Presidential Proclamation 5030, dated March 10, 1983, as defined in 16 U.S.C. 1802(6).

**Fishing** or **to fish** means:
1. The catching or taking of fish;
2. The attempted catching or taking of fish;
3. Any other activity that can reasonably be expected to result in the catching or taking of fish; or
4. Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1) through (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 normally used for fishing.

**IATTC** means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

**Import** means to land on, bring into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction, constitutes an importation within the meaning of the customs laws of the United States.
§ 300.3 Relation to other laws.

Other laws that may apply to fishing activities addressed herein are set forth in §600.705 of chapter VI of this title.

§ 300.4 General prohibitions.

It is unlawful for any person subject to the jurisdiction of the United States to:

(a) Violate the conditions or restrictions of a permit issued under this part.

(b) Fail to submit information, fail to submit information in a timely manner, or submit false or inaccurate information, with respect to any information required to be submitted, reported, communicated, or recorded pursuant to this part.

(c) Make any false statement, oral or written, to an authorized officer concerning the catching, taking, harvesting, possession, landing, purchase, sale, or transfer of fish, or concerning any other matter subject to investigation by that officer under this part.

(d) Conceal any material fact (including by omission), concerning any matter subject to investigation by an authorized officer under this part.

(e) Refuse to allow an authorized officer to inspect any report or record required to be made or kept under this part.

(f) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this part such that the vessel cannot be readily identified from an enforcement vessel or aircraft.

(g) Fail to comply immediately with any of the enforcement and boarding procedures specified in this part.

(h) Refuse to allow an authorized officer to board a fishing vessel, or enter any other area of custody (i.e., any vessel, building, vehicle, live car, pound, pier, or dock facility where fish might be found).
be found) subject to such person’s control, for the purpose of conducting any inspection, search, seizure, investigation, or arrest in connection with the enforcement of this part or any other applicable law.

(i) Destroy, stave, or dispose of in any manner, any fish, gear, cargo, or other matter, upon any communication or signal from an authorized officer of the United States, or upon the approach of such an officer, enforcement vessel, or aircraft, before the officer has had the opportunity to inspect same, or in contravention of directions from such an officer.

(j) Intentionally destroy evidence that could be used to determine if a violation of this part has occurred.

(k) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer in the conduct of any boarding, inspection, search, seizure, investigation, or arrest in connection with enforcement of this part.

(l) Resist a lawful arrest or detention for any act prohibited by this part.

(m) Interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this part.

(n) Interfere with, obstruct, delay, or prevent, by any means, an investigation, search, seizure, or disposition of seized property in connection with enforcement of this part.

(o) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any living marine resource taken or retained in violation of this part.

(p) Violate any provision of any statute implemented by this part.

(q) Attempt to do any of the foregoing.

§ 300.5 Facilitation of enforcement.

(a) Compliance. The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer or CCAMLR inspector to stop the vessel, and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing this part.

(1) For the purposes of this section “freeboard” means the working distance between the top rail of the gunwale of a vessel and the water’s surface. Where cut-outs are provided in the bulwarks for the purpose of boarding personnel, freeboard means the distance between the threshold of the bulwark cut-out and the water’s surface.

(2) For the purposes of this section, “pilot ladder” means a flexible ladder constructed and approved to meet the U.S. Coast Guard standards for pilot ladders at 46 CFR subpart 163.003 entitled Pilot Ladder.

(b) Communications. (1) Upon being approached by a USCG vessel or aircraft, or other vessel or aircraft with an authorized officer or CCAMLR inspector aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF-FM radiotelephone is the preferred method of communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, voice, flags, whistle or horn may be employed by an authorized officer or CCAMLR inspector, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. USCG units will normally use the flashing light signal “L” which, in the International Code of Signals, means “you should stop your vessel instantly.”

(4) Failure of a vessel’s operator promptly to stop the vessel when directed to do so by an authorized officer or CCAMLR inspector, or by an enforcement vessel or aircraft, using loudhailer, radiotelephone, flashing light, flags, whistle, horn or other means constitutes prima facie evidence of the offense of refusal to allow an authorized officer or CCAMLR inspector to board.

(5) A person aboard a vessel who does not understand a signal from an enforcement unit and who is unable to
§ 300.10 Purpose.

This subpart implements the High Seas Fishing Compliance Act of 1995 (Act), which requires the Secretary to license U.S. vessels fishing on the high seas.

§ 300.11 Definitions.

In addition to the terms defined in section 300.2 and those in the Act and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993 (Agreement), the terms used in this subpart have the following meanings. If a term is defined differently in §300.2, the Act, or the Agreement, the definition in this section shall apply.

High seas means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any Nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

High seas fishing vessel means any vessel of the United States used or intended for use on the high seas for the purpose of the commercial exploitation of living marine resources as a harvesting vessel, mothership, or any other support vessel directly engaged in a fishing operation.

International conservation and management measures means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations
§ 300.13 Vessel permits.

(a) Eligibility. (1) Any high seas fishing vessel of the United States is eligible to receive a permit under this subpart, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and—
   (i) The foreign nation suspended such authorization, because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or
   (ii) The foreign nation, within the 3 years preceding application for a permit under this section, withdrew such authorization, because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restrictions in paragraphs (a)(1)(i) and (ii) of this section do not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Regional Administrator demonstrating that the owner and operator at the time the vessel undermined the effectiveness of such measures has no further legal, beneficial, or financial interest in, or control of, the vessel.

(3) The restrictions in paragraphs (a)(1)(i) and (ii) of this section do not apply if it is determined by the Regional Administrator that issuing a permit would not subvert the purposes of the Agreement.

(b) Application forms. The owner or operator of a high seas fishing vessel may apply for a permit under this subpart by completing an application form. Applicants may obtain an application form from a Regional Administrator.

(c) Application information. An applicant must submit a complete and accurate permit application, signed by the owner or operator, to the appropriate Regional Administrator.

(d) Fees. NMFS will charge a fee to recover the administrative expenses of permit issuance. The amount of the fee will be determined in accordance with the procedures of the NOAA Finance Handbook, available from a Regional Administrator, for determining administrative costs of each special product or service. The fee is specified with the application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded will invalidate any permit.

(e) Issuance. (1) Except as provided in subpart D of 15 CFR part 904, the Regional Administrator will issue a permit, which will include appropriate conditions or restrictions, within 30 days of receipt of a completed application and payment of the appropriate fee.

(2) The Regional Administrator will notify the applicant of any deficiency in the application.

(f) Validity. Permits issued under this subpart are valid for 5 years from the date of issuance. Renewal of a permit prior to its expiration is the responsibility of the permit holder. For a permit to remain valid to its expiration date, the vessel’s USCG documentation or state registration must be kept current. A permit issued under this subpart is void when the name of the owner or vessel changes, or in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is removed from such documentation.

(g) Change in application information. Any changes in vessel documentation...
§ 300.14 Vessel identification.

(a) General. A vessel permitted under this subpart must be marked for identification purposes in accordance with this section.

(b) Marking. Vessels must be marked either:

(1) In accordance with vessel identification requirements specified in Federal fishery regulations issued under the Magnuson-Stevens Act or under other Federal fishery management statutes; or

(2) In accordance with the following identification requirements:

(i) A vessel must be marked with its IRCS if it has been assigned an IRCS. If an IRCS has not been assigned to the vessel, it must be marked (in order of priority) with its Federal, State, or other documentation number appearing on its high seas fishing permit and if a WCPFC Area Endorsement has been issued for the vessel under §300.212, that documentation number must be preceded by the characters “USA” and a hyphen (that is, “USA-”).

(ii) The markings must be displayed at all times on the vessel’s side or superstructure, port and starboard, as well as on a deck;

(iii) The markings must be placed so that they do not extend below the waterline, are not obscured by fishing gear, whether stowed or in use, and are clear of flow from scuppers or overboard discharges that might damage or discolor the markings;

(iv) Block lettering and numbering must be used;

(v) The height of the letters and numbers must be in proportion to the size of the vessel as follows: for vessels 25 meters (m) and over in length, the height of letters and numbers must be no less than 1.0 m; for vessels 20 m but less than 25 m in length, the height of letters and numbers must be no less than 0.8 m; for vessels 15 m but less than 20 m in length, the height of letters and numbers must be no less than 0.6 m; for vessels 12 m but less than 15 m in length, the height of letters and numbers must be no less than 0.4 m; for vessels 5 m but less than 12 m in length, the height of letters and numbers must be no less than 0.3 m; and for vessels under 5 m in length, the height of letters and numbers must be no less than 0.1 m;

(vi) The height of the letters and numbers to be placed on decks must be no less than 0.3 m;

(vii) The length of the hyphen(s), if any, must be half the height (h) of the letters and numbers;

(viii) The width of the stroke for all letters, numbers, and hyphens must be h/6;

(ix) The space between letters and/or numbers must not exceed h/4 nor be less than h/6;

(x) The space between adjacent letters having sloping sides must not exceed h/8 nor be less than h/10;

(xi) The marks must be white on a black background, or black on a white background;

(xii) The background must extend to provide a border around the mark of no less than h/6; and

(xiii) The marks and the background must be maintained in good condition at all times.

[64 FR 15, Jan. 4, 1999, as amended at 75 FR 3347, Jan. 21, 2010]

§ 300.15 Prohibitions.

In addition to the prohibitions in section 300.4, it is unlawful for any person to:

(a) Use a high seas fishing vessel on the high seas in contravention of international conservation and management measures.

(b) Use a high seas fishing vessel on the high seas, unless the vessel has on board a valid permit issued under section 300.13.
§ 300.20 Purpose and scope.

The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950 (Act). The regulations implement recommendations of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean so far as they affect vessels and persons subject to the jurisdiction of the United States.

[69 FR 67277, Nov. 17, 2004]
§ 300.21 Definitions.

In addition to the terms defined in §300.2, in the Act, and in the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), the terms used in this subpart have the following meanings. If a term is defined differently in §300.2, in the Act, or in the Convention, the definition in this section shall apply.

**Bigeye tuna** means the species *Thunnus obesus*.

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

**Commission’s Yellowfin Regulatory Area (CYRA)** means the waters bounded by a line extending westward from the mainland of North America along the 40° N. latitude parallel, and connecting the following coordinates:
40° N. lat., 125° W. long.;
20° N. lat., 125° W. long.;
20° N. lat., 120° W. long.;
5° N. lat., 120° W. long.;
5° N. lat., 110° W. long.;
10° S. lat., 110° W. long.;
10° S. lat., 90° W. long.;
30° S. lat., 90° W. long.; and then eastward along the 30° S. latitude parallel to the coast of South America.

**Convention Area** means the waters within the area bounded by the mainland of the Americas, lines extending westward from the mainland of the Americas along the 40° N. lat. and 40° S. lat., and 150° W. long.

**Fish aggregating device (FAD)** means a manmade raft or other floating object used to attract tuna and make them available to fishing vessels.

**Fishing trip** means a period that a fishing vessel spends at sea between port visits and during which any fishing occurs.

**Fishing vessel** means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for fishing or for assisting or supporting a vessel engaged in fishing, except purse seine skiffs.

**Floating object** means any natural object or FAD around which fishing vessels may catch tuna.

**Incidental catch or incidental species** means species caught while fishing with the primary purpose of catching a different species. An incidental catch is expressed as a percentage of the weight of the total fish on board.

**Land or Landing** means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish on board the vessel are counted as part of the landing.

**Longline gear** means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

**Observer** means an individual placed aboard a fishing vessel under the IATTC observer program or any other international observer program in which the United States may participate.

**Regional Administrator** means the Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, or a designee.

**Regional Vessel Register (hereafter referred to as Vessel Register)** means the regional register of vessels authorized to fish for tuna and tuna-like species in the Convention Area, as established by the Inter-American Tropical Tuna Commission in June 2000.

**South Pacific Tuna Treaty** means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

**Tender vessel** means a vessel that does not engage in purse seine fishing but tends to FADs in support of tuna fishing operations.

**Transship** means to unload fish from a vessel that caught fish to another vessel.

**Transshipment receiving vessel** means any vessel, boat, ship, or other craft that is used to receive fish from a fishing vessel.
§ 300.22 Eastern Pacific fisheries recordkeeping and written reports.

(a) The master or other person in charge of a commercial fishing vessel or commercial passenger fishing vessel (CPFV) authorized to fish for tuna and tuna-like species in the Convention Area, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of operations conducted from the fishing vessel. For vessels greater than 400 st (362.8 mt) carrying capacity that are authorized to purse seine for tuna in the Convention Area, the log must include for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish on board, by species. The record and bridge log maintained and submitted at the request of the IATTC shall be sufficient to comply with this paragraph, provided the items of information specified by the IATTC are accurately entered in the log. For purse seine vessels of 400 st (362.8 mt) or less carrying capacity or less and for non-purse seine vessels, maintaining and submitting any logbook required by existing state or federal regulation shall be sufficient to comply with this paragraph.

(b) Vessel Register. The Vessel Register shall include, consistent with resolutions of the IATTC, all commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area. Except as provided under paragraph (b)(1) of this section, tuna purse seine vessels must be listed on the Vessel Register and categorized as active under paragraph (b)(4)(i) of this section in order to fish for tuna and tuna-like species in the Convention Area.

(1) Exceptions. The following classes of vessels are exempted from being listed on the Vessel Register to purse seine for tuna in the Convention Area:

(i) Vessels licensed under the South Pacific Tuna Treaty that exercise an option to fish in the Convention Area for a single trip each year, provided that the total number of optional trips does not exceed 32 in a given calendar year. Each optional trip in the Convention Area may not exceed 90 days in duration.

(ii) Vessels of 400 st (362.8 mt) or less carrying capacity for which landings of tuna caught in the Convention Area comprise 50 percent or less of the vessel’s total landings, by weight, for a given calendar year.

(2) Requirements for inclusion of purse seine vessels on the vessel register. The tuna purse seine portion of the Vessel Register shall include, consistent with resolutions of the IATTC, only vessels that fished in the Convention Area prior to June 28, 2002. Inclusion on the tuna purse seine portion of the Vessel Register is valid through December 31 of each year. New tuna purse seine vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the tuna purse seine vessel or vessels being replaced.

(3) Vessel information. Information on each commercial fishing vessel or CPFV authorized to use purse seine, longline, drift gillnet, harpoon, troll, rod and reel, or pole and line fishing gear to fish for tuna and tuna-like species in the Convention Area for sale shall be collected by the Regional Administrator to conform to IATTC resolutions governing the Vessel Register. This information initially includes, but is not limited to, the vessel name and registration number; the name and business address of the owner(s) and managing owner(s); a photograph of the vessel with the registration number legible; previous vessel name(s) and previous flag (if known and if any); port of registry; International Radio Call Sign; vessel length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity in metric tons; engine horsepower; date and place where built; and type of fishing method or methods used. The required information shall be
§ 300.22

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collected as part of existing information collections as described in this and other parts of the CFR.

(4) Purse seine vessel register status. For a purse seine vessel to be listed on the Vessel Register and to be categorized as either "active" or "inactive" in the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator the required permit applications, written notifications, and fees as described under §216.24(b) of this title and under paragraphs (b)(4)(i) and (b)(4)(iii) of this section.

(i) Active status. As early as August 1 of each year, vessel owners or managing owners may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as active for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator the vessel permit application and payment of the permit application fee and vessel assessment fee. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator written notification including, but not limited to, a vessel photograph, the vessel information as described under paragraph (b)(3) of this section, and the owner or managing owner’s signature and business telephone and fax numbers. If a purse seine vessel of 400 st (362.8 mt) carrying capacity or less is required by the Agreement on the IDCP to carry an observer, the vessel owner or managing owner must also submit payment of the vessel assessment fee to the Regional Administrator. Vessel permit applications and written notifications must be submitted by fax to (562) 980–4047. The Regional Administrator must receive the vessel permit application or written notification and payment of the permit application fee and vessel assessment fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application or written notification and payment of the vessel assessment fee and permit application fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active. The following restrictions apply to active status:

(A) The cumulative carrying capacity of all purse seine vessels categorized as active on the Vessel Register may not exceed 8,969 mt in a given year;

(B) A purse seine vessel may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under §216.24(b) of this title;

(C) Requests for active status will be prioritized according to the following hierarchy:

(1) Requests received for vessels that were categorized as active in the previous year, unless the request for active status was determined to be frivolous by the Regional Administrator under paragraph (b)(4)(ii) of this section;

(2) Requests received for vessels that were categorized as inactive under paragraph (b)(4)(iii) of this section in the previous year;

(3) Requests for vessels not described in paragraphs (b)(4)(i)(C)(1) or (2) of this section will be prioritized on a first-come, first-served basis according to the date and time stamp printed by the incoming fax machine upon receipt, provided that the associated vessel assessment fee is paid by the applicable deadline described in §216.24(b)(6)(iii) of this title; and

(4) Requests received from owners or managing owners of vessels that were determined by the Regional Administrator to have made a frivolous request for active status under paragraph (b)(4)(ii) of this section.

(ii) Frivolous requests for active status. A request for active status under paragraph (b)(4)(i) of this section will be considered frivolous, unless as a result of force majeure or other extraordinary circumstances as determined by the Regional Administrator if, for a vessel categorized as active in a given calendar year,
(A) Less than 20 percent of the vessel’s total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area; or

(B) The vessel did not fish for tuna at all in the Convention Area in that same year.

(iii) Inactive status. From August 1 through November 30 of each year, vessel owners or managing owners may request that purse seine vessels qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator payment of the associated vessel assessment fee. Payment of the vessel assessment fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the Regional Administrator written notification as described in this paragraph (payment of the vessel assessment fee is not required).

(5) Removal from the vessel register. A vessel may be removed from the Vessel Register by the Regional Administrator:

(i) If the vessel has sunk;

(ii) Upon written request by the vessel’s owner or managing owner;

(iii) Following a final agency action on a permit sanction for a violation;

(iv) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation;

(v) If the U.S. Maritime Administration or the U.S. Coast Guard notifies NMFS that:

(A) The owner has submitted an application for transfer of the vessel to foreign registry and flag; or

(B) The documentation for the vessel will be or has been deleted for any reason.

(vi) If the vessel does not have a valid state registration or U.S. Coast Guard certificate of documentation;

(vii) For tuna purse seine vessels, upon receipt of written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag, as described in paragraph (b)(8) of this section; or

(viii) For tuna purse seine vessels, if the request for active status on the Vessel Register has been determined to be a frivolous request.

(6) Process for Removal from the Vessel Register. When a vessel is removed from the Vessel Register under paragraph (b)(5) of this section, the Regional Administrator shall promptly notify the vessel owner in writing of the removal and the reasons therefor. For a removal from the Vessel Register under §300.22(b)(5)(iii), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register for the term of the permit sanction. For a removal from the Vessel Register
under §300.22(b)(5)(iv), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register until such time as payment is made on the penalty or penalty agreement, or such other duration as NOAA and the vessel owner may agree upon.

(7) Procedures for replacing purse seine vessels removed from the Vessel Register.

(i) A purse seine vessel in excess of 400 st (362.8 mt) carrying capacity that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel pays the vessel assessment fee associated with inactive status. A purse seine vessel of 400 st (362.8 mt) carrying capacity or less that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel submits written notification as described in paragraph (b)(4)(iii) of this section.

(ii) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of the active vessels does not exceed 8,969 mt and the owner submits a complete request under paragraph (b)(7)(iv) or (b)(7)(v) of this section.

(iii) After a purse seine vessel categorized as active is removed from the Vessel Register, the Regional Administrator will notify owners or managing owners of vessels categorized as inactive that replacement capacity is available on the active list of the Vessel Register. In the event that owners of inactive vessels do not request to replace a removed vessel, the Regional Administrator will notify owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active list of the Vessel Register.

(iv) Vessel owners or managing owners may request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator written notification as described in paragraph (b)(4)(i) of this section and, only if the vessel is required by the Agreement on the IDCP to carry an observer, payment of the vessel assessment fee within 10 business days after submission of the faxed written notification. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(v) Vessel owners or managing owners may request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator the vessel permit application as described under §216.24(b) of this title and payment of the vessel assessment fee and permit application fee within 10 business days after submission of the faxed vessel permit application for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced, and the captain of the replacement vessel possesses an operator permit under §216.24(b) of this title. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(vi) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

(8) The owner or managing owner of a purse seine vessel listed on the Vessel Register must provide written notification to the Regional Administrator prior to submitting an application for
§ 300.23 Eastern Pacific fisheries—Persons and vessels exempted.

This subpart does not apply to:

(a) Any person or vessel authorized by the IATTC, the Assistant Administrator, or any state of the United States to engage in fishing for research purposes.

(b) Any person or vessel engaged in sport fishing for personal use.

[61 FR 35550, July 5, 1996, as amended at 74 FR 1620, Jan. 13, 2009]

§ 300.24 Prohibitions.

In addition to the prohibitions in §300.4, it is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Land any species of tuna during the closed season for that species in excess of the amount allowed by the Regional Administrator.

(b) Fish on floating objects in the Convention Area using any gear type specified by the Regional Administrator’s notification of closure issued under §300.25.

(c) Use tender vessels in the Convention Area.

(d) Transship purse seine-caught tuna at sea within the Convention Area.

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 using purse seine gear in the Convention Area, except fish considered unfit for human consumption due to reasons other than size, and except on the last set of the trip if there is insufficient well capacity to accommodate the entire catch.

(f) When using purse seine gear to fish for tuna in the Convention Area, fail to release any non-tuna species as soon as practicable after being identified on board the vessel during the handling operation.

(g) Land any non-tuna fish species taken in a purse seine set in the Convention Area.

(h) Fail to use the sea turtle handling, release, and resuscitation procedures in §300.25(e).

(i) Fail to report information when requested by the Regional Administrator under §300.22.

(j) Fail to provide written notification as described under §300.22(b)(8) to the Regional Administrator at least 10 business days prior to submission of an application to transfer a purse seine vessel listed on the Vessel Register to foreign registry and flag, unless transfer of the vessel requires approval by the U.S. Maritime Administration.

(k) Use a fishing vessel over 24 meters in length to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of §300.25(b)(4)(i) or (ii).

(l) Use a fishing vessel over 24 meters in length to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of §300.25(b)(4)(iii).

(m) Fail to stow gear as required in §300.25(b)(4)(iv) or (f)(3).

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the Convention Area in contravention of §300.25(f)(1) or (2).


§ 300.25 Eastern Pacific fisheries management.

(a) Notification of IATTC recommendations and resolutions. Fishery management resolutions made by the IATTC and approved by the Department of...
§ 300.25 50 CFR Ch. III (10–1–10 Edition)

State will be promulgated in the Federal Register via appropriate rulemaking. The publication in the Federal Register will summarize the fishery management resolutions and respond to any public comments received by NMFS.

(b) Tuna quotas in the longline fishery in the EPO. (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when NMFS closes the fishery for a specific species.

(2) For each of the calendar years 2009, 2010, and 2011, there is a limit of 500 metric tons of bigeye tuna that may be captured and landed by longline gear in the Convention Area by fishing vessels of the United States that are over 24 meters in length.

(3) NMFS will monitor bigeye tuna landings with respect to the limit established under paragraph (b)(2) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit in any year is expected to be reached by a specific future date, and at least 7 calendar days in advance of that date, NMFS will publish a notice in the Federal Register announcing that the limit has been reached and that the restrictions described in paragraph (b)(4) of this section will be in effect through the end of the calendar year.

(4) Once an announcement is made pursuant to paragraph (b)(3) of this section, the following restrictions will apply during the period specified in the announcement:

(i) A fishing vessel of the United States over 24 meters in length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(A) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective.

(B) In the case of a vessel that has declared to NMFS, pursuant to §665.23(a) of this title, that the current trip type is shallow-setting, the 14-day limit is waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the prohibitions, as recorded by the NMFS observer on board the vessel.

(ii) Bigeye tuna caught by longline gear used on a vessel of the United States over 24 meters in length in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under §660.707 or §665.21 of this title.

(iii) A fishing vessel of the United States over 24 meters in length, other than a vessel for which a declaration has been made to NMFS, pursuant to §665.23(a) of this title, that the current trip type is shallow-setting, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (b)(3) of this section.

(iv) If a fishing vessel of the United States over 24 meters in length, other than a vessel for which a declaration has been made to NMFS, pursuant to §665.23(a) of this title, that the current trip type is shallow-setting, is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

(c) Use of tender vessels. No person subject to these regulations may use a tender vessel in the Convention Area.

(d) Transshipments at sea. No person subject to these regulations may transship purse seine-caught tuna from one vessel to another vessel at sea within the Convention Area.

(e) Bycatch reduction measures. (1) Bigeye, skipjack, and yellowfin tuna caught by a fishing vessel of the United
States of class size 4–6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except fish deemed unfit for human consumption for reasons other than size from 0000 hours on January 1, 2010 to 2400 hours on December 31, 2011. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

(2) All purse seine vessels must release all sharks, billfishes, rays, mahimahi (dorado), and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation.

(3) All purse seine vessels must apply special sea turtle handling and release procedures, as follows:

(i) Whenever a sea turtle is sighted in the net, a speedboat shall be stationed close to the point where the net is lifted out of the water to assist in release of the turtle;

(ii) If a turtle is entangled in the net, net roll shall stop as soon as the turtle comes out of the water and shall not resume until the turtle has been disentangled and released;

(iii) If, in spite of the measures taken under paragraphs (e)(3)(i) and (ii) of this section, a turtle is accidentally brought onboard the vessel alive and active, the vessel’s engine shall be disengaged and the turtle shall be released as quickly as practicable;

(iv) If a turtle brought on board under paragraph (e)(3)(iii) of this section is alive but comatose or inactive, the resuscitation procedures described in §223.206(d)(1)(i)(B) of this title shall be used before release of the turtle.

(f) Purse seine closures in the EPO. (1) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area from 0000 hours on November 21, 2009, to 2400 hours on January 18, 2010; from 0000 hours on November 18, 2010, to 2400 hours on January 18, 2011; and from 0000 hours on November 7, 2011, to 2400 hours on January 18, 2012, except that a vessel of class size 4 (182 to 272 metric tons carrying capacity) may make one fishing trip of up to 30 days duration during the specified closure period, provided that the vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program during the entire fishing trip.

(2) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on September 29 to 2400 hours on October 29 in the years 2010 or 2011 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

(3) At all times while a vessel is in a Closed Area established under paragraphs (f)(1) or (f)(2) of this section, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

or the Treaty, the definition in this section shall apply.

_Applicable national law_ means any of the laws of Pacific Island Parties in the following table and any regulations or other instruments having the force of law implemented pursuant to these laws:

<table>
<thead>
<tr>
<th>Pacific Island Party</th>
<th>Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEDERATED STATES OF MICRONESIA</td>
<td>Titles 18 and 24 of the Code of the Federated States of Micronesia, as amended by Public Law Nos. 2-28, 2-31, 3-9, 3-10, 3-34, and 3-60.</td>
</tr>
<tr>
<td>PALAU</td>
<td>Palau National Code, Title 27.</td>
</tr>
</tbody>
</table>
Int'l. Fishing and Related Activities § 300.31

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<thead>
<tr>
<th>Pacific Island Party</th>
<th>Laws</th>
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</table>

Authorized inspector means any individual authorized by a Pacific Island Party or the Secretary to conduct inspections, to remove samples of fish and to gather any other information relating to fisheries in the Licensing Area.

Authorized officer means any officer who is authorized by the Secretary, or the Secretary of Transportation, or the head of any Federal or state agency that has entered into an enforcement agreement with the Secretary under section 10(a) of the Act.

Authorized party officer means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

Closed area means any of the areas in the following table, as depicted on charts provided by the Regional Administrator and as further described in additional information that may be provided by the Regional Administrator:

<table>
<thead>
<tr>
<th>Pacific Island Party</th>
<th>Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUSTRALIA</td>
<td>All waters within the seaward boundary of the Australian Fishing Zone (AFZ) west of a line connecting the point of intersection of the outer limit of the AFZ by the parallel of latitude 25° 30′ South with the point of intersection of the meridian of longitude 151° East by the outer limit of the AFZ and all waters south of the parallel of latitude 25° 30′ South.</td>
</tr>
<tr>
<td>COOK ISLANDS</td>
<td>Territorial Sea.</td>
</tr>
<tr>
<td>FIJI</td>
<td>Internal waters, archipelagic waters and territorial seas of Fiji and Rotuma and its Dependencies.</td>
</tr>
<tr>
<td>KIRIBATI</td>
<td>Within archipelagic waters as established in accordance with Marine Zones (Declaration) Act 1983; within 12 nautical miles drawn from the baselines from which the territorial seas is measured; and within 2 nautical miles of any anchored fish aggregating device within the Kiribati exclusive economic zone for which notification of its location shall be given by geographical coordinates.</td>
</tr>
<tr>
<td>MARSHALL ISLANDS</td>
<td>12 nautical mile territorial sea and area within two nautical miles of any anchored fish aggregating device within the Marshall Islands exclusive economic zone for which notification of its location shall be given by geographical coordinates.</td>
</tr>
<tr>
<td>NAURU</td>
<td>The territorial waters as defined by Nauru Interpretation Act, 1971, Section 2.</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>Territorial waters; waters within 6 nautical miles of outer boundary of territorial waters; all waters to west of New Zealand main islands and south of 39° South latitude; and in respect of Tokelau: areas within 12 nautical miles of all island and reef baselines; twelve and one half nautical miles either side of a line joining Atafu and Nukunonu and Fakaofo; and coordinates as follows: Atafu: 8°35′10″ S, 172°29′30″ W Nukunonu: 9°06′25″ S, 171°52′10″ W 9°11′30″ S, 171°47′00″ W</td>
</tr>
<tr>
<td>NIUE</td>
<td>Fakaofo: 9°22′30″ S, 171°16′30″ W Territorial sea and within 3 nautical miles of Beveridge Reef, Antelope Reef and Haran Reef as depicted by appropriate symbols on NZ 225F (chart showing the territorial sea and exclusive economic zone of Niue pursuant to the Niue Territorial Sea and Exclusive Economic Zone Act of 1978).</td>
</tr>
<tr>
<td>PALAU</td>
<td>Within 12 nautical miles of all island baselines in the Palau Islands; and the area:</td>
</tr>
</tbody>
</table>
### § 300.31

<table>
<thead>
<tr>
<th>Pacific Island Party</th>
<th>Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>commencing at the north-easternmost intersection of the outer limit of the 12 nautical mile territorial sea of Palau by the arc of a circle having a radius of 50 nautical miles and its center at Latitude 07°16′34″ North, longitude 134°28′25″ East, being at about the center of the reef entrance to Malakal Pass; running thence generally south-easterly, southerly, south-westerly, westerly, north-westerly, northerly and north-easterly along that arc to its intersection by the outer limit of the 12 nautical mile territorial sea; and thence generally northerly, north-easterly, easterly, south-easterly and southerly along that outer limit to the point of commencement. Where for the purpose of these specifications it is necessary to determine the position on the surface of the Earth of a point, line or area, it shall be determined by reference to the World Geodetic System 1984; that is to say, by reference to a spheroid having its center at the center of the Earth and a major (equatorial) radius of 6,378,137 meters and a flattening of 1/298.2572.</td>
<td><strong>PAPUA NEW GUINEA</strong> All territorial seas, archipelagic and internal waters. <strong>SOLOMON ISLANDS</strong> All internal waters, territorial seas and archipelagic waters; and such additional waters around the main group archipelago, as defined under the Delimitation of Marine Waters Act 1978, not exceeding sixty nautical miles. <strong>TONGA</strong> All waters with depths of not more than 1,000 meters, within the area bounded by the fifteenth and twenty third and one half degrees of south latitudes and the one hundred and seventy third and the one hundred and seventy seventh degrees of west longitudes; also within a radius of twelve nautical miles from the islands of Teleki Tonga and Teleki Tokelau. <strong>TUVALU</strong> Territorial sea and waters within two nautical miles of all named banks, that is Macaw, Kosciusko, Rose, Bayonnaise and Hera, in Tuvalu exclusive economic zone, as depicted on the chart entitled &quot;Tuvalu Fishery Limits,&quot; prepared by the United Kingdom Hydrographic Department, Taunton, January 11, 1981. <strong>VANUATU</strong> Archipelagic waters and the territorial sea, and internal waters. <strong>SAMOA</strong> Territorial sea; reefs, banks and sea-mounts and within 2 nautical miles of any anchored fish aggregating device within the Samoa exclusive economic zone for which notification of its location shall be given by geographical coordinates.</td>
</tr>
</tbody>
</table>

`FFA Vessel Register` means the registry of fishing vessels maintained by the FFA, comprising those vessels which are in good standing and licensed to fish in the waters of FFA member countries, including those vessels licensed under §300.32. `Fishing vessel or vessel` means any boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for commercial fishing, and that is documented under the laws of the United States. `Fishing arrangement` means an arrangement between a Pacific Island Party and the owner of a U.S. fishing vessel that complies with section 6(b) of the Act. `Licensing Area` means all waters in the Treaty Area except for: (1) Those waters subject to the jurisdiction of the United States in accordance with international law. (2) Those waters within closed areas. (3) Those waters within limited areas closed to fishing. `Licensing period` means the period of validity of licenses issued in accordance with the Treaty. `Operator` means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master. `Pacific Island Party` means a Pacific island nation that is a party to the Treaty. `Pacific Islands Forum Fisheries Agency` or `FFA` means the organization established by the 1979 South Pacific Forum Fisheries Agency Convention. `Regional Administrator` means the Regional Administrator, Pacific Islands Region, NMFS, 1601 Kapiolani Blvd.,
§ 300.32 Vessel licenses.

(a) Each vessel fishing in the Licensing Area must have a license issued by the Administrator for the licensing period being fished, unless excepted by §300.39. Each licensing period begins on June 15 and ends on June 14 of the following year.

(b) Upon receipt, the license or a duly certified copy, facsimile or telex confirmation must be carried on board the vessel when in the Licensing Area or Closed Areas and must be produced at the request of authorized officers, authorized party officers, or authorized inspectors. Prior to receipt of the license, but after issuance, a vessel may be used to fish, provided the number of the issued license is available on board.

(c) Application forms for licenses to use a vessel to fish in the Licensing Area may be requested from, and upon completion, must be returned to, the Regional Administrator. All of the information requested on the form and the following must be supplied before the application will be considered complete:

1. The licensing period for which the license is requested.

2. The name of an agent, located in Port Moresby, Papua New Guinea, who, on behalf of the license holder, will receive and respond to any legal process on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty.

3. Documentation from an insurance company showing that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance.

4. If the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, reasonable assurances that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines.

5. A copy of the vessel’s USCG Certificate of Documentation.

(d) The number of available licenses is 45, five of which shall only be available to fishing vessels of the United States engaged in joint venture arrangements, specifically: Vessels engaged in fishing activity designed to promote maximization of the benefits...
§ 300.33 Compliance with applicable national laws.

The operator of the vessel shall comply with each of the applicable national laws, and the operator of the vessel shall be responsible for the compliance by the vessel and its crew with each of the applicable national laws, and the vessel shall be operated in accordance with those laws.

§ 300.34 Reporting requirements.

(a) Holders of licenses issued under §300.32 shall comply with the reporting requirements of this section with respect to the licensed vessels.

(b) Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of these regulations, the Act, or the Treaty shall be true, complete and correct. Any change in circumstances that has the effect of rendering any of the information provided false, incomplete or misleading shall be communicated immediately to the Regional Administrator.

(c) The operator of any vessel licensed under §300.32 must prepare and submit accurate, complete, and timely notifications, requests, and reports with respect to the licensed vessel, as described in paragraphs (c)(1) through (10) of this section.

(1) Catch report forms. A record of catch, effort and other information must be maintained on board the vessel, on catch report forms (also known as “Regional Purse Seine Logsheets”, or RPLs) provided by the Regional Administrator. At the end of each day that the vessel is in the Licensing Area, all information specified on the form must, for that day, be recorded on the form. The completed catch report form must be mailed by registered air mail to the Administrator within 14 days of the vessel’s next entry into port for the purpose of unloading its fish catch. A copy of the completed catch report form must also be submitted to, and received by, the Regional Administrator within 2 days of the vessel reaching port.

(2) Unloading and transshipment logsheet forms. At the completion of any unloading or transshipment of fish from the vessel, all the information...
specified on unloading and transshipment logsheet forms provided by the Regional Administrator must, for that unloading or transshipment, be recorded on such forms. A separate form must be completed for each fish processing destination to which the unloaded or transshipped fish are bound. The completed unloading and transshipment logsheet form or forms must be mailed by registered airmail to the Administrator within 14 days of the completion of the unloading or transshipment. The submitted form must be accompanied by a report or reports of the size breakdown of the catch as determined by the receiver or receivers of the fish, and such report must be signed by the receiver or receivers. A copy of the completed unloading and transshipment logsheet, including a copy of the accompanying report or reports of the size breakdown of the catch as determined by the receiver or receivers of the fish, must also be submitted to, and received by, the Regional Administrator within 2 days of the completion of the unloading or transshipment.

(3) Port departure reports. Before the vessel’s departure from port for the purpose of beginning a fishing trip in the Licensing Area, a report must be submitted to the Administrator by telex, transmission via VMS unit, facsimile, or e-mail that includes the following information: Report type ("LBEG"); Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; port name; weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and estimated date and time (in UTC) of entry into port. This information must be reported in the format provided by the Regional Administrator.

(4) Entry into port for unloading reports. Each time the vessel enters or exits the waters under the jurisdiction of a Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("ZENT" for entry or "ZEXT" for exit); FFA Regional Register number; trip begin date; date and time (in UTC) of the entry or exit; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; and the date, time (in UTC), and location where such transshipment is requested to occur. The notification to the Administrator and the request to the Pacific Island Party may be identical. The notification and request must include the following information: Name of vessel; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board the vessel (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; and the date, time (in UTC), and location where such transshipment is requested to occur. The notification to the Administrator must be reported in the format provided by the Regional Administrator and submitted by telex, transmission by VMS unit, facsimile, or e-mail. The request to the Pacific Island Party must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(5) Zone entry and exit reports. Each time the vessel enters or exits the waters under the jurisdiction of a Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("ZENT" for entry or "ZEXT" for exit); FFA Regional Register number; trip begin date; date and time (in UTC) of the entry or exit; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; and intended action. This information must be reported in the format provided by the Regional Administrator and sent via the means and to the Regional Administrator.
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the address provided by the Regional Administrator.

(7) **Weekly reports.** Each Wednesday while the vessel is within the waters under the jurisdiction of a Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("WEEK"); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and whether or not there is a vessel observer on board ("Y" or "N"). This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(8) **Port entry reports.** At least 24 hours before the vessel’s entry into port of any Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("PENT"); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; estimated time (in UTC) of entry into port; port name; and intended action. This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(9) **Transshipment reports.** Upon completion of transshipment of any or all of the fish on board the vessel, a report must be submitted to the Administrator and to the Pacific Island Party in whose jurisdiction the transshipment occurred. The report must include the following information: Report type ("TRANS"); FFA Regional Register number; trip begin date; date and time (in UTC) of the transshipment; IRCS; vessel position at time of transshipment (latitude and longitude to nearest minute of arc); amount of fish transshipped (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; name of vessel to which the fish were transshipped; and the destination of the transshipped fish. The report to the Administrator must be reported in the format provided by the Regional Administrator and submitted by telex, transmission by VMS unit, facsimile, or e-mail. The report to the Pacific Island Party must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(10) **Other reports and notifications to Pacific Island Parties.** Reports and notifications must be submitted to the relevant Pacific Island Parties in each of the circumstances and in the manner described in the subparagraphs of this paragraph. Unless otherwise indicated in this paragraph, the reports must be prepared in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(i) Australia. (A) Each day while the vessel is within the Australian Fishing Zone, a report must be submitted that includes the following information: vessel position (latitude and longitude to nearest minute of arc); and the amount of catch made during the previous day, by species.

(B) At least 24 hours before entering the Australian Fishing Zone, a notification must be submitted that indicates an intent to enter the Australian Fishing Zone.

(ii) Fiji. (A) Each day while the vessel is in Fiji fisheries waters, a report must be submitted that includes the following information: vessel name; IRCS; country of registration of the vessel; and vessel position at the time of the report (latitude and longitude to nearest minute of arc).

(B) Each week while the vessel is in Fiji fisheries waters, a report must be submitted that includes the amount of the catch made during the preceding week, by species.

(iii) Kiribati. (A) At least 24 hours before entering a Closed Area under the jurisdiction of Kiribati, a notification must be submitted that includes the following information: vessel name; IRCS; country of registration of the vessel; and vessel position at the time of the
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report (latitude and longitude to nearest minute of arc); the reason for entering the Closed Area; and the estimated time (in UTC) of entry into the Closed Area (latitude and longitude to nearest minute of arc).

(B) Immediately upon entry into or exit from a Closed Area under the jurisdiction of Kiribati, a report must be submitted that includes the following information: report type (“CAENT” for entry or “CAEXT” for exit); the number of the vessel’s license issued under § 300.32; IRCS; date and time (in UTC) of the report; vessel position (latitude and longitude to nearest minute of arc); amount of the catch on board the vessel; and status of the boom (“up” or “down”), net (“deployed” or “stowed”), and skiff (“deployed” or “stowed”).

(C) At least 24 hours prior to fueling the vessel from a tanker in the area of jurisdiction of Kiribati, a report must be submitted that includes the following information: report type (“SBUNK”); the number of the vessel’s license issued under § 300.32; IRCS; trip start date; name of port from which trip started; amount of the catch on board the vessel, by species; estimated time of bunkering; estimated position of bunkering (latitude and longitude to nearest minute of arc); and name of tanker.

(D) After fueling the vessel from a tanker in the area of jurisdiction of Kiribati, but no later than 12 noon local time on the following day, a report must be submitted that includes the following information: report type (“FBUNK”); the number of the vessel’s license issued under § 300.32; IRCS; start time of bunkering; end time of bunkering; amount of fuel received, in kiloliters; and name of tanker.

(iv) New Zealand.

(A) At least 24 hours before entering the exclusive economic zone of New Zealand, a notification must be submitted that includes the following information: name of vessel; IRCS; position of point of entry into the exclusive economic zone of New Zealand (latitude and longitude to nearest minute of arc); amount of catch on board the vessel, by species; and condition of the catch on board the vessel (“fresh” or “frozen”).

(B) For each day that the vessel is in the exclusive economic zone of New Zealand, a notification must be submitted no later than noon of the following day of the vessel’s position (latitude and longitude to nearest minute of arc) at noon.

(C) For each week or portion thereof that the vessel is in the exclusive economic zone of New Zealand, a report that covers the period from 12:01 a.m. on Monday to 12 midnight on the following Sunday must be submitted and received by noon of the following Wednesday (local time). The report must include the amount of the catch taken in the exclusive economic zone of New Zealand during the reporting period.

(D) At least 10 days prior to an intended transshipment in an area under the jurisdiction of New Zealand, a notification must be submitted that includes the intended port, date, and time of transshipment.

(E) At least 24 hours prior to exiting the exclusive economic zone of New Zealand, a notification must be submitted that includes the following information: position of the intended point of exit (latitude and longitude to nearest minute of arc); the amount of catch on board the vessel, by species; and condition of the catch on board the vessel (“fresh” or “frozen”).

(v) Solomon Islands.

(A) At least 24 hours prior to entry into Solomon Islands Fisheries Limits, a report must be submitted that includes the following information: expected vessel position (latitude and longitude to nearest minute of arc) and expected date and time of entry.

(B) For each week or portion thereof that the vessel is in the exclusive economic zone of Solomon Islands, a report that covers the period from 12:01 a.m. on Monday to 12 midnight on the following Sunday must be submitted and received by noon of the following Tuesday (local time). The report must include the amount of the catch taken and the number of fishing days spent in the exclusive economic zone of Solomon Islands during the reporting period.

(vi) Tonga.

(A) Each day while the vessel is in the exclusive economic
§ 300.35 Vessel and gear identification.

While a vessel is in the Licensing Area, a Limited Area closed to fishing, or a Closed Area, a recent and up-to-date copy of the International Code of Signals (INTERCO) shall be on board and accessible at all times. The operator shall comply with the 1989 Food and Agricultural Organization standard specifications for the marking and identification of fishing vessels. The international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, and be clear, distinct, and uncovered, in the following manner:

(a) On both sides of the vessel’s hull or superstructure, with each letter and number being at least 1 m high and having a stroke width of 16.7 cm, with the background extending to provide a border around the mark of not less than 16.7 cm.

(b) On the vessel’s deck, on the body of any helicopter and on the hull of any skiff, with each letter and number being at least 30 cm high and having a stroke width of 5 cm with the background extending to provide a border around the mark of not less than 5 cm.

(c) On any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, with each letter and number being at least 10 cm high and having a stroke width of 1.7 cm, with the background extending to provide a border around the mark of not less than 1.7 cm.

§ 300.36 Closed area stowage requirements.

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

§ 300.37 Radio monitoring.

The international distress frequency, 2,182 mHz, and 156.8 mHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the Parties.

§ 300.38 Prohibitions.

(a) Except as provided for in §300.39, in addition to the prohibitions in §300.4, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) To violate the Act or any provision of any regulation or order issued pursuant to Act.

(2) To use a vessel for fishing in violation of an applicable national law.

(3) To violate the terms and conditions of any fishing arrangement to which that person is a party.

(4) To use a vessel for fishing in any Closed Area.

(5) To refuse to permit any authorized officer or authorized party officer to board a fishing vessel for purpose of conducting a search or inspection in connection with the enforcement of the Act or the Treaty.
§ 300.40 Civil penalties.

The procedures of 15 CFR part 904 apply to the assessment of civil penalties, except as modified by the requirements of section 8 of the Act.
§ 300.41 Investigation notification.

Upon commencement of an investigation under section 10(b)(1) of the Act, the operator of any vessel concerned shall have 30 days after receipt of notification of the investigation and the operator's rights under section 10(b)(1) to submit comments, information, or evidence bearing on the investigation, and to request in writing that the Secretary provide the operator an opportunity to present the comments, information, or evidence orally to the Secretary or the Secretary's representative.

§ 300.42 Findings leading to removal from fishing area.

(a) Following an investigation conducted under section 10(b) of the Act, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel that has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding that:

(1) The fishing vessel—
   (i) While fishing in the Licensing Area did not have a license issued under §300.32 to fish in the Licensing Area, and that under the terms of the Treaty the fishing is not authorized to be conducted in the Licensing Area without such a license.
   (ii) Was involved in any incident in which an authorized officer, authorized party officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcibly resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of duties as authorized by the Act or the Treaty;
   (iii) Has not made full payment within 60 days of any amount due as a result of a final judgement or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or
   (iv) Was not represented by an agent for service of process in accordance with the Treaty; or

(2) There is probable cause to believe that the fishing vessel—
   (i) Was used in violation of section 5(a)(4), (a)(5), (b)(2), or (b)(3) of the Act;
   (ii) Used an aircraft in violation of section 5(b)(7) of the Act; or
   (iii) Was involved in an incident in which section 5(a)(7) of the Act was violated.

(b) Upon being advised by the Secretary of State that proper notification to Parties has been made by a Pacific Island Party that such Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of that Pacific Island Party, the Secretary shall order the vessel to leave those waters until the Secretary of State notifies the Secretary that the order is no longer necessary.

(c) The Secretary shall rescind any order issued on the basis of a finding under paragraphs (a)(1) (iii) or (iv) of this section (subsections 11(a)(1) (C) or (D) of the Act) as soon as the Secretary determines that the facts underlying the finding do not apply.

(d) An order issued in accordance with this section is not subject to judicial review.

§ 300.43 Observers.

(a) The operator and each member of the crew of a vessel shall allow and assist any person identified as an observer under the Treaty by the Pacific Island Parties:

(1) To board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary.

(2) Without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel that the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas that may be used to hold, process, weigh and store fish; remove samples; have full access to vessel's records, including its log and documentation for the purpose of inspection and copying; have reasonable access to navigation equipment, charts, and radios, and gather any other information relating to fisheries in the Licensing Area.
§ 300.45 Vessel Monitoring System.

(a) Applicability. Holders of vessel licenses issued under §300.32 are required, in order to have the licensed vessel in the Treaty Area, to:

(1) Have installed a VMS unit on board the licensed vessel;

(2) Allow the Administrator, its agent, or a person authorized by the Administrator to program the VMS unit to transmit position and related information to the Administrator;

(3) If directed by the Regional Administrator, allow NMFS, its agent, or a person authorized by NMFS to program the VMS unit to transmit position and related information to NMFS; and

(4) Carry and have operational the VMS unit at all times while in the Treaty Area, except as provided in paragraphs (f) and (g) of this section.

(b) FFA Vessel Register. Purse seine vessels must be in good standing on the FFA Vessel Register maintained by the Administrator in order to be licensed under the Treaty. FFA Vessel Register application forms may be obtained from the Regional Administrator or the Administrator or from the FFA Web site: http://www.ffa.int. Purse seine vessel owners or operators must submit completed FFA Vessel Register applications to the Regional Administrator for transmittal to the Administrator and pay fees for registration of their vessel(s) on the FFA Vessel Register annually. The vessel owner or operator may submit a completed FFA Vessel Register application form at any time, but the application must be received by the Regional Administrator at least seven days before the first day of the next licensing period to avoid the potential lapse of the registration and license between licensing periods.

(c) VMS unit installation. A VMS unit required under this section must be installed by a person authorized by the Administrator. A list of Administrator-authorized VMS unit installers may be obtained from the Regional Administrator or the Administrator.

(d) Hardware and software specifications. The VMS unit installed and carried on board a vessel to comply with the requirements of this section must consist of hardware and software that is approved by the Administrator and able to perform all functions required by the Administrator. A current list of approved hardware and software may be obtained from the Administrator.

(e) Service activation. Other than when in port or in a shipyard and having given proper notification to the Administrator as specified in paragraph (g) of this section, the owner or operator of a vessel licensed under §300.32 must, when the vessel is in the Treaty Area:

(1) Activate the VMS unit on board the licensed vessel to transmit automatic position reports;

(2) Ensure that no person interrupts, interferes with, or impedes the operation of the VMS unit or tampers with, alters, damages, or disables the VMS unit, or attempts any of the same; and

(3) Ensure that no person moves or removes the VMS unit from the installed position without first notifying the Administrator by telephone, facsimile, or e-mail of such movement or removal.
§ 300.46 Interruption of VMS unit signal.

When a vessel owner or operator is notified by the Administrator or an authorized officer that automatic position reports are not being received, or the vessel owner or operator is otherwise alerted or aware that transmission of automatic position reports has been interrupted, the vessel owner and operator must comply with the following:

(1) The vessel owner or operator must submit manual position reports that include vessel name, call sign, current position (latitude and longitude to the nearest minute), date, and time to the Administrator by telephone, facsimile, or e-mail at intervals of no greater than eight hours or a shorter interval if and as specified by the Administrator or an authorized officer. The reports must continue to be submitted until the Administrator has confirmed to the vessel owner or operator that the VMS unit is properly transmitting position reports. If the manual position reports cannot be made, the vessel operator or owner must notify the Administrator of such as soon as possible, by any means possible.

(2) If directed by the Administrator or an authorized officer, the vessel operator must immediately stow the fishing gear in the manner described in § 300.36, take the vessel directly to a port designated by the Administrator or authorized officer, and notify the Administrator by telephone, facsimile, or e-mail as soon as possible that the vessel is being taken to port with fishing gear stowed.

(g) Shutdown of VMS unit while in port or in shipyard. When a vessel is in port and not moving, the VMS unit may be shut down, provided that the Administrator has been notified by telephone, facsimile, or e-mail that the VMS unit is in port and of the intended shutdown, and only as long as manual position reports as described in paragraph (f)(1) of this section are submitted to the Administrator at intervals of no greater than 24 hours or a shorter interval if and as specified by the Administrator or an authorized officer. If the VMS unit is shut down while the vessel is in port, the vessel owner or operator must notify the Administrator by telephone, facsimile, or e-mail as soon as possible after the vessel’s departure from port.

(h) VMS unit repair and replacement. After a fishing trip during which interruption of automatic position reports has occurred, the vessel’s owner or operator must have the VMS unit repaired or replaced prior to the vessel’s next trip. If the VMS unit is replaced, the new VMS unit must be installed by an Administrator-authorized VMS unit installer, as specified in paragraph (c) of this section. In making such repairs or replacements, conformity with the current requirements must be met before the vessel may lawfully operate under the Treaty.

(i) Access to data. As a condition to obtaining a license, holders of vessel licenses issued under § 300.32 must allow the Regional Administrator, an authorized officer, the Administrator or an authorized party officer or designees access to the vessel’s position data obtained from the VMS unit at the time of, or after, its transmission to the vendor or receiver.

(72 FR 6154, Feb. 9, 2007)

§ 300.46 Transshipping requirements.

(a) Applicability. This section applies to vessels licensed under § 300.32.

(b) Transshipping may only be done at the time and place authorized for transshipment by the Pacific Island Parties, following the notification and request requirements of § 300.34(c)(5).

(c) The operator and each member of the crew of a vessel from which any fish taken in the Licensing Area is transshipped must:

(1) Allow and assist any person identified as an officer of the Pacific Island Party to:

(i) Have full access to the vessel and any place where such fish is being
transshipped and the use of facilities and equipment that the officer may determine is necessary to carry out his or her duties;

(ii) Have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish;

(iii) Remove samples;

(iv) Have full access to the vessel’s records, including its log and documentation, for the purpose of inspection and copying; and

(v) Gather any other information required to fully monitor the activity without interfering unduly with the lawful operation of the vessel; and

(2) Not assault, obstruct, resist, delay, refuse boarding to, intimidate, or interfere with any person identified as an officer of the Pacific Island Party in the performance of his or her duties.

(d) Transshipping at sea may only be done:

(1) In a designated area in accordance with such terms and conditions as may be agreed between the operator of the vessel and the Pacific Island Party in whose jurisdiction the transshipment is to take place;

(2) In accordance with the requirements of §300.34; and

(3) If the catch is transshipped to a carrier vessel duly authorized in accordance with national laws.

[72 FR 6155, Feb. 9, 2007]

Subpart E—Pacific Halibut Fisheries


§ 300.60 Purpose and scope.

This subpart implements the North Pacific Halibut Act of 1982 (Act) and is intended to supplement, not conflict with, the annual fishery management measures adopted by the International Pacific Halibut Commission (Commission) under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention).

§ 300.61 Definitions.

In addition to the terms defined in §300.2 and those in the Act and the Convention, the terms used in this subpart have the following meanings. If a term is defined differently in §300.2, the Act, or the Convention, the definition in this section shall apply.

Alaska Native tribe means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a Federally recognized Alaska Native tribe that has customary and traditional use of halibut and that is listed in §300.65(g)(2) of this part.

Area 2A includes all waters off the States of California, Oregon, and Washington.

Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58° 11′ 54″ N. lat., 136° 38′ 24″ W. long.) and south and east of a line running 205° true from said light.

Area 3A means all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57° 41′ 15″ N. latitude, 155° 35′ 00″ W. longitude) to Cape Ikolik (57° 17′ 17″ N. latitude, 154° 47′ 18″ W. longitude), then along the Kodiak Island coastline to Cape Trinity (56° 44′ 50″ N. latitude, 154° 08′ 44″ W. longitude), then 140° true.

Charter halibut permit means a permit issued by the National Marine Fisheries Service pursuant to §300.67.

Charter vessel angler, for purposes of §§300.65(d), 300.66, and 300.67, means a person, paying or non-paying, using the services of a charter vessel guide.

Charter vessel fishing trip, for purposes of §§300.65(d), 300.66, and 300.67, means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from that vessel.

Charter vessel guide, for purposes of §§300.65(d), 300.66 and 300.67, means a person who holds an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

Charter vessel operator, for purposes of §300.65(d), means the person in control of the vessel during a charter vessel fishing trip.

Chiniak Bay means all waters bounded by the shoreline and straight lines...
connecting the coordinates in the order listed:

1. North from Cape Chiniak (57°37.22′ N. lat., 152°9.36′ W. long.);
2. To Buoy #1 at Williams Reef (57°50.36′ N. lat., 152°8.82′ W. long.);
3. To East Cape on Spruce Island (57°54.89′ N. lat., 152°8.19′ W. long.);
4. To Termination Point on Kodiak Island (57°51.31′ N. lat., 152°24.01′ W. long.); and
5. Connecting to a line running counterclockwise along the shoreline of Kodiak Island to Cape Chiniak (57°37.22′ N. lat., 152°9.36′ W. long.).

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing.

Commission means the International Pacific Halibut Commission.

Commission regulatory area means an area defined by the Commission for purposes of the Convention identified in 50 CFR 300.60 and prescribed in the annual management measures published pursuant to 50 CFR 300.62.

Community charter halibut permit means a permit issued by NMFS to a Community Quota Entity pursuant to §300.67.

Crew member, for purposes of §§300.65(d), and 300.67, means an assistant, deckhand, or similar person who works directly under the supervision of, and on the same vessel as, a charter vessel guide or operator of a vessel with one or more charter vessel anglers on board.

Customary trade means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, the non-commercial exchange of subsistence halibut for anything other than items of significant value.

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area.

Guideline harvest level (GHL) means the level of allowable halibut harvest by the charter vessel fishery.

Halibut harvest means the catching and retaining of any halibut.

Head-on length means a straight line measurement passing over the pectoral fin from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

Individual Fishing Quota (IFQ), for purposes of this subpart, means the annual catch limit of halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the TAC of halibut.

IFQ fishing trip, for purposes of the subpart, means the period beginning when a vessel operator commences harvesting IFQ halibut and ending when the vessel operator lands any species.

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined at §679.2 of this title.

Military charter halibut permit means a permit issued by NMFS to a United States Military Morale, Welfare and Recreation Program pursuant to §300.67.

Overall length of a vessel means the horizontal distance, rounded to the nearest ft/meter, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments).

Person includes an individual, corporation, firm, or association.

Power hauling means using electrically, hydraulically, or mechanically powered devices or attachments or other assisting devises or attachments to deploy and retrieve fishing gear. Power hauling does not include the use of hand power, a hand powered crank, a fishing rod, a downrigger, or a hand troll gurdy.

Rural means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a community of Alaska listed at §300.65(g)(1) or an area of Alaska described at §300.65(g)(3) in which the non-commercial, customary, and traditional use of fish and game for personal or family consumption is a principal characteristic of the economy or area and in which there is a long-term, customary, and traditional use of halibut.

Rural resident means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska:
§ 300.63

Subsistence halibut registration certificate (SHARC) means documentation, issued by NMFS, of the registration required at § 300.65(i).

Treaty Indian tribes means the Hoh, Jamestown S’Klallam, Lower Elwha S’Klallam, Lummi, Makah, Port Gamble S’Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, Tulalip, and Nooksack tribes.

Valid, with respect to a charter halibut permit for purposes of §§ 300.66 and 300.67, means the charter halibut permit that is currently in effect.

§ 300.62 Annual management measures.

Annual management measures may be added and modified through adoption by the Commission and publication in the FEDERAL REGISTER by the Assistant Administrator, with immediate regulatory effect. Such measures may include, inter alia, provisions governing: Licensing of vessels, inseason actions, regulatory areas, fishing periods, closed periods, closed areas, catch limits (quotas), fishing period limits, size limits, careful release of halibut, vessel clearances, logs, receipt and possession of halibut, fishing gear, retention of tagged halibut, supervision of unloading and weighing, and sport fishing for halibut. The Assistant Administrator will publish the Commission’s regulations setting forth annual management measures in the FEDERAL REGISTER by March 15 each year. Annual management measures may be adjusted inseason by the Commission.

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

(a) A catch sharing plan (CSP) may be developed by the Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Northwest Region, NMFS.
(b)(1) Each year, before January 1, NMFS will publish a proposal to govern the recreational fishery under the CSP for the following year and will seek public comment. The comment period will extend until after the Commission’s annual meeting, so the public will have the opportunity to consider the final area 2A total allowable catch (TAC) before submitting comments. After the Commission’s annual meeting and review of public comments, NMFS will publish in the Federal Register the annual rule governing sport fishing in area 2A. Annual management measures may be adjusted inseason by NMFS.

(2) A portion of the commercial TAC is allocated as incidental catch in the salmon troll fishery in Area 2A. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the Federal Register along with the annual salmon management measures.

(3) A portion of the Area 2A Washington recreational TAC is allocated as incidental catch in the primary directed longline sablefish fishery north of 46°53.30′ N. lat. (Pt. Chehalis, Washington), which is regulated under 50 CFR 660.372. This fishing opportunity is only available in years in which the Area 2A TAC is greater than 900,000 lb (408.2 mt) provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). Each year that this harvest is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the Federal Register along with the annual salmon management measures.

(i) In years when this incidental harvest of halibut in the directed sablefish fishery north of 46°53.30′ N. lat. is allowed, it is allowed only for vessels using longline gear that are registered to groundfished limited entry permits with sablefish endorsements and that possess the appropriate incidental halibut harvest license issued by the Commission.

(ii) It is unlawful for any person to possess, land or purchase halibut south of 46°53.30′ N. lat. that were taken and retained as incidental catch authorized by this section in the directed longline sablefish fishery.

(4) The commercial longline fishery in area 2A is governed by the annual management measures published pursuant to §§300.62 and 300.63.

(5) The treaty Indian fishery is governed by §300.64 and tribal regulations. The annual quota for the fishery will be announced with the Commission regulations under §300.62.

(c) Flexible Inseason Management Provisions for Sport Halibut Fisheries in Area 2A. (1) The Regional Administrator, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), or their designees, is authorized to modify regulations during the season after making the following determinations:

(i) The action is necessary to allow allocation objectives to be met.

(ii) The action will not result in exceeding the catch limit for the area.

(iii) If any of the sport fishery subareas north of Cape Falcon, Oregon are not projected to utilize their respective quotas by September 30, NMFS may take inseason action to transfer any projected unused quota to another Washington sport subarea.

(iv) If any of the sport fishery subareas south of Leadbetter Point, Washington, are not projected to utilize their respective quotas by their season ending dates, NMFS may take inseason action to transfer any projected unused quota to another Oregon sport subarea.

(2) Flexible inseason management provisions include, but are not limited to, the following:

(i) Modification of sport fishing periods;
(ii) Modification of sport fishing bag limits;
(iii) Modification of sport fishing size limits;
(iv) Modification of sport fishing days per calendar week; and
(v) Modification of subarea quotas.

(3) Notice procedures. (i) Actions taken under this section will be published in the Federal Register.

(ii) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 206–526–6667 or 800–662–9825 (May through October) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(4) Effective dates. (i) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(ii) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the Federal Register. If the Regional Administrator determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after publication of the action in the Federal Register.

(iii) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(5) Availability of data. The Regional Administrator will compile, in aggregate form, all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, Washington.

(d) Fishery Election in Area 2A. (1) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(i) The sport fishery under Section 24 of the annual domestic management measures and IPHC regulations;

(ii) The commercial directed fishery for halibut during the fishing period(s) established in section 8 of the annual domestic management measures and IPHC regulations and/or the incidental retention of halibut during the primary sablefish fishery described at 50 CFR 660.372; or

(iii) The incidental catch fishery during the salmon troll fishery as authorized in section 8 of the annual domestic management measures and IPHC regulations.

(2) No person shall fish for halibut in the sport fishery in Area 2A under section 24 of the annual domestic management measures and IPHC regulations from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed commercial halibut fishery during the fishing periods established in section 8 of the annual domestic management measures and IPHC regulations and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8 of the annual domestic management measures and IPHC regulations.

(4) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as
authorized under section 8 of the annual domestic management measures and IPHC regulations taken on a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A, or that is licensed for the sport charter halibut fishery in Area 2A.

6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under section 8 of the annual domestic management measures and IPHC regulations taken on a vessel that, during the same calendar year, has been used in the directed commercial halibut fishery during the fishing periods established in Section 8 of the annual domestic management measures and IPHC regulations in Area 2A.

(e) Area 2A Non-Treaty Commercial Fishery Closed Areas. Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10’ N. lat. Between the U.S./Canada border and 46°16’ N. lat. and 43°00’ N. lat., the RCA is defined along an eastern boundary by a line approximating the 30-fm (55-m) depth contour. Coordinates for the 30-fm (55-m) boundary are listed at §300.63(f).

(f) The 30-fm (55-m) depth contour between the U.S. border with Canada and 40°10.00’ N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 48°24.79’ N. lat., 124°44.07’ W. long.;
(2) 48°24.80’ N. lat., 124°44.74’ W. long.;
(3) 48°23.94’ N. lat., 124°44.70’ W. long.;
(4) 48°23.51’ N. lat., 124°45.01’ W. long.;
(5) 48°22.59’ N. lat., 124°44.97’ W. long.;
(6) 48°21.75’ N. lat., 124°45.26’ W. long.;
(7) 48°21.23’ N. lat., 124°47.78’ W. long.;
(8) 48°20.32’ N. lat., 124°49.53’ W. long.;
(9) 48°16.72’ N. lat., 124°53.58’ W. long.;
(10) 48°10.00’ N. lat., 124°52.58’ W. long.;
(11) 48°05.63’ N. lat., 124°52.91’ W. long.;
(12) 47°53.37’ N. lat., 124°47.37’ W. long.;
(13) 47°40.28’ N. lat., 124°40.07’ W. long.;
(14) 47°31.70’ N. lat., 124°37.03’ W. long.;
(15) 47°25.67’ N. lat., 124°34.79’ W. long.;
(16) 47°12.82’ N. lat., 124°29.12’ W. long.;
(17) 46°52.94’ N. lat., 124°22.58’ W. long.;
(18) 46°44.18’ N. lat., 124°18.00’ W. long.;
(19) 46°38.17’ N. lat., 124°15.88’ W. long.;
(20) 46°29.53’ N. lat., 124°15.89’ W. long.;
(21) 46°19.27’ N. lat., 124°14.15’ W. long.;
(22) 46°16.00’ N. lat., 124°13.04’ W. long.;
(23) 46°07.00’ N. lat., 124°07.01’ W. long.;
(24) 45°55.95’ N. lat., 124°02.23’ W. long.;
(25) 45°54.53’ N. lat., 124°02.57’ W. long.;
(26) 45°50.65’ N. lat., 124°01.62’ W. long.;
(27) 45°48.20’ N. lat., 124°02.16’ W. long.;
(28) 45°46.00’ N. lat., 124°01.86’ W. long.;
(29) 45°43.46’ N. lat., 124°01.28’ W. long.;
(30) 45°40.48’ N. lat., 124°01.03’ W. long.;
(31) 45°39.04’ N. lat., 124°01.68’ W. long.;
(32) 45°35.48’ N. lat., 124°01.90’ W. long.;
(33) 45°29.81’ N. lat., 124°02.45’ W. long.;
(34) 45°27.97’ N. lat., 124°01.90’ W. long.;
(35) 45°27.22’ N. lat., 124°02.66’ W. long.;
(36) 45°24.20’ N. lat., 124°02.94’ W. long.;
(37) 45°20.60’ N. lat., 124°01.74’ W. long.;
(38) 45°20.25’ N. lat., 124°01.85’ W. long.;
(39) 45°16.44’ N. lat., 124°03.22’ W. long.;
(40) 45°13.63’ N. lat., 124°02.69’ W. long.;
(41) 45°11.05’ N. lat., 124°03.59’ W. long.;
(42) 45°08.55’ N. lat., 124°03.47’ W. long.;
(43) 45°03.82’ N. lat., 124°04.43’ W. long.;
(44) 45°02.81’ N. lat., 124°04.64’ W. long.;
(45) 44°58.06’ N. lat., 124°05.03’ W. long.;
(46) 44°52.97’ N. lat., 124°06.92’ W. long.;
(47) 44°48.89’ N. lat., 124°07.04’ W. long.;
(48) 44°46.94’ N. lat., 124°08.25’ W. long.;
(49) 44°42.72’ N. lat., 124°08.98’ W. long.;
(50) 44°38.16’ N. lat., 124°11.48’ W. long.;
(51) 44°33.38’ N. lat., 124°11.54’ W. long.;
(52) 44°28.51’ N. lat., 124°12.04’ W. long.;
(53) 44°27.65’ N. lat., 124°12.56’ W. long.;
(54) 44°19.67’ N. lat., 124°12.37’ W. long.;
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(55) 44°10.79’ N. lat., 124°12.22’ W. long.; (107) 41°42.53’ N. lat., 124°16.47’ W. long.;
(56) 44°09.22’ N. lat., 124°12.28’ W. long.; (108) 41°37.20’ N. lat., 124°17.05’ W. long.;
(57) 44°08.30’ N. lat., 124°12.30’ W. long.; (109) 41°24.58’ N. lat., 124°10.51’ W. long.;
(58) 44°00.22’ N. lat., 124°12.80’ W. long.; (110) 41°20.73’ N. lat., 124°11.73’ W. long.;
(59) 43°51.56’ N. lat., 124°13.18’ W. long.; (111) 41°17.59’ N. lat., 124°10.66’ W. long.;
(60) 43°44.26’ N. lat., 124°14.50’ W. long.; (112) 41°04.54’ N. lat., 124°14.47’ W. long.;
(61) 43°33.62’ N. lat., 124°16.28’ W. long.; (113) 40°54.26’ N. lat., 124°13.90’ W. long.;
(62) 43°28.66’ N. lat., 124°18.72’ W. long.; (114) 40°40.31’ N. lat., 124°26.24’ W. long.;
(63) 43°23.12’ N. lat., 124°24.04’ W. long.; (115) 40°34.00’ N. lat., 124°27.39’ W. long.;
(64) 43°20.83’ N. lat., 124°25.67’ W. long.; (116) 40°30.00’ N. lat., 124°31.32’ W. long.;
(65) 43°20.48’ N. lat., 124°25.90’ W. long.; (117) 40°28.89’ N. lat., 124°32.43’ W. long.;
(66) 43°16.41’ N. lat., 124°27.52’ W. long.; (118) 40°24.77’ N. lat., 124°29.51’ W. long.;
(67) 43°14.23’ N. lat., 124°29.26’ W. long.; (119) 40°22.47’ N. lat., 124°24.12’ W. long.;
(68) 43°14.03’ N. lat., 124°29.31’ W. long.; (120) 40°19.73’ N. lat., 124°23.59’ W. long.;
(69) 43°11.92’ N. lat., 124°28.26’ W. long.; (121) 40°18.64’ N. lat., 124°21.89’ W. long.;
(70) 43°11.02’ N. lat., 124°29.11’ W. long.; (122) 40°17.67’ N. lat., 124°23.07’ W. long.;
(71) 43°10.13’ N. lat., 124°29.15’ W. long.; (123) 40°15.58’ N. lat., 124°23.61’ W. long.;
(72) 43°09.26’ N. lat., 124°31.03’ W. long.; (124) 40°13.42’ N. lat., 124°22.94’ W. long.;
(73) 43°07.73’ N. lat., 124°30.92’ W. long.; (125) 40°10.00’ N. lat., 124°16.65’ W. long.;
(74) 43°05.93’ N. lat., 124°29.64’ W. long.; (g) The 100-’fm (183-m) depth contour
(75) 43°01.59’ N. lat., 124°30.64’ W. long.; used between the U.S. border with Canada
(76) 42°59.72’ N. lat., 124°31.16’ W. long.; and 40°10.00’ N. lat. is defined by
(77) 42°53.75’ N. lat., 124°36.09’ W. long.; straight lines connecting all of the
(78) 42°50.60’ N. lat., 124°36.41’ W. long.; following points in the order stated:
(79) 42°50.60’ N. lat., 124°38.39’ W. long.; (1) 48°15.00’ N. lat., 125°41.00’ W. long.;
(80) 42°49.37’ N. lat., 124°38.81’ W. long.; (2) 48°14.00’ N. lat., 125°36.00’ W. long.;
(81) 42°46.42’ N. lat., 124°37.69’ W. long.; (3) 48°09.50’ N. lat., 125°40.50’ W. long.;
(82) 42°46.07’ N. lat., 124°38.56’ W. long.; (4) 48°08.00’ N. lat., 125°38.00’ W. long.;
(83) 42°45.29’ N. lat., 124°37.95’ W. long.; (5) 48°05.00’ N. lat., 125°37.25’ W. long.;
(84) 42°45.61’ N. lat., 124°36.87’ W. long.; (6) 48°02.60’ N. lat., 125°34.70’ W. long.;
(85) 42°44.27’ N. lat., 124°33.64’ W. long.; (7) 47°59.00’ N. lat., 125°34.00’ W. long.;
(86) 42°42.75’ N. lat., 124°31.84’ W. long.; (8) 47°57.26’ N. lat., 125°29.82’ W. long.;
(87) 42°40.50’ N. lat., 124°29.67’ W. long.; (9) 47°59.87’ N. lat., 125°25.81’ W. long.;
(88) 42°40.04’ N. lat., 124°29.20’ W. long.; (10) 48°01.80’ N. lat., 125°24.53’ W. long.;
(89) 42°38.09’ N. lat., 124°28.39’ W. long.; (11) 48°02.08’ N. lat., 125°22.98’ W. long.;
(90) 42°36.73’ N. lat., 124°27.54’ W. long.; (12) 48°02.97’ N. lat., 125°22.89’ W. long.;
(91) 42°36.56’ N. lat., 124°28.40’ W. long.; (13) 48°04.47’ N. lat., 125°21.75’ W. long.;
(92) 42°35.77’ N. lat., 124°28.79’ W. long.; (14) 48°06.11’ N. lat., 125°19.33’ W. long.;
(93) 42°34.03’ N. lat., 124°29.98’ W. long.; (15) 48°07.95’ N. lat., 125°18.55’ W. long.;
(94) 42°34.19’ N. lat., 124°30.58’ W. long.; (16) 48°09.00’ N. lat., 125°18.00’ W. long.;
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§ 300.63

(118) 44°00.14' N. lat., 124°55.25' W.
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(121) 43°56.47' N. lat., 124°34.61' W.
(122) 43°42.73' N. lat., 124°32.41' W.
(123) 43°30.92' N. lat., 124°34.43' W.
(124) 43°20.83' N. lat., 124°39.39' W.
(125) 43°17.45' N. lat., 124°41.16' W.
(126) 43°07.04' N. lat., 124°41.25' W.
(127) 43°03.45' N. lat., 124°44.36' W.
(128) 43°03.91' N. lat., 124°50.81' W.
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(130) 42°54.12' N. lat., 124°47.36' W.
(131) 42°50.00' N. lat., 124°45.33' W.
(132) 42°44.00' N. lat., 124°42.38' W.
(133) 42°40.50' N. lat., 124°41.71' W.
(134) 42°38.23' N. lat., 124°41.25' W.
(135) 42°33.02' N. lat., 124°42.38' W.
(136) 42°31.90' N. lat., 124°42.04' W.
(137) 42°30.08' N. lat., 124°42.67' W.
(138) 42°28.28' N. lat., 124°47.08' W.
(139) 42°25.22' N. lat., 124°43.51' W.
(140) 42°19.23' N. lat., 124°37.91' W.
(141) 42°16.29' N. lat., 124°36.11' W.
(142) 42°13.67' N. lat., 124°35.81' W.
(143) 42°05.66' N. lat., 124°34.92' W.
(144) 42°00.00' N. lat., 124°35.27' W.
(145) 41°47.04' N. lat., 124°27.64' W.
(146) 41°32.92' N. lat., 124°28.79' W.

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§ 300.64 Fishing by U.S. treaty Indian tribes.

(a) Halibut fishing in subarea 2A–1 by members of U.S. treaty Indian tribes located in the State of Washington is governed by this section.

(b) Commercial fishing for halibut by treaty Indians is permitted only in subarea 2A–1 with hook-and-line gear in conformance with the season and quota established annually by the Commission.

(c) Commercial fishing periods and management measures to implement paragraph (b) of this section will be established by treaty Indian tribal regulations.

(d) Commercial fishing for halibut by treaty Indians shall comply with the Commission’s management measures governing size limits, careful release of halibut, logs, and fishing gear (published pursuant to §300.62), except that the 72-hour fishing restriction preceding the opening of a halibut fishing period shall not apply to treaty Indian fishing.

(e) Ceremonial and subsistence fishing for halibut by treaty Indians in subarea 2A–1 is permitted with hook-and-line gear from January 1 to December 31.

(f) No size or bag limits shall apply to the ceremonial and subsistence fishery, except that when commercial halibut fishing is prohibited pursuant to paragraph (b) of this section, treaty Indians may take and retain not more than two halibut per person per day.

(g) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(h) Any member of a U.S. treaty Indian tribe who is engaged in commercial or ceremonial and subsistence fishing under this section must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in United States v. Washington 384 F. Supp. 312 (W.D. Wash., 1974).

(i) The following table sets forth the fishing areas of each of the 12 treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe’s fishing area may be revised as ordered by a Federal Court.

<table>
<thead>
<tr>
<th>Tribe</th>
<th>Boundaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>HOH</td>
<td>Between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River), and east of 125°44′00″ W. long.</td>
</tr>
<tr>
<td>JAMESTOWN S’KLALLAM ..........</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown S’Klallam Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>LOWER ELWHA S’KLALLAM .......</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha S’Klallam Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>LUMMI</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash., February 13, 1990) (decision and order re: cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States. North of 48°02′15″ N. lat. (Norwegian Memorial), west of 123°42′36″ W. long., and east of 125°44′00″ W. long.</td>
</tr>
<tr>
<td>MAKAH</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Nooksack Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>NOOKSACK</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1442, to be places at which the Quileute Tribe may fish under rights secured by treaties with the United States. Between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River), and east of 125°44′00″ W. long.</td>
</tr>
<tr>
<td>PORT GAMBLE S’KLALLAM .......</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Port Gamble S’Klallam Tribe may fish under rights secured by treaties with the United States.</td>
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<tr>
<td>QUILEUTE</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1443, to be places at which the Quinault Tribe may fish under rights secured by treaties with the United States. Between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis), and east of 125°44′00″ W. long.</td>
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</table>
Int'l. Fishing and Related Activities § 300.65

<table>
<thead>
<tr>
<th>Tribe</th>
<th>Boundaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>SKOKOMISH</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>SUQUAMISH</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>SWINOMISH</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>TULALIP</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1531±1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.</td>
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§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

(a) A catch sharing plan (CSP) may be developed by the North Pacific Fisheries Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Alaska Region, NMFS.

(b) The catch sharing plan for Commission regulatory area 4 allocates the annual TAC among area 4 subareas and will be implemented by the Commission in annual management measures published pursuant to 50 CFR 300.62.

c) Guideline harvest level. (1) The annual GHLs for Regulatory Areas 2C and 3A are determined as follows:

<table>
<thead>
<tr>
<th>If the Annual Total Constant Exploitation Yield for Halibut is More Than:</th>
<th>Then the GHL will be:</th>
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<tbody>
<tr>
<td>(i) Regulatory Area 2C</td>
<td></td>
</tr>
<tr>
<td>(A) 9,027,000 lb (4,094.6 mt)</td>
<td>1,432,000 lb (649.5 mt)</td>
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<tr>
<td>(B) 7,965,000 lb (3,612.9 mt)</td>
<td>1,217,000 lb (552.0 mt)</td>
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<tr>
<td>(C) 6,903,000 lb (3,131.1 mt)</td>
<td>1,074,000 lb (487.2 mt)</td>
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<tr>
<td>(D) 5,841,000 lb (2,649.4 mt)</td>
<td>931,000 lb (422.3 mt)</td>
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<tr>
<td>(E) 4,779,000 lb (2,167.7 mt)</td>
<td>788,000 lb (357.4 mt)</td>
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(2) NMFS will publish a notice in the Federal Register on an annual basis announcing the GHL based on the table in paragraph (c)(1) of this section for Area 2C and Area 3A for that calendar year after the IPHC establishes the constant exploitation yield for that year.

(3) The announced GHLs for Area 2C and 3A are intended to be the benchmarks for charter halibut harvest in those areas for the year in which it is announced pursuant to paragraph (c)(2) of this section. NMFS may take action at any time to limit the charter halibut harvest to as close to the GHL as practicable.

d) Charter vessels in Area 2C and Area 3A—(1) General requirements—(i) Logbook submission. Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheets
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must be submitted to the Alaska Department of Fish and Game, Division of Sport Fish, 333 Raspberry Road, Anchorage, AK 99518–1599, and postmarked no more than seven calendar days after the end of a charter vessel fishing trip.

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d). The employer of the charter vessel guide is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d).

(2) Charter vessels in Area 2C—(i) Daily bag limit. The number of halibut caught and retained by each charter vessel angler in Area 2C is limited to no more than one halibut per calendar day.

(ii) Charter vessel guide and crew restriction. A charter vessel guide, a charter vessel operator, and any crew member of a charter vessel must not catch and retain halibut during a charter fishing trip.

(iii) Line limit. The number of lines used to fish for halibut onboard a vessel must not exceed six or the number of charter vessel anglers, whichever is less.

(iv) Recordkeeping and reporting requirements in Area 2C. Each charter vessel angler and charter vessel guide onboard a vessel in Area 2C must comply with the following recordkeeping and reporting requirements (see paragraphs (d)(2)(iv)(A) and (B) of this section):

(A) Charter vessel angler signature requirement. At the end of a charter vessel fishing trip, each charter vessel angler who retains halibut caught in Area 2C must acknowledge that his or her information and the number of halibut retained (kept) are recorded correctly by signing the back of the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet on the line number that corresponds to the angler’s information on the front of the logbook data sheet.

(B) Charter vessel guide requirements. For each charter vessel fishing trip in Area 2C, the charter vessel guide must record the following information (see paragraphs (d)(2)(iv)(B)(1) through (d) of this section) in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook:

(1) Business owner license number. The sport fishing operator business license number issued by the Alaska Department of Fish and Game to the charter vessel guide or the charter vessel guide’s employer.

(2) Guide license number. The Alaska Department of Fish and Game sport fishing guide license number held by the charter vessel guide who certified the logbook data sheet.

(3) Date. Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips were taken on the same day. A separate logbook data sheet is required for each calendar day that halibut are caught and retained during a multi-day trip.

(4) Regulatory area fished. Circle the regulatory area (Area 2C or Area 3A) where halibut were caught and retained during each charter vessel fishing trip. If halibut were caught and retained in Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used to record halibut caught and retained for each regulatory area.

(5) Angler sport fishing license number and printed name. Before a charter vessel fishing trip begins, record for each charter vessel angler the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number, and print the name of each paying and nonpaying charter vessel angler onboard that will fish for halibut. Record the name of each angler not required to have an Alaska Sport Fishing License or its equivalent.

(6) Number of halibut retained. For each charter vessel angler, record the number of halibut caught and retained during the charter vessel fishing trip.

(7) Signature. At the end of a charter vessel fishing trip, acknowledge that the recorded information is correct by signing the logbook data sheet.

(8) Angler signature. The charter vessel guide is responsible for ensuring that charter vessel anglers comply with the signature requirements at paragraph (d)(2)(iv)(A) of this section.

(3) Recordkeeping and reporting requirements in Area 3A. For each charter vessel angler and charter vessel guide onboard a vessel in Area 3A must comply with the following recordkeeping and reporting requirements (see paragraphs (d)(2)(iv)(A) and (B) of this section):
vessel fishing trip in Area 3A, the charter vessel guide must record the regulatory area (Area 2C or Area 3A) where halibut were caught and retained by circling the appropriate area in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook. If halibut were caught and retained in Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used to record halibut caught and retained for each regulatory area.

(e)(4), and (e)(5) of this section, that part of the Commission Regulatory Area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20′30″ N. lat., 135°45′10″ W. long. to Chichagof Island at 57°22′03″ N. lat., 135°43′00″ W. long., and

(B) By a line from Chichagof Island at 57°22′35″ N. lat., 135°41′18″ W. long. to Baranof Island at 57°22′17″ N. lat., 135°40′57″ W. long.; and

(C) That is enclosed on the south and west by a line from Cape Edgecumbe at 56°59′54″ N. lat., 135°51′27″ W. long. to Vasiliff Rock at 56°48′56″ N. lat., 135°32′30″ W. long., and

(D) To the green day marker in Dorothy Narrows at 56°49′17″ N. lat., 135°22′45″ W. long. to Baranof Island at 56°49′17″ N. lat., 135°22′36″ W. long.

(ii) With respect to paragraphs (e)(3), (e)(4), and (e)(5) of this section, that part of the Commission Regulatory Area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20′30″ N. lat., 135°45′10″ W. long. to Chichagof Island at 57°22′03″ N. lat., 135°43′00″ W. long., and

(B) A line from Chichagof Island at 57°22′35″ N. lat., 135°41′18″ W. long. to Baranof Island at 57°22′17″ N. lat., 135°40′57″ W. long.; and

(C) That is enclosed on the south and west by a line from Sitka Point at 56°59′23″ N. lat., 135°49′34″ W. long., to Hanus Point at 56°51′53″ N. lat., 135°30′30″ W. long., and

(D) To the green day marker in Dorothy Narrows at 56°49′17″ N. lat., 135°22′45″ W. long. to Baranof Island at 56°49′17″ N. lat., 135°22′36″ W. long.

(2) A person using a vessel greater than 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61, is prohibited from fishing for IFQ halibut with setline gear, as defined at 50 CFR 300.61, within Sitka Sound as defined in paragraph (e)(1)(i) of this section.

(3) A person using a vessel less than or equal to 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61:

(i) Is prohibited from fishing for IFQ halibut with setline gear within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31; and

(ii) Is prohibited, during the remainder of the designated IFQ season, from retaining more than 2,000 lb (0.91 mt) of IFQ halibut within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, per IFQ fishing trip, as defined in 50 CFR 300.61.

(4) No charter vessel shall engage in sport fishing, as defined at §300.61, for halibut within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined at §300.61, for other species within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (e)(4) and (e)(4)(i) of this section, halibut harvested outside Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in §300.61, for other species within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

(5) Setline gear may not be used in a 4 nm radius extending south from Low Island at 57°00′70″ N. lat., 135°36′57″ W. long. within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

(f) Sitka Pinnacles Marine Reserve.

(1) For purposes of this paragraph (f), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by

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straight lines connecting the following points in a counterclockwise manner:
56°55.5′N lat., 135°54.0′W long;
56°57.0′N lat., 135°54.0′W long;
56°57.0′N lat., 135°57.0′W long;
56°55.5′N lat., 135°57.0′W long.

(2) No person shall engage in commercial, sport or subsistence fishing, as defined at §300.61, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

(g) Subsistence fishing in and off Alaska. No person shall engage in subsistence fishing for halibut unless that person meets the requirements in paragraphs (g)(1), (g)(2), or (g)(3) of this section.

(1) A person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut listed in the following table:

### HALIBUT REGULATORY AREA 2C

<table>
<thead>
<tr>
<th>Rural Community</th>
<th>Organized Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angoon</td>
<td>Municipality</td>
</tr>
<tr>
<td>Coffman Cove</td>
<td>Municipality</td>
</tr>
<tr>
<td>Craig</td>
<td>Municipality</td>
</tr>
<tr>
<td>Edna Bay</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Ellin Cove</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Gustavus</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Haines</td>
<td>Municipality</td>
</tr>
<tr>
<td>Hollis</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Hoornah</td>
<td>Municipality</td>
</tr>
<tr>
<td>Hydaburg</td>
<td>Municipality</td>
</tr>
<tr>
<td>Hyder</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Kake</td>
<td>Municipality</td>
</tr>
<tr>
<td>Kasaan</td>
<td>Municipality</td>
</tr>
<tr>
<td>Klawock</td>
<td>Municipality</td>
</tr>
<tr>
<td>Klukwan</td>
<td>Municipality</td>
</tr>
<tr>
<td>Metlakatla</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Meyers Chuck</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Naukati</td>
<td>Municipality</td>
</tr>
<tr>
<td>Pelican</td>
<td>Municipality</td>
</tr>
<tr>
<td>Petersburg</td>
<td>Municipality</td>
</tr>
<tr>
<td>Point Baker</td>
<td>Census Designated Place</td>
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<tr>
<td>Port Alexander</td>
<td>Municipality</td>
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<tr>
<td>Port Protection</td>
<td>Census Designated Place</td>
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<tr>
<td>Saxman</td>
<td>Municipality</td>
</tr>
<tr>
<td>Sitka</td>
<td>Municipality</td>
</tr>
<tr>
<td>Shagway</td>
<td>Municipality</td>
</tr>
<tr>
<td>Tenakee Springs</td>
<td>Municipality</td>
</tr>
<tr>
<td>Thorne Bay</td>
<td>Municipality</td>
</tr>
<tr>
<td>Whale Pass</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Wrangell</td>
<td>Municipality</td>
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### HALIBUT REGULATORY AREA 3A—Continued

<table>
<thead>
<tr>
<th>Rural Community</th>
<th>Organized Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kodiak City</td>
<td>Municipality</td>
</tr>
<tr>
<td>Larsen Bay</td>
<td>Municipality</td>
</tr>
<tr>
<td>Nanwalek</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Old Harbor</td>
<td>Municipality</td>
</tr>
<tr>
<td>Ouzinkie</td>
<td>Municipality</td>
</tr>
<tr>
<td>Port Graham</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Port Lions</td>
<td>Municipality</td>
</tr>
<tr>
<td>Seldovia</td>
<td>Municipality</td>
</tr>
<tr>
<td>Tatitlek</td>
<td>Municipality</td>
</tr>
<tr>
<td>Yakutat</td>
<td>Municipality</td>
</tr>
</tbody>
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### HALIBUT REGULATORY AREA 3B

<table>
<thead>
<tr>
<th>Rural Community</th>
<th>Organized Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chignik Bay</td>
<td>Municipality</td>
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<tr>
<td>Chignik Lagoon</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Chignik Lake</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Cold Bay</td>
<td>Municipality</td>
</tr>
<tr>
<td>False Pass</td>
<td>Municipality</td>
</tr>
<tr>
<td>Ivanof Bay</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>King Cove</td>
<td>Municipality</td>
</tr>
<tr>
<td>Nelson Lagoon</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Peryville</td>
<td>Census Designated Place</td>
</tr>
<tr>
<td>Sand Point</td>
<td>Municipality</td>
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### HALIBUT REGULATORY AREA 4A

<table>
<thead>
<tr>
<th>Rural Community</th>
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<tbody>
<tr>
<td>Akutan</td>
<td>Municipality</td>
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<tr>
<td>Nikolski</td>
<td>Census Designated Place</td>
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<tr>
<td>Unalaska</td>
<td>Municipality</td>
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</tbody>
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### HALIBUT REGULATORY AREA 4B

<table>
<thead>
<tr>
<th>Rural Community</th>
<th>Organized Entity</th>
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</thead>
<tbody>
<tr>
<td>Adak</td>
<td>Census Designated Place</td>
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<td>Atka</td>
<td>Municipality</td>
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### HALIBUT REGULATORY AREA 4C

<table>
<thead>
<tr>
<th>Rural Community</th>
<th>Organized Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. George</td>
<td>Municipality</td>
</tr>
<tr>
<td>St. Paul</td>
<td>Municipality</td>
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### HALIBUT REGULATORY AREA 4D

<table>
<thead>
<tr>
<th>Rural Community</th>
<th>Organized Entity</th>
</tr>
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<tbody>
<tr>
<td>Gambell</td>
<td>Municipality</td>
</tr>
<tr>
<td>Savoonga</td>
<td>Municipality</td>
</tr>
<tr>
<td>Diomede (Inalik)</td>
<td>Municipality</td>
</tr>
</tbody>
</table>

### HALIBUT REGULATORY AREA 4E

<table>
<thead>
<tr>
<th>Rural Community</th>
<th>Organized Entity</th>
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<tbody>
<tr>
<td>Alakanuk</td>
<td>Municipality</td>
</tr>
<tr>
<td>Aleknegik</td>
<td>Municipality</td>
</tr>
<tr>
<td>Bethel</td>
<td>Municipality</td>
</tr>
<tr>
<td>Brevig Mission</td>
<td>Municipality</td>
</tr>
<tr>
<td>Cheformak</td>
<td>Municipality</td>
</tr>
<tr>
<td>Chevak</td>
<td>Municipality</td>
</tr>
<tr>
<td>Clark’s Point</td>
<td>Municipality</td>
</tr>
</tbody>
</table>
(2) A person is eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe with customary and traditional uses of halibut listed in the following table:

### HALIBUT REGULATORY AREA 2C—Continued

<table>
<thead>
<tr>
<th>Place with Tribal Headquarters</th>
<th>Organized Tribal Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kake</td>
<td>Organized Village of Kake</td>
</tr>
<tr>
<td>Kasaan</td>
<td>Organized Village of Kasaan</td>
</tr>
<tr>
<td>Ketchikan</td>
<td>Ketchikan Indian Corporation</td>
</tr>
<tr>
<td>Klawock</td>
<td>Klawock Cooperative Association</td>
</tr>
<tr>
<td>Klukean</td>
<td>Chilkat Indian Village</td>
</tr>
<tr>
<td>Metlakatla</td>
<td>Metlakatla Indian Community, Annette Island Reserve</td>
</tr>
<tr>
<td>Petersburg</td>
<td>Petersburg Indian Association</td>
</tr>
<tr>
<td>Saxman</td>
<td>Organized Village of Saxman</td>
</tr>
<tr>
<td>Sitka</td>
<td>Sitka Tribe of Alaska</td>
</tr>
<tr>
<td>Skagway</td>
<td>Skagway Village</td>
</tr>
<tr>
<td>Wrangell</td>
<td>Wrangell Cooperative Association</td>
</tr>
</tbody>
</table>

### HALIBUT REGULATORY AREA 3A

<table>
<thead>
<tr>
<th>Place with Tribal Headquarters</th>
<th>Organized Tribal Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Akhiok</td>
<td>Native Village of Akhiok</td>
</tr>
<tr>
<td>Chenega Bay</td>
<td>Native Village of Chenega</td>
</tr>
<tr>
<td>Cordova</td>
<td>Native Village of Eyak</td>
</tr>
<tr>
<td>Karluik</td>
<td>Native Village of Karluik</td>
</tr>
<tr>
<td>Kenai-Soldotna</td>
<td>Kenaize Indian Tribe</td>
</tr>
<tr>
<td>Village of Salamatoff</td>
<td></td>
</tr>
<tr>
<td>Kodiak City</td>
<td>Lesini Village (Woody Island)</td>
</tr>
<tr>
<td>Larsen Bay</td>
<td>Native Village of Larsen Bay</td>
</tr>
<tr>
<td>Nanwalek</td>
<td>Native Village of Nanwalek</td>
</tr>
<tr>
<td>Ninilikch</td>
<td>Ninilikch Village</td>
</tr>
<tr>
<td>Old Harbor</td>
<td>Village of Old Harbor</td>
</tr>
<tr>
<td>Ouzinkie</td>
<td>Native Village of Ouzinkie</td>
</tr>
<tr>
<td>Port Graham</td>
<td>Native Village of Port Graham</td>
</tr>
<tr>
<td>Port Lions</td>
<td>Native Village of Port Lions</td>
</tr>
<tr>
<td>Seldovia</td>
<td>Seldovia Village Tribe</td>
</tr>
<tr>
<td>Tatitlek</td>
<td>Native Village of Tatitlek</td>
</tr>
<tr>
<td>Wasilha</td>
<td>Village of Konatak</td>
</tr>
<tr>
<td>Yakutat</td>
<td>Yakutat Tingit Tribe</td>
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</tbody>
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### HALIBUT REGULATORY AREA 3B

<table>
<thead>
<tr>
<th>Place with Tribal Headquarters</th>
<th>Organized Tribal Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chignik Bay</td>
<td>Native Village of Chignik</td>
</tr>
<tr>
<td>Chignik Lagoon</td>
<td>Native Village of Chignik Lagoon</td>
</tr>
<tr>
<td>Chignik Lake</td>
<td>Chignik Lake Village</td>
</tr>
<tr>
<td>False Pass</td>
<td>Native Village of False Pass</td>
</tr>
<tr>
<td>Ivanof Bay</td>
<td>Ivanof Bay Village</td>
</tr>
<tr>
<td>King Cove</td>
<td>Agdaagux Tribe of King Cove</td>
</tr>
<tr>
<td>Nelson Lagoon</td>
<td>Native Village of Nelson Lagoon</td>
</tr>
<tr>
<td>Perryville</td>
<td>Native Village of Perryville</td>
</tr>
<tr>
<td>Sand Point</td>
<td>Pauloff Harbor Village</td>
</tr>
<tr>
<td>Village of Unga</td>
<td>Oagan Tayagunin Tribe of Sand Point Village</td>
</tr>
</tbody>
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### HALIBUT REGULATORY AREA 4A

<table>
<thead>
<tr>
<th>Place with Tribal Headquarters</th>
<th>Organized Tribal Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Akutan</td>
<td>Native Village of Akutan</td>
</tr>
<tr>
<td>Nikolis</td>
<td>Native Village of Nikolis</td>
</tr>
<tr>
<td>Unalaska</td>
<td>Qawalingin Tribe of Unalaska</td>
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HALIBUT REGULATORY AREA 4B

<table>
<thead>
<tr>
<th>Place with Tribal Headquarters</th>
<th>Organized Tribal Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atka</td>
<td>Native Village of Atka</td>
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HALIBUT REGULATORY AREA 4C

<table>
<thead>
<tr>
<th>Place with Tribal Headquarters</th>
<th>Organized Tribal Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. George</td>
<td>Pribilof Islands Aleut Communities of St. Paul Island and St. George Island</td>
</tr>
<tr>
<td>St. Paul</td>
<td></td>
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HALIBUT REGULATORY AREA 4D

<table>
<thead>
<tr>
<th>Place with Tribal Headquarters</th>
<th>Organized Tribal Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gambell</td>
<td>Native Village of Gambell</td>
</tr>
<tr>
<td>Savoonga</td>
<td>Native Village of Savoonga</td>
</tr>
<tr>
<td>Diomede (Ilulik)</td>
<td>Native Village of Diomede (Ilulik)</td>
</tr>
</tbody>
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HALIBUT REGULATORY AREA 4E—Continued

<table>
<thead>
<tr>
<th>Place with Tribal Headquarters</th>
<th>Organized Tribal Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nome</td>
<td>Native Village of Nome</td>
</tr>
</tbody>
</table>

(3) A person is eligible to harvest subsistence halibut if he or she is a rural resident in one of the rural areas of Alaska described as follows:

(i) Southeast Alaska east of 141° W. long., except for the land areas of the Ketchikan Gateway Borough as described at paragraph (g)(4)(i) of this section, the land areas of the City and Borough of Juneau, and the Ketchikan and Juneau non-subsistence marine waters areas as defined in paragraphs (h)(3)(i) and (h)(3)(ii) of this section (see figures 2 and 3 to this subpart E).

(ii) The Alaska Peninsula, Aleutian Islands, Kodiak Island Archipelago, and the area south of the northern boundary of the Bristol Bay Borough and south of 58°39.5' N. lat. (see figures 5, 6, and 7 to this subpart E).

(iii) Nelson, Nunivak, and Saint Lawrence Islands (see figure 6 to this subpart E).

(iv) All other areas of Alaska within ten statute miles of mean high water on the Bering Sea and Pacific Ocean coasts, south of Cape Espenberg, including along the Kuskokwim River to Bethel, and that are not specified as non-rural land or water areas as defined in paragraph (g)(4) of this section (see figures 4, 5, 6, and 7 to this subpart E).

(4) Non-rural areas consist of the non-subsistence marine waters areas
(i) Subsistence fishing gear set or retrieved from a vessel while engaged in subsistence fishing for halibut must not have more than the allowable number of hooks per vessel, or per person registered in accordance with paragraph (i) of this section and aboard the vessel, whichever is less, according to the regulatory area and permit type indicated in the following table:

<table>
<thead>
<tr>
<th>Regulatory Area</th>
<th>Permit Type</th>
<th>Gear Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2C--Except Sitka Sound, and Ketchikan and Juneau non-subsistence marine waters areas</td>
<td>SHARC</td>
<td>30 hooks per vessel</td>
</tr>
<tr>
<td></td>
<td>Ceremonial Permit</td>
<td>30 hooks per vessel</td>
</tr>
<tr>
<td></td>
<td>Educational Permit</td>
<td>30 hooks per vessel</td>
</tr>
<tr>
<td></td>
<td>Community Harvest Permit</td>
<td>30 hooks per person onboard up to 90 hooks per vessel</td>
</tr>
<tr>
<td>2C--Sitka Sound</td>
<td>SHARC</td>
<td>30 hooks per vessel</td>
</tr>
<tr>
<td></td>
<td>Ceremonial Permit</td>
<td>30 hooks per vessel September 1 through May 31: 30 hooks per vessel; June 1 through August 31: 15 hooks per vessel; no power hauling</td>
</tr>
<tr>
<td></td>
<td>Educational Permit</td>
<td>30 hooks per vessel</td>
</tr>
<tr>
<td></td>
<td>Community Harvest Permit</td>
<td>fishing under Community Harvest Permit not allowed</td>
</tr>
<tr>
<td>2C--Ketchikan and Juneau non-subsistence marine waters areas</td>
<td>SHARC</td>
<td>general subsistence halibut fishing not allowed</td>
</tr>
<tr>
<td></td>
<td>Ceremonial Permit</td>
<td>30 hooks per vessel</td>
</tr>
<tr>
<td></td>
<td>Educational Permit</td>
<td>30 hooks per vessel</td>
</tr>
</tbody>
</table>

(ii) The City and Borough of Juneau (see figure 3 to this subpart E).

(iii) The Greater Anchorage Area Borough (see figures 4 and 5 to this subpart E).

(iv) The Matanuska-Susitna Borough (see figure 5 to this subpart E).

(v) The Kenai Peninsula Borough excluding the area of the Seldovia Census Designated Place, the area south and west of that place, and the area south and west of a line that runs from 59°27.5′ N. lat., 151°31.7′ W. long. to 59°12.5′ N. lat., 151°18.5′ W. long (see figure 5 to this subpart E).

(vi) The City of Valdez (see figures 4 and 5 to this subpart E).

(b) Limitations on subsistence fishing. Subsistence fishing for halibut may be conducted only by persons who qualify for such fishing pursuant to paragraph (g) of this section and who hold a valid subsistence halibut registration certificate in that person’s name issued by NMFS pursuant to paragraph (i) of this section, provided that such fishing is consistent with the following limitations.

(1) Subsistence fishing is limited to setline gear and hand-held gear, including longline, handline, rod and reel, spear, jig and hand-troll gear.
Regulatory Area | Permit Type | Gear Restrictions |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3A–Except Chiniak Bay, and Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas</td>
<td>SHARC</td>
<td>30 hooks per person onboard up to 90 hooks per vessel</td>
</tr>
<tr>
<td>Ceremonial Permit</td>
<td>30 hooks per person onboard up to 90 hooks per vessel</td>
<td></td>
</tr>
<tr>
<td>Educational Permit</td>
<td>30 hooks per person onboard up to 90 hooks per vessel</td>
<td></td>
</tr>
<tr>
<td>Community Harvest Permit</td>
<td>30 hooks per person onboard up to 90 hooks per vessel</td>
<td></td>
</tr>
</tbody>
</table>

3A–Chiniak Bay | SHARC | 30 hooks per person onboard up to 90 hooks per vessel |
| Ceremonial Permit | 30 hooks per person onboard up to 90 hooks per vessel |
| Educational Permit | 30 hooks per person onboard up to 90 hooks per vessel |
| Community Harvest Permit | 30 hooks per person onboard up to 90 hooks per vessel |

3A–Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas | SHARC | general subsistence halibut fishing not allowed |
| Ceremonial Permit | 30 hooks per person onboard up to 90 hooks per vessel |
| Educational Permit | 30 hooks per person onboard up to 90 hooks per vessel |
| Community Harvest Permit | fishing under Community Harvest Permit not allowed |

3B | SHARC | 30 hooks per person onboard up to 90 hooks per vessel |

(ii) All setline gear marker buoys carried on board or used by any vessel regulated under this section shall be marked with the following: first initial, last name, and address (street, city, and state), followed by the letter “S” to indicate that it is used to harvest subsistence halibut.

(iii) Markings on setline marker buoys shall be in characters at least 4 inches (10.16 cm) in height and 0.5 inch (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.

(2) The retention of subsistence halibut is limited per person eligible to conduct subsistence fishing for halibut and onboard the vessel according to the following table:

<table>
<thead>
<tr>
<th>Regulatory Area</th>
<th>Permit Type</th>
<th>Retention Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>2C–Except Sitka Sound, and Ketchikan and Juneau non-subsistence marine waters areas</td>
<td>SHARC</td>
<td>20 halibut per day per vessel and in possession</td>
</tr>
<tr>
<td>Ceremonial Permit</td>
<td>25 halibut per permit</td>
<td></td>
</tr>
<tr>
<td>Educational Permit</td>
<td>25 halibut per permit</td>
<td></td>
</tr>
<tr>
<td>Community Harvest Permit</td>
<td>no daily or possession limit</td>
<td></td>
</tr>
</tbody>
</table>

2C–Sitka Sound | SHARC | September 1 through May 31: 10 halibut per day per vessel and in possession |
| Ceremonial Permit | September 1 through May 31: 25 halibut per permit |

(2) The retention of subsistence halibut is limited per person eligible to conduct subsistence fishing for halibut and onboard the vessel according to the following table:
Subsistence fishing may be conducted in any waters in and off Alaska except in the four non-subsistence marine waters areas defined as follows:

(i) Ketchikan non-subsistence marine waters area in Commission regulatory area 2C (see Figure 2 to subpart E) is defined as those waters between a line from Caamano Point at 55°29.90′ N. lat., 131°58.25′ W. long. to Point Higgins at 55°27.42′ N. lat., 131°50.00′ W. long. and a point at 55°11.78′ N. lat., 131°05.13′ W. long., located on Point Sykes to a point at 55°12.22′ N. lat., 131°05.70′ W. long., located one-half mile northwest of Point Sykes to Point Alava at 55°11.54′ N. lat., 131°11.00′ W. long., and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines, including within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point at 132°07.23′ W. long., and north of the latitude of the southernmost tip of Mary Island at 55°02.66′ N. lat.;

(ii) Juneau non-subsistence marine waters area in Commission regulatory area 2C (see Figure 3 to subpart E) is defined as those waters of Stephens Passage and contiguous waters north of the latitude of Midway Island Light (57°50.21′ N. lat.), including the waters of Taku Inlet, Port Snettisham, Saginaw Channel, and Favorite Channel, and those waters of Lynn Canal and contiguous waters south of the latitude of the northernmost entrance of Berners Bay (58°43.07′ N. lat.), including the waters of Berners Bay and Echo Cove, and those waters of Chatham Strait and contiguous waters north of the latitude of Point Marsden (58°03.42′ N. lat.), and east of a line from Point Couverden at 58°11.38′ N. lat., 135°03.40′ W. long., to Point Augusta at 58°02.38′ N. lat., 134°57.11′ W. long.;

(iii) The Anchorage-Matsu-Kenai non-subsistence marine waters area in Commission Regulatory Area 3A (see figures 4, 5, 6, and 7 to this subpart E) is defined as:

(A) All waters of Cook Inlet north of a line extending from the westernmost point of Hesketh Island at 59°30.40′ N. lat., except those waters within mean

<table>
<thead>
<tr>
<th>Regulatory Area</th>
<th>Permit Type</th>
<th>Retention Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>2C–Ketchikan and Juneau non-subsistence marine waters areas</td>
<td>SHARC</td>
<td>general subsistence halibut fishing not allowed</td>
</tr>
<tr>
<td>SHARC</td>
<td>20 halibut per person per day and in possession</td>
<td></td>
</tr>
<tr>
<td>Ceremonial Permit</td>
<td>25 halibut per permit</td>
<td></td>
</tr>
<tr>
<td>Educational Permit</td>
<td>25 halibut per permit</td>
<td></td>
</tr>
<tr>
<td>Community Harvest Permit</td>
<td>no daily or possession limit</td>
<td></td>
</tr>
<tr>
<td>3A–Including Chiniak Bay, but excluding Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas</td>
<td>SHARC</td>
<td>general subsistence halibut fishing not allowed</td>
</tr>
<tr>
<td>SHARC</td>
<td>20 halibut per person per day and in possession</td>
<td></td>
</tr>
<tr>
<td>Ceremonial Permit</td>
<td>25 halibut per permit</td>
<td></td>
</tr>
<tr>
<td>Educational Permit</td>
<td>25 halibut per permit</td>
<td></td>
</tr>
<tr>
<td>Community Harvest Permit</td>
<td>no daily or possession limit</td>
<td></td>
</tr>
<tr>
<td>3A–Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas</td>
<td>SHARC</td>
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</tr>
<tr>
<td>Educational Permit</td>
<td>25 halibut per permit</td>
<td></td>
</tr>
<tr>
<td>Community Harvest Permit</td>
<td>fishing under Community Harvest Permit not allowed</td>
<td></td>
</tr>
<tr>
<td>3B</td>
<td>SHARC</td>
<td>20 halibut per person per day and no possession limit</td>
</tr>
<tr>
<td>4A and 4B</td>
<td>SHARC</td>
<td>20 halibut per person per day; no possession limit</td>
</tr>
</tbody>
</table>
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lower low tide from a point one mile south of the southern edge of the Chuitna River (61°05.00' N. lat., 151°01.00' W. long.) south to the easternmost tip of Granite Point (61°01.00' N. lat., 151°23.00' W. long.) (Tyonek subdistrict); and

(B) All waters of Alaska south of 59°30.40' N. lat. on the western shore of Cook Inlet to Cape Douglas (58°51.10' N. lat.) and in the east to Cape Fairfield (148°50.25' W. long.), except those waters of Alaska west of a line from the easternmost point of Jakolof Bay (151°31.90' W. long.) and, following the shore to a line extending south from the easternmost point of Rocky Bay (151°18.41' W. long.); and

(iv) Valdez non-subsistence marine waters area

(E) is defined as the waters of Port Valdez and Valdez Arm located north of 61°01.38' N. lat., and east of 146°43.80' W. long.

(4) Waters in and off Alaska that are not specifically identified as non-subsistence marine waters areas in paragraph (h)(3) of this section are rural for purposes of subsistence fishing for halibut. Subsistence fishing may be conducted in any rural area by any person with a valid subsistence halibut registration certificate in his or her name issued by NMFS under paragraph (h) of this section, except that:

(i) A subsistence halibut registration certificate is valid only in the rural area in which the Alaska Native tribal headquarters is located.

(ii) The Alaska Region, NMFS, may enter into cooperative agreements with Alaska Native tribal governments or their representative organizations for purposes of identifying persons qualified to conduct subsistence fishing for halibut in waters in and off Alaska.

(iii) A person who registers according to paragraph (g)(4) of this section and who is qualified to conduct subsistence fishing for halibut according to paragraph (g) of this section. The Alaska Region, NMFS, may enter into cooperative agreements with Alaska Native tribal governments or their representative organizations for purposes of identifying persons qualified to conduct subsistence fishing for halibut in waters in and off Alaska.

(iv) The Alaska Region, NMFS, may enter into cooperative agreements with Alaska Native tribal governments or their representative organizations for purposes of identifying persons qualified to conduct subsistence fishing for halibut in waters in and off Alaska.

(v) To register as a subsistence halibut fisherman, a person may request a cooperating Alaska Native tribal government or other entity designated by NMFS to submit an application on his or her behalf to the Alaska Region, NMFS. Alternatively, a person may apply by submitting a completed application to the Alaska Region, NMFS. Application forms are available on the NMFS Alaska Region Web site at http://alaskafisheries.noaa.gov, or by contacting NMFS at 800–304–4846. Option 2.

A person must register as a subsistence halibut fisherman and possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut in waters in and off Alaska.

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(iii) A person who registers according to paragraph (g)(4) of this section and who is qualified to conduct subsistence fishing for halibut in waters in and off Alaska.

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(iii) A person who registers according to paragraph (g)(4) of this section and who is qualified to conduct subsistence fishing for halibut in waters in and off Alaska.

(iv) The Alaska Region, NMFS, may enter into cooperative agreements with Alaska Native tribal governments or their representative organizations for purposes of identifying persons qualified to conduct subsistence fishing for halibut in waters in and off Alaska.

(v) To register as a subsistence halibut fisherman, a person may request a cooperating Alaska Native tribal government or other entity designated by NMFS to submit an application on his or her behalf to the Alaska Region, NMFS. Alternatively, a person may apply by submitting a completed application to the Alaska Region, NMFS. Application forms are available on the NMFS Alaska Region Web site at http://alaskafisheries.noaa.gov, or by contacting NMFS at 800–304–4846. Option 2.

A person must register as a subsistence halibut fisherman and possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut in waters in and off Alaska.
Alaska Region website. By using the SHARC number and date of birth, and by submitting the application form, the applicant certifies that all information is true, correct, and complete.

(3) Expiration of registration. Each subsistence halibut registration certificate will be valid only for the period of time specified on the certificate. A person eligible to harvest subsistence halibut under paragraph (g) of this section may renew his or her registration certificate that is expired or will expire within 3 months by following the procedures described in paragraph (i)(2) of this section. A subsistence halibut registration certificate will expire:

(i) 2 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (g)(1) of this section, and

(ii) 4 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (g)(2) of this section.

(j) Community Harvest Permit (CHP). An Area 2C or Area 3A community or Alaska Native tribe listed in paragraphs (g)(1) or (g)(2) of this section may apply for a CHP, which allows a community or Alaska Native tribe to appoint one or more individuals from its respective community or Alaska Native tribe to harvest subsistence halibut from a single vessel under reduced gear and harvest restrictions. The CHP consists of a harvest log and up to five laminated permit cards. A CHP is a permit subject to regulation under §679.4(a) of this title.

(1) Qualifications. (i) NMFS may issue a CHP to any community or Alaska Native tribe that applies according to paragraph (j)(2) of this section and that is qualified to conduct subsistence fishing for halibut according to paragraph (g) of this section.

(ii) NMFS will issue a CHP to a community in Area 2C or Area 3A only if:

(A) The applying community is listed as eligible in Area 2C or Area 3A according to paragraph (g)(1) of this section; and

(B) No Alaska Native tribe listed in paragraph (g)(2) of this section exists in that community.

(iii) NMFS will issue a CHP to an Alaska Native tribe in Area 2C or Area 3A only if the applying tribe is listed as eligible in Area 2C or Area 3A according to paragraph (g)(2) of this section.

(iv) Eligible communities or Alaska Native tribes may appoint only one CHP Coordinator per community or tribe.

(2) Application. A community or Alaska Native tribe may apply for a CHP by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668. A complete application must include:

(i) The name of the community or Alaska Native tribe requesting the CHP;

(ii) The full name of the person who is designated as the CHP Coordinator for each community or Alaska Native tribe, the designated CHP Coordinator’s mailing address (number and street, city, state, and zip code), community of residence (the rural community or Alaska Native tribe if applicable (as indicated in paragraph (g)(2) of this section), and the daytime telephone number; and

(iii) Any previously issued CHP harvest logs.

(3) Restrictions. Subsistence fishing for halibut under a CHP shall be valid only:

(i) In Area 2C or Area 3A, except that a CHP may not be used:

(A) Within Sitka Sound as defined in paragraph (e)(1)(ii) of this section (see Figure 1 to this subpart E); or

(B) Within the Ketchikan, Juneau, Anchorage-Matsu-Kenai, and Valdez non-subsistence marine waters areas as defined in paragraph (h)(3) of this section (see figures 2, 3, 4, 5, 6, and 7 to this subpart E).

(ii) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (i) of this section for the same community or Alaska Native tribe listed on the CHP;

(iii) On a single vessel on which a CHP card is present; and

(iv) If subsistence fishing gear set or retrieved from a vessel on which the CHP card is present does not exceed the restrictions of paragraph (h) of this section.
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(4) **Expiration of permit.** Each CHP will be valid only for the period of time specified on the permit. A CHP will expire one year from the date of issuance to a community or Alaska Native tribe eligible to harvest halibut under paragraph (g) of this section. A community or Alaska Native tribe eligible to harvest subsistence halibut under paragraph (g) of this section may renew its CHP that is expired or will expire within three months by following the procedures described in paragraph (j)(2) of this section.

(5) **Duties of the CHP coordinator.** Each CHP Coordinator must ensure:
   (i) The designated harvesters who may fish under the CHP are identified on the Community Harvest Permit harvest log when the CHP is issued to the designated harvesters;
   (ii) The CHP remains in the possession of the CHP Coordinator or other tribal or government authority when not in use and is issued to the designated harvesters when necessary; and
   (iii) All required recordkeeping and data reporting of subsistence harvests under the CHP are performed.

(6) **Harvest log submission.** Each Community Harvest Permit harvest log must be submitted to NMFS on or before the date of expiration by facsimile or mail. Harvest logs must be mailed to RAM at the address given in paragraph (j)(2) of this section or faxed to 907–586–7354. The log must provide information on:
   (i) The subsistence fisher’s identity including his or her full name, subsistence halibut registration certificate number, date of birth, mailing address (number and street, city, state, and zip code), community of residence, daytime phone number, and tribal identity (if appropriate); and
   (ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period specified on the permit, and if so, the date harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(k) **Ceremonial Permit or Educational Permit.** An Area 2C or Area 3A Alaska Native tribe that is listed in paragraph (g)(2) of this section may apply for a Ceremonial or Educational Permit, allowing the tribe to harvest up to 25 halibut per permit issued. The Ceremonial and Educational Permits each consist of a harvest log and a single laminated permit card. Ceremonial and Educational Permits are permits subject to regulation under §679.4(a) of this title.

(1) **Qualifications.** (i) NMFS may issue a Ceremonial or Educational Permit to any Alaska Native tribe that completes an application according to paragraph (k)(2) of this section and that qualified to conduct subsistence fishing for halibut according to paragraph (g)(2) of this section.

(ii) Eligible Alaska Native tribes may appoint only one Ceremonial Permit Coordinator per tribe.

(iii) Eligible educational programs may appoint only one authorized Instructor per Educational Permit.

(2) **Application.** An Alaska Native tribe may apply for a Ceremonial or Educational Permit by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668.

   (i) A complete application must include:
      (A) The name of the Alaska Native tribe requesting the Ceremonial or Educational Permit;
      (B) The name of the person designated as the Ceremonial Permit Coordinator for each Alaska Native tribe or the name of the person designated as the Instructor for an Educational Permit, the Ceremonial Permit Coordinator or Instructor’s mailing address (number and street, city, state, and zip code), and the daytime telephone number;
      (C) Any previously issued Ceremonial Permit harvest logs from any expired Ceremonial Permit if applying for a Ceremonial Permit; and
      (D) Any previously issued Educational Permit harvest logs from any expired Educational Permit if applying for an Educational Permit.
(ii) NMFS will issue a Ceremonial Permit for the harvest of halibut associated with traditional cultural events only if the application:

(A) Indicates the occasion of cultural or ceremonial significance; and

(B) Identifies the person designated by the eligible Alaska Native tribe as the Ceremonial Permit Coordinator.

(iii) NMFS will issue an Educational Permit only if the application:

(A) Indicates the occasion of cultural or ceremonial significance; and

(B) Identifies the person designated by the eligible Alaska Native tribe as the Ceremonial Permit Coordinator.

(iv) NMFS will issue an Educational Permit only if the application:

(A) Includes the name and address of the educational institution or organization;

(B) Includes the instructor’s name;

(C) Demonstrates the enrollment of qualified students;

(D) Describes minimum attendance requirements of the educational program; and

(E) Describes standards for the successful completion of the educational program.

(3) Restrictions. Subsistence fishing for halibut under Ceremonial or Educational Permits shall be valid only:

(i) In Area 3A, except:

(A) In the Anchorage-Matsu-Kenai non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figures 4, 5, 6, and 7 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

1. Kenaitze Indian Tribe;
2. Seldovia Village Tribe;
3. Ninilchik Village;
4. Native Village of Port Graham;
5. Native Village of Nanwalek; and

(B) In the Valdez non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figures 4 and 5 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

1. Central Council of Tlingit/Haida Indians;
2. Douglas Indian Association; and
3. Aukquan Traditional Council.

(C) A Ceremonial Permit may not be used within Sitka Sound from June 1 through August 31;

(ii) On a single vessel on which the Ceremonial or Educational Permit card is present;

(iii) On the vessel on which the instructor is present for Educational Permits;

(iv) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (i) of this section for the same Alaska Native tribe listed on the Ceremonial or Educational Permit, except that students enrolled in an educational program may fish under an Educational Permit without a subsistence halibut registration certificate; and

(v) If subsistence fishing gear set or retrieved from a vessel on which the Ceremonial or Educational Permit card is present does not exceed the restrictions of paragraph (h) of this section.

(4) Expiration of permits. Each Ceremonial or Educational Permit will be valid only for the period of time specified on the permit. Ceremonial and Educational Permits will expire 30 days from the date of issuance to an Alaska Native tribe eligible to harvest halibut under paragraph (g)(2) of this section. A tribe eligible to harvest subsistence halibut under paragraph (g)(2) of this section may apply for additional Ceremonial or Educational Permits at any time.

(5) Duties of Ceremonial Permit Coordinators and Instructors. Each Ceremonial Permit Coordinator or Instructor must ensure:

(i) The designated harvesters or students who may fish under the Ceremonial or Educational Permit are identified on the Ceremonial/Educational Permit harvest log when the permit is used;

(ii) The Ceremonial Permit remains in the possession of the Ceremonial
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In addition to the general prohibitions specified in 50 CFR 300.4, it is unlawful for any person to do any of the following:

(a) Fish for halibut except in accordance with the annual management measures published pursuant to 50 CFR 300.62.

(b) Fish for halibut except in accordance with the catch sharing plans and domestic management measures implemented under 50 CFR 300.63 and 50 CFR 300.65.

(c) Fish for halibut in Sitka Sound in violation of the Sitka Sound LAMP implemented under 50 CFR 300.65(e).

(d) Fish for halibut or anchor a vessel with halibut on board within the Sitka Pinnacles Marine Reserve defined at 50 CFR 300.65(f).

(e) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under §300.65(g), possesses a valid subsistence halibut registration certificate pursuant to §300.65(l), and makes this certificate available for inspection by an authorized officer on request, except that students enrolled in a valid educational program and fishing under an Educational Permit issued pursuant to §300.65(k) do not need a subsistence halibut registration certificate.

(f) Fish for subsistence halibut in and off Alaska with gear other than that described at 50 CFR 300.65(h)(1) and retain more halibut than specified at 50 CFR 300.65(h)(2).

(g) Fish for subsistence halibut in and off Alaska in a non-subsistence marine waters area specified at §300.65(h)(3).

(h) Retain on board the harvesting vessel halibut harvested while subsistence fishing with halibut harvested while commercial fishing or from sport fishing, as defined at §300.61, except for subsistence halibut harvested while subsistence fishing in and off Alaska when not in use and is issued to designated harvesters when necessary; and

(iii) All required recordkeeping and data reporting of subsistence harvests under the Ceremonial or Educational Permit are performed.

(6) Harvest log submission. Submission of a Ceremonial or Educational Permit log shall be required upon the expiration of each permit and must be received by Restricted Access Management within 15 days of the expiration by facsimile or mail. Harvest logs must be mailed to RAM at the address given in paragraph (k)(2) of this section or faxed to 907–586–7354. The log must provide information on:

(i) The subsistence fisher’s identity including his or her full name, subsistence halibut registration certificate number if applicable (students do not need a SHARC), date of birth, mailing address (number and street, city, state, and zip code), community of residence, daytime phone number, and tribal identity;

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period indicated on the permit, and if so, the date when harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(1) Appeals. If Restricted Access Management (RAM) determines that an application is deficient, it will prepare and send an Initial Administrative Determination (IAD) to the applicant. The IAD will indicate the deficiencies in the application or any additional provided information. An applicant who receives an IAD may appeal RAM’s findings pursuant to §679.43 of this title.

that persons authorized to conduct subsistence fishing under §300.65(g), and who land their total annual harvest of halibut:

(1) In Commission regulatory Areas 4D or 4E may retain, with harvests of Community Development Quota (CDQ) halibut, subsistence halibut harvested in Commission regulatory areas 4D or 4E that are smaller than the size limit specified in the annual management measures published pursuant to §300.62; or

(2) In Commission regulatory Areas 4C, 4D or 4E may retain, with harvests of CDQ halibut, subsistence halibut harvested in Commission regulatory areas 4C, 4D or 4E that are equal to or greater than the size limit specified in the annual management measures published pursuant to §300.62.

(i) Fish for subsistence halibut from a charter vessel or retain subsistence halibut onboard a charter vessel if anyone other than the owner of record, as indicated on the State of Alaska vessel registration, or the owner’s immediate family is aboard the charter vessel and unless each person engaging in subsistence fishing onboard the charter vessel holds a subsistence halibut registration certificate in the person’s name pursuant to §300.65(h).

(j) Retain or possess subsistence halibut for commercial purposes; cause subsistence halibut to be sold, bartered, or otherwise entered into commerce; or solicit exchange of subsistence halibut for commercial purposes, except that a person who qualified to conduct subsistence fishing for halibut under §300.65(g), and who holds a subsistence halibut registration certificate in the person’s name under §300.65(i), may be reimbursed for the expense of fishing for subsistence halibut under the following conditions:

(1) Persons who qualify as rural residents under §300.65(g)(1) or (g)(3) and hold a SHARC in the person’s name under §300.65(i) may be reimbursed for actual expenses for ice, bait, food, and fuel directly related to subsistence fishing for halibut, by residents of the same rural community or by rural residents residing within ten statute miles of the rural location listed on the person’s SHARC application; or

(2) Persons who qualify as Alaska Native tribal members under §300.65(g)(2) and hold a SHARC in the person’s name under §300.65(i) may be reimbursed for actual expenses for ice, bait, food, and fuel directly related to subsistence fishing for halibut, by any Alaska Native tribe, or its members, or residents of the same rural community or by rural residents residing within ten statute miles of the rural location listed on the person’s SHARC application.

(k) Retain subsistence halibut harvested under a CHP, Ceremonial Permit, or Educational Permit together in any combination or with halibut harvested under any other license or permit.

(l) Fillet, mutilate, or otherwise disfigure subsistence halibut in any manner that prevents the determination of the number of fish caught, possessed, or landed.

(m) Exceed any of the harvest or gear limitations specified at §300.65(d).

(n) Transfer subsistence halibut to charter vessel anglers.

(o) Fail to comply with the requirements at §300.65(d).

(p) Fail to submit or submit inaccurate information on any report, license, catch card, application, or statement required or submitted under §§300.65 and 300.67, or submit inaccurate information to an authorized officer.

(q) Refuse to present valid identification, U.S. Coast Guard operator’s license, permit, license, or Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip logbook upon the request of an authorized officer.


Effective Date Note: At 75 FR 600, Jan. 5, 2010, §300.66 was amended by revising paragraphs (b), (1), (o), and adding paragraphs (r), (s), (t), (u), and (v), effective February 1, 2011. For the convenience of the user, the added and revised text is set forth as follows:
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* * * * *

(b) Fish for halibut except in accordance with the catch sharing plans and domestic management measures implemented under §§300.63, 300.65, and 300.67.

* * * * *

(i) Fish for subsistence halibut from a charter vessel or retain subsistence halibut onboard a charter vessel if anyone other than the owner of record, as indicated on the State of Alaska vessel registration, or the owner's immediate family is aboard the charter vessel and unless each person engaging in subsistence fishing onboard the charter vessel holds a subsistence halibut registration certificate in the person's name pursuant to §300.65(i) and complies with the gear and harvest restrictions found at §300.65(h). For purposes of this paragraph (i), the term "charter vessel" means a vessel that is registered, or that should be registered, as a sport fishing guide vessel with the Alaska Department of Fish and Game.

* * * * *

(o) Fail to comply with the requirements of §§300.65 and 300.67.

* * * * *

(r) Be an operator of a vessel with one or more charter vessel anglers on board that are catching and retaining halibut without an original valid charter halibut permit for the regulatory area in which the vessel is operating.

(x) Be an operator of a vessel with more charter vessel anglers on board catching and retaining halibut than the total angler endorsement number specified on the charter halibut permit or permits on board the vessel.

§ 300.67 Charter halibut limited access program.

This section establishes limitations on using a vessel on which charter vessel anglers catch and retain Pacific halibut in International Pacific Halibut Commission (IPHC) regulatory areas 2C and 3A.

(a) General permit requirements. (1) In addition to other applicable permit and licensing requirements, any operator of a vessel with one or more charter vessel anglers catching and retaining Pacific halibut on board a vessel must have on board the vessel an original valid charter halibut permit or permits endorsed for the regulatory area in which the vessel is operating and endorsed for at least the number of charter vessel anglers who are catching and retaining Pacific halibut. Each charter halibut permit holder must insure that the operator of the permitted vessel complies with all requirements of §§300.65 and 300.67.

(2) Area endorsement. A charter halibut permit is valid only in the International Pacific Halibut Commission regulatory area for which it is endorsed. Regulatory areas are defined in the annual management measures published pursuant to §300.62.

(3) Charter vessel angler endorsement. A charter halibut permit is valid for up to the maximum number of charter vessel anglers for which the charter halibut permit is endorsed.

(b) Qualifications for a charter halibut permit. A charter halibut permit for IPHC regulatory area 2C must be based on meeting participation requirements in area 2C. A charter halibut permit for IPHC regulatory area 3A must be based on meeting participation requirements in area 3A. Qualifications for a charter halibut permit in each area must be determined separately and must not be combined.

(1) NMFS will issue a charter halibut permit to a person who meets the following requirements:

(i) The person applies for a charter halibut permit within the application...
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period specified in the Federal Register and completes the application process pursuant to paragraph (h) of this section.

(ii) The person is the individual or non-individual entity to which the State of Alaska Department of Fish and Game (ADF&G) issued the ADF&G Business Owner Licenses that authorized logbook fishing trips that meet the minimum participation requirements described in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section for one or more charter halibut permits, unless the person is applying as a successor-in-interest.

(A) Reported five (5) bottomfish logbook fishing trips or more during one year of the qualifying period; and

(B) Reported five (5) halibut logbook fishing trips or more during the recent participation period.

(iii) If the person is applying as a successor-in-interest to the person to which ADF&G issued the Business Owner Licenses that authorized logbook fishing trips that meet the participation requirements described in paragraphs (b)(1)(ii) of this section for one or more charter halibut permits, NMFS will require the following written documentation:

(A) If the applicant is applying on behalf of a deceased individual, the applicant must document that the individual is deceased, that the applicant is the personal representative of the deceased’s estate appointed by a court, and that the applicant specifies who, pursuant to the applicant’s personal representative duties, should receive the permit(s) for which application is made; or

(B) If the applicant is applying as a successor-in-interest to an entity that is not an individual, the applicant must document that the entity has been dissolved and that the applicant is the successor-in-interest to the dissolved entity.

(iv) If more than one applicant claims that they are the successor-in-interest to a dissolved entity, NMFS will award the permit or permits for which the dissolved entity qualified in the name(s) of the applicants that submitted a timely application and proved that they are a successor-in-interest to the dissolved entity.

(2) Notwithstanding any other provision in this subpart, and except as provided in paragraph (b)(1)(iv) of this section,

(i) One logbook fishing trip shall not be credited to more than one applicant;

(ii) One logbook fishing trip made pursuant to one ADF&G Business Owner License shall not be credited to more than one applicant; and

(iii) Participation by one charter halibut fishing business shall not be allowed to support issuance of permits to more than one applicant.

(3) For purposes of this section, the term “ADF&G Business Owner(s) License(s)” includes a “business registration,” “sport fish business owner license,” “sport fish business license,” and “ADF&G business license”.

(c) Number of charter halibut permits.

An applicant that meets the participation requirements in paragraph (b) of this section will be issued the number of charter halibut permits equal to the lesser of the number of permits determined by paragraphs (c)(1) or (c)(2) of this section as follows:

(1) The total number of bottomfish logbook fishing trips made pursuant to the applicant’s ADF&G Business License in the applicant-selected year divided by five, and rounded down to a whole number; or

(2) The number of vessels that made the bottomfish logbook fishing trips in the applicant-selected year.

(d) Designation of transferability. Each permit issued to an applicant under paragraph (c) of this section will be designated as transferable or non-transferable.

(1) Minimum participation criteria for a transferable permit are described in paragraphs (d)(1)(i) and (d)(1)(ii) of this section as follows:

(i) Reported fifteen (15) bottomfish logbook fishing trips or more from the same vessel during one year of the qualifying period; and

(ii) Reported fifteen (15) halibut logbook fishing trips or more from the same vessel during the recent participation period.

(iii) The vessel used during the recent participation period is not required to be the same vessel used during the qualifying period.
The number of transferable charter halibut permits issued to an applicant will be equal to the lesser of the number of vessels that met the minimum transferable permit qualifications described in paragraphs (d)(1)(i) or (d)(1)(ii) of this section.

(e) Angler endorsement. A charter halibut permit will be endorsed for the highest number of charter vessel anglers reported on any logbook fishing trip in the qualifying period except that:

(1) The angler endorsement number will be four (4) if the highest number of charter vessel anglers reported on any logbook fishing trip in the qualifying period is less than four (4) or no charter vessel anglers were reported on any of the applicant’s logbook fishing trips in the applicant-selected year; and

(2) The angler endorsement number will be six (6) on a charter halibut permit issued pursuant to military service under paragraph (g)(3) of this section.

(f) For purposes of this section, the following terms are defined as follows:

(1) Applicant-selected year means the year in the qualifying period, 2004 or 2005, selected by the applicant for NMFS to use in determining the applicant’s number of transferable and non-transferable permits.

(2) Bottomfish logbook fishing trip means a logbook fishing trip in the qualifying period that was reported to the State of Alaska in a Saltwater Charter Logbook with one of the following pieces of information: The statistical area(s) where bottomfish fishing occurred, the boat hours that the vessel engaged in bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing.

(3) Halibut logbook fishing trip means a logbook fishing trip in the recent participation period that was reported to the State of Alaska in a Saltwater Charter Logbook within the time limit for reporting the trip in effect at the time of the trip with one of the following pieces of information: The number of halibut that was kept, the number of halibut that was released, the statistical area(s) where bottomfish fishing occurred, or the boat hours that the vessel engaged in bottomfish fishing.

(4) Logbook fishing trip means a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to the State of Alaska in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip, except that for multi-day trips, the number of trips will be equal to the number of days of the multi-day trip, e.g., a two day trip will be counted as two trips.

(g) Unavoidable circumstance. Unavoidable circumstance claims must be made pursuant to paragraph (h)(6) of this section, and will be limited to persons who would be excluded from the charter halibut fishery entirely unless their unavoidable circumstance is recognized. This unavoidable circumstance provision cannot be used to upgrade the number of permits issued or to change a non-transferable permit to a transferable permit, and is limited to the following circumstances.

(1) Recent participation period. An applicant for a charter halibut permit that meets the participation requirement for the qualifying period, but does not meet the participation requirement for the recent participation period, may receive one or more charter halibut permits if the applicant proves paragraphs (g)(1)(i) through (iv) of this section as follows:

(i) The applicant had a specific intent to operate a charter halibut fishing business in the recent participation period;

(2) The number of transferable charter halibut permits issued to an applicant will be equal to the lesser of the number of vessels that met the minimum transferable permit qualifications described in paragraphs (d)(1)(i) or (d)(1)(ii) of this section.

(e) Angler endorsement. A charter halibut permit will be endorsed for the highest number of charter vessel anglers reported on any logbook fishing trip in the qualifying period except that:

(1) The angler endorsement number will be four (4) if the highest number of charter vessel anglers reported on any logbook fishing trip in the qualifying period is less than four (4) or no charter vessel anglers were reported on any of the applicant’s logbook fishing trips in the applicant-selected year; and

(2) The angler endorsement number will be six (6) on a charter halibut permit issued pursuant to military service under paragraph (g)(3) of this section.

(f) For purposes of this section, the following terms are defined as follows:

(1) Applicant-selected year means the year in the qualifying period, 2004 or 2005, selected by the applicant for NMFS to use in determining the applicant’s number of transferable and non-transferable permits.

(2) Bottomfish logbook fishing trip means a logbook fishing trip in the qualifying period that was reported to the State of Alaska in a Saltwater Charter Logbook with one of the following pieces of information: The statistical area(s) where bottomfish fishing occurred, the boat hours that the vessel engaged in bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing.

(3) Halibut logbook fishing trip means a logbook fishing trip in the recent participation period that was reported to the State of Alaska in a Saltwater Charter Logbook within the time limit for reporting the trip in effect at the time of the trip with one of the following pieces of information: The number of halibut that was kept, the number of halibut that was released, the statistical area(s) where bottomfish fishing occurred, or the boat hours that the vessel engaged in bottomfish fishing.

(4) Logbook fishing trip means a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to the State of Alaska in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip, except that for multi-day trips, the number of trips will be equal to the number of days of the multi-day trip, e.g., a two day trip will be counted as two trips.

(g) Unavoidable circumstance. Unavoidable circumstance claims must be made pursuant to paragraph (h)(6) of this section, and will be limited to persons who would be excluded from the charter halibut fishery entirely unless their unavoidable circumstance is recognized. This unavoidable circumstance provision cannot be used to upgrade the number of permits issued or to change a non-transferable permit to a transferable permit, and is limited to the following circumstances.

(1) Recent participation period. An applicant for a charter halibut permit that meets the participation requirement for the qualifying period, but does not meet the participation requirement for the recent participation period, may receive one or more charter halibut permits if the applicant proves paragraphs (g)(1)(i) through (iv) of this section as follows:

(i) The applicant had a specific intent to operate a charter halibut fishing business in the recent participation period;
(i) The applicant's specific intent was thwarted by a circumstance that was:
(A) Unavoidable;
(B) Unique to the owner of the charter halibut fishing business; and
(C) Unforeseen and reasonably unforeseeable by the owner of the charter halibut fishing business;
(ii) The circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred; and
(iv) The applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in the recent participation period.
(v) If the applicant proves the foregoing (see paragraphs (g)(1)(i) through (iv) of this section), the applicant will receive either:
(A) One non-transferable permit with an angler endorsement of four (4); or
(B) The number of transferable and non-transferable permits, and the angler endorsement on those permits, that result from the logbook fishing trips that the applicant proves likely would have taken by the applicant but for the circumstance that thwarted the applicant's specific intent to operate a charter halibut fishing business in one year of the qualifying period and the applicant did not participate during the other year of the qualifying period.
(3) Military service. An applicant for a charter halibut permit that meets the participation requirement in the recent participation period, but does not meet the participation requirement for the qualifying period, may receive one or more permits if the applicant proves the following:
(i) The applicant was ordered to report for active duty military service as a member of a branch of the U.S. military, National Guard, or military reserve during the qualifying period; and
(ii) The applicant had a specific intent to operate a charter halibut fishing business that was thwarted by the applicant's order to report for military service.
(iii) The number of transferable and non-transferable charter halibut permit(s) that an applicant may receive under paragraph (g)(3) of this section will be based on the criteria in paragraph (g)(2)(v)(B) of this section. Angler endorsements on all such charter halibut permits will be pursuant to paragraph (e)(2) of this section.
(h) Application for a charter halibut permit. (1) An application period of no less than 60 days will be specified by notice in the Federal Register during which any person may apply for a charter halibut permit. Any application that is submitted by mail and postmarked, or submitted by hand delivery or facsimile, after the last day of the application period will be denied. Electronic submission other than by facsimile will be denied. Applications must be submitted to the address given
in the Federal Register notice of the application period.

(2) Charter halibut permit. To be complete, a charter halibut permit application must be signed and dated by the applicant, and the applicant must attest that, to the best of the applicant’s knowledge, all statements in the application are true and the applicant complied with all legal requirements for logbook fishing trips in the qualifying period and recent participation period that were reported under the applicant’s ADF&G Business Owner Licenses. An application for a charter halibut permit will be made available by NMFS. Completed applications may be submitted by mail, hand delivery, or facsimile at any time during the application period announced in the Federal Register notice of the application period described at paragraph (h)(1) of this section.

(3) Application procedure. NMFS will create the official charter halibut record and will accept all application claims that are consistent with the official charter halibut record. If an applicant’s claim is not consistent with the official charter halibut record, NMFS will issue non-transferable interim permit(s) for all undisputed permit claims, and will respond to the applicant by letter specifying a 30-day evidentiary period during which the applicant may provide additional information or argument to support the applicant’s claim for disputed permit(s). Limits on the 30-day evidentiary period are as follows:

(i) An applicant shall be limited to one 30-day evidentiary period; and

(ii) Additional information received after the 30-day evidentiary period has expired will not be considered for purposes of the initial administrative determination.

(4) After NMFS evaluates the additional information submitted by the applicant during the 30-day evidentiary period, it will take one of the following two actions.

(i) If NMFS determines that the applicant has met its burden of proving that the official charter halibut record is incorrect, NMFS will amend the official charter halibut record and use the official charter halibut record, as amended, to determine whether the applicant is eligible to receive one or more charter halibut permits, the nature of those permits and the angler and area endorsements on those permits; or

(ii) If NMFS determines that the applicant has not met its burden of proving that the official charter halibut record is incorrect, NMFS will notify the applicant by an initial administrative determination, pursuant to paragraph (h)(5) of this section.

(5) Initial Administration Determination (IAD). NMFS will send an IAD to the applicant following the expiration of the 30-day evidentiary period if NMFS determines that the applicant has not met its burden of proving that the official charter halibut record is incorrect or that other reasons exist to initially deny the application. The IAD will indicate the deficiencies in the application and the deficiencies with the information submitted by the applicant in support of its claim.

(6) Appeal. An applicant that receives an IAD may appeal to the Office of Administrative Appeals (OAA) pursuant to §679.43 of this title.

(i) If the applicant does not apply for a charter halibut permit within the application period specified in the Federal Register, the applicant will not receive any interim permits pending final agency action on the application.

(ii) If the applicant applies for a permit within the specified application period and OAA accepts the applicant’s appeal, the applicant will receive the number and kind of interim permits which are not in dispute, according to the information in the official charter halibut record.

(iii) If the applicant applies for a permit within the specified application period and OAA accepts the applicant’s appeal, but according to the information in the official charter halibut record, the applicant would not be issued any permits, the applicant will receive one interim permit with an angler endorsement of four (4).

(iv) All interim permits will be non-transferable and will expire when NMFS takes final agency action on the application.

(i) Transfer of a charter halibut permit—(1) General. A transfer of a charter
halibut permit is valid only if it is approved by NMFS. NMFS will approve a transfer of a charter halibut permit if the permit to be transferred is a transferable permit issued under paragraph (d)(2) of this section, if a complete transfer application is submitted, and if the transfer application meets the standards for approval in paragraph (i)(2) of this section.

(2) Standards for approval of transfers. NMFS will transfer a transferable charter halibut permit to a person designated by the charter halibut permit holder if, at the time of the transfer the following standards are met:

(i) The person designated to receive the transferred permit is a U.S. citizen or a U.S. business with a minimum of 75 percent U.S. ownership;
(ii) The parties to the transfer do not owe NMFS any fines, civil penalties or any other payments;
(iii) The transfer is not inconsistent with any sanctions resulting from Federal fishing violations;
(iv) The transfer will not cause the designated recipient of the permit to exceed the permit limit at paragraph (j) of this section, unless an exception to that limit applies;
(v) A transfer application is completed and approved by NMFS; and
(vi) The transfer does not violate any other provision in this part.

(3) For purposes of paragraph (i)(2) of this section, a U.S. business with a minimum of 75 percent U.S. ownership means a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity where at least 75 percent of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

(4) Application to transfer a charter halibut permit. To be complete, a charter halibut permit transfer application must have notarized and dated signatures of the applicants, and the applicants must attest that, to the best of the applicants’ knowledge, all statements in the application are true. An application to transfer a charter halibut permit will be made available by NMFS. Completed transfer applications may be submitted by mail or hand delivery at any time to the addresses listed on the application. Electronic or facsimile deliveries will not be accepted.

(5) Denied transfer applications. If NMFS does not approve a charter halibut permit transfer application, NMFS will inform the applicant of the basis for its disapproval.

(6) Transfer due to court order, operation of law or as part of a security agreement. NMFS will transfer a charter halibut permit based on a court order, operation of law or a security agreement, if NMFS determines that a transfer application is complete and the transfer will not violate an eligibility criterion for transfers.

(j) Charter halibut permit limitations—

(1) General. A person may not own, hold, or control more than five (5) charter halibut permits except as provided by paragraph (j)(4) of this section. NMFS will not approve a transfer application that would result in the applicant that would receive the transferred permit holding more than five (5) charter halibut permits except as provided by paragraph (j)(6) of this section.

(2) Ten percent ownership criterion. In determining whether two or more persons are the same person for purposes of paragraph (j)(1) of this section, NMFS will apply the definition of an “affiliation for the purpose of defining AFA entities” at §679.2 of this title.

(3) A permit will cease to be a valid permit if the permit holder is:

(i) An individual and the individual dies; or
(ii) A non-individual (e.g., corporation or partnership) and dissolves or changes as defined at paragraph (j)(5) of this section.
(iii) A transferable permit may be made valid by transfer to an eligible recipient.

(4) Exception for initial recipients of permits. Notwithstanding the limitation at paragraph (j)(1) of this section, NMFS may issue more than five (5) charter halibut permits to an initial recipient that meets the requirements described in paragraphs (b), (d), and (e) of this section for more than five (5) charter halibut permits, subject to the following limitations:
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(1) This exception applies only to an initial recipient as the recipient exists at the time that it is initially issued the permits;

(ii) If an initial recipient of transferable permit(s) who is an individual dies, the individual’s successor-in-interest may not hold more than five (5) charter halibut permits;

(iii) If an initial recipient permit holder that is a non-individual, such as a corporation or a partnership, dissolves or changes, NMFS will consider the new entity a new permit holder and the new permit holder may not hold more than five (5) charter halibut permits.

(5) For purposes of this paragraph (j), a “change” means:

(i) For an individual, the individual has died, in which case NMFS must be notified within 30 days of the individual’s death; and

(ii) For a non-individual entity, the same as defined at § 679.42(j)(4)(i) of this title, in which case the permit holder must notify NMFS within 15 days of the effective date of the change as required at § 679.42(j)(5) of this title.

(6) Exception for transfer of permits. Notwithstanding the limitation at paragraph (j)(1) of this section, NMFS may approve a permit transfer application that would result in the person that would receive the transferred permit(s) holding more than five (5) transferable charter halibut permits if the parties to the transfer meet the following conditions:

(i) The designated person that would receive the transferred permits does not hold any charter halibut permits;

(ii) All permits that would be transferred are transferable permits;

(iii) The permits that would be transferred are all of the transferable permits that were awarded to an initial recipient who exceeded the permit limitation of five (5) permits; and

(iv) The person transferring its permits also is transferring its entire charter vessel fishing business, including all the assets of that business, to the designated person that would receive the transferred permits.

(k) Community charter halibut permit—

(1) General. A Community Quota Entity (CQE), as defined in § 679.2 of this title, representing an eligible community listed in paragraph (k)(2) of this section, may receive one or more community charter halibut permits. A community charter halibut permit issued to a CQE will be designated for area 2C or area 3A, will be non-transferable, and will have an angler endorsement of six (6).

(2) Eligible communities. Each community charter halibut permit issued to a CQE under paragraph (k)(1) of this section will specify the name of an eligible community on the permit. Only the following communities are eligible to receive community charter halibut permits:


(ii) For Area 3A: Akhiok, Chenega Bay, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lyons, Seldovia, Tatitlek, Tyonek, Yakutat.

(3) Limitations. The maximum number of community charter halibut permits that may be issued to a CQE for each eligible community the CQE represents is as follows:

(i) A CQE representing an eligible community or communities in regulatory area 2C may receive a maximum of four (4) community charter halibut permits per eligible community designated for Area 2C.

(ii) A CQE representing an eligible community or communities in regulatory area 3A may receive a maximum of seven (7) community charter halibut permits per eligible community designated for Area 3A.

(4) NMFS will not approve a transfer that will cause a CQE representing a community or communities to hold more than the total number of permits described in paragraphs (k)(4)(i) and (k)(4)(ii) of this section, per community, including community charter halibut permits granted to the CQE under this paragraph (k) and any charter halibut permits acquired by the CQE by transfer under paragraph (i) of this section.

(i) The maximum number of charter halibut and community charter halibut...
permits that may be held by a CQE per
community represented by the CQE in
regulatory area 2C is eight (8).
(ii) The maximum number of charter
halibut and community charter halibut
permits that may be held by a CQE per
community represented by the CQE in
regulatory area 3A is fourteen (14).
(5) Limitation on use of permits. The
following limitations apply to commu-
nity charter halibut permits issued to
a CQE under paragraph (k)(1) of this
section.
(i) Every charter vessel fishing trip
authorized by such a permit and on
which halibut are caught and retained
must begin or end at a location(s) speci-
fied on the application for a commu-
nity charter halibut permit and that is
within the boundaries of the eligible
community designated on the permit.
The geographic boundaries of the eligi-
ble community will be those defined by
the United States Census Bureau.
(ii) Community charter halibut per-
mits may be used only within the regu-
latory area for which they are desig-
nated to catch and retain halibut.
(6) Application procedure. To be com-
plete, a community charter halibut
permit application must be signed and
dated by the applicant, and the appli-
cant must attest that, to the best of
the applicants’ knowledge, all state-
ments in the application are true and
complete. An application for a commu-
nity charter halibut permit will be
made available by NMFS and may be
submitted by mail, hand delivery, or
facsimile at any time to the address(s)
listed on the application. Electronic
deliveries other than facsimile will not
be accepted.

§ 300.67 Charter halibut limited access pro-
gram.

(e) Angler endorsement. A charter halibut
permit will be endorsed as follows:
(1) The angler endorsement number for the
first transferable permit for an area issued
to an applicant will be the greatest num-
ber of charter vessel anglers reported on any log-
book trip in the qualifying period in that
area.
(2) The angler endorsement number for
each subsequent transferable permit issued
to the same applicant for the same area will
be the greatest number of charter vessel an-
glers reported by the applicant on any log-
book trip in the qualifying period for a vessel
not already used in that area to determine
an angler endorsement, until all transferable
permits issued to the applicant are assigned
an angler endorsement.
(3) The angler endorsement number for the
first non-transferable permit for an area
issued to an applicant will be the greatest
number of charter vessel anglers reported on any log-
book trip in the qualifying period for a vessel
not already used to determine an angler
endorsement in that area.
(4) The angler endorsement number for
each subsequent non-transferable permit
issued to the same applicant for the same
area will be the greatest number of charter
vessel anglers reported by the applicant on any log-
book trip in the qualifying period for a vessel
not already used in that area to de-
termine an angler endorsement, until all

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non-transferable permits issued to the applicant are assigned an angler endorsement.

(5) The angler endorsement number will be four (4) if the greatest number of charter vessel anglers reported on any logbook fishing trip for an area in the qualifying period is less than four (4), or no charter vessel anglers were reported on any of the applicant's logbook fishing trips in the applicant-selected year.

**Figure 1 to Subpart E of Part 300—Sitka Local Area Management Plan**
Figure 2 to Subpart E of Part 300—Southern Southeast Alaska Rural and Non-Rural Areas

[74 FR 57110, Nov. 4, 2009]
FIGURE 3 TO SUBPART E OF PART 300—NORTHERN SOUTHEAST ALASKA RURAL AND NON-RURAL AREAS

[74 FR 57110, Nov. 4, 2009]
Figure 4 to Subpart E of Part 300—Prince William Sound Rural and Non-Rural Areas

[74 FR 57110, Nov. 4, 2009]
Figure 5 to Subpart E of Part 300—Anchorage, Matanuska-Susitna, and Kenai Rural and Non-Rural Areas

[74 FR 57110, Nov. 4, 2009]
Figure 6 to Subpart E of Part 300—Alaska Peninsula and Aleutian Islands Rural and Non-Rural Areas

[74 FR 57110, Nov. 4, 2009]
Figure 7 to Subpart E of Part 300—Western and Central Alaska Rural and Non-Rural Areas

[Map of Western and Central Alaska showing rural and non-rural areas, with labels for places like Nome, Cape Espenberg, Nelson Is, Bethel, and others.]

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Subpart F—Fraser River Sockeye and Pink Salmon Fisheries


§ 300.90 Purpose and scope.

This subpart implements the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631–3644) (Act) and is intended to supplement, not conflict with, the fishery regimes and Fraser River Panel regulations adopted under the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985 (Treaty).

§ 300.91 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

All-citizen means any person who is not a treaty Indian fishing in that treaty Indian’s tribal treaty fishing places pursuant to treaty Indian tribal fishing regulations (whether in compliance with such regulations or not).

Authorized officer means, in addition to those individuals identified under authorized officer at § 300.2, any state, Federal, or other officer as may be authorized by the Secretary in writing, including any treaty Indian tribal enforcement officer authorized to enforce tribal fishing regulations.

Commission means the Pacific Salmon Commission established by the Pacific Salmon Treaty.

Consistent regulation or consistent order means any Federal, state, or treaty Indian tribal regulation or order that is in addition to and not in conflict with (at least as restrictive as) any regime of the Commission, Fraser River Panel regulation, inseason order of the Secretary, or these regulations.

Fishing gear—

(1) Gill net means a fishing net of single web construction, not anchored, tied, staked, placed, or weighted in such a manner that it cannot drift.

(2) Purse seine means all types of fishing gear consisting of a lead line, cork line, auxiliary lines, purse line and purse rings and of mesh net webbing fashioned in such a manner that it is used to encircle fish, and in addition prevent their escape under the bottom or lead line of the net by drawing in the bottom of the net by means of the purse line so that it forms a closed bag.

(3) Reef net means a non-self-fishing open bunt square or rectangular section of mesh netting suspended between two anchored boats fashioned in such a manner that to impound salmon passing over the net, the net must be raised to the surface.

(4) Troll fishing gear means one or more lines that drag hooks with bait or lures behind a moving fishing vessel.

(5) Treaty Indian fishing gear means fishing gear defined authorized, and identified under treaty Indian tribal laws and regulations in accordance with the requirements of Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974).

Fraser River Panel means the Fraser River Panel established by the Pacific Salmon Treaty.

Fraser River Panel Area (U.S.) means the United States’ portion of the Fraser River Panel Area specified in Annex II of the Treaty as follows:

(1) The territorial water and the high seas westward from the western coast of Canada and the United States of America and from a direct line drawn from Bonilla Point, Vancouver Island, to the lighthouse of Tatoosh Island, Washington—which line marks the entrance of Juan de Fuca Strait—and embraced between 48° and 49° N. lat., excepting therefrom, however, all the waters of Barkley Sound, eastward of a straight line drawn from Amphitrite Point to Cape Flattery and all the waters of Nitinat Lake and the entrance thereto.

(2) The waters included within the following boundaries: Beginning at Bonilla Point, Vancouver Island, thence along the aforesaid direct line drawn from Bonilla Point to Tatoosh Lighthouse, Washington, described in paragraph (1) of this definition, thence to the nearest point of Cape Flattery, thence following the southerly shore of
§ 300.92 Relation to other laws.

(a) Insofar as they are consistent with this part, any other applicable Federal law or regulation, or any applicable law and regulations of the State of Washington or of a treaty Indian tribe with treaty fishing rights in the Fraser River Panel Area (U.S.) will continue to have force and effect in the Fraser River Panel Area (U.S.) with respect to fishing activities addressed herein.

(b) Any person fishing subject to this subpart is bound by the international boundaries now recognized by the United States within the Fraser River Panel Area (U.S.) described in §300.91.
notwithstanding any dispute or negotiation between the United States and Canada regarding their respective jurisdictions, until such time as different boundaries are published by the United States.

(c) Any person fishing in the Fraser River Panel Area (U.S.) who also fishes for groundfish in the EEZ should consult Federal regulations at part 663 of this title for applicable requirements, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with §663.6. Federal regulations governing salmon fishing in the EEZ, which includes a portion of the Fraser River Panel Area (U.S.), are at part 661 of this title. Annual regulatory modifications are published in the Federal Register.

(d) Except as otherwise provided in this subpart, general provisions governing off-reservation fishing by treaty Indians are found at 25 CFR part 249, subpart A. Additional general and specific provisions governing treaty Indian fisheries are found in regulations and laws promulgated by each treaty Indian tribe for fishermen fishing pursuant to tribal authorization.

(e) Nothing in this subpart relieves a person from any other applicable requirements lawfully imposed by the United States, the State of Washington, or a treaty Indian tribe.

§ 300.93 Reporting requirements.

Any person fishing for sockeye or pink salmon within the Fraser River Panel Area (U.S.) and any person receiving or purchasing fish caught by such persons are subject to State of Washington reporting requirements at Washington Administrative Code, Chapter 220-69. Treaty Indian fishermen are subject also to tribal reporting requirements. No separate Federal reports are required.

§ 300.94 Prohibitions and restrictions.

In addition to the prohibitions in §300.4, the following prohibitions and restrictions apply.

(a) In addition to the prohibited acts set forth in the Act at 16 U.S.C. 3637(a), the following restrictions apply to sockeye and pink salmon fishing in the Fraser River Panel Area (U.S.):

1. The Fraser River Panel Area (U.S.) is closed to sockeye and pink salmon fishing, unless opened by Fraser River Panel regulations or by inseason orders of the Secretary issued under §300.97 that give effect to orders of the Fraser River Panel, unless such orders are determined not to be consistent with domestic legal obligations. Such regulations and inseason orders may be further implemented by regulations promulgated by the United States, the State of Washington, or any treaty Indian tribe, which are also consistent with domestic legal obligations.

2. It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to fish for, or take and retain, any sockeye or pink salmon:

   (i) Except during times or in areas that are opened by Fraser River Panel regulations or by inseason order, except that this provision will not prohibit the direct transport of legally caught sockeye or pink salmon to offloading areas.

   (ii) By means of gear or methods not authorized by Fraser River Panel regulations, inseason orders, or other applicable Federal, state, or treaty Indian tribal law.

   (iii) In violation of any applicable area, season, species, zone, gear, or mesh size restriction.

(b) It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to—

1. Remove the head of any sockeye or pink salmon caught in the Fraser River Panel Area (U.S.), or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

2. Fail to permit an authorized officer to inspect a record or report required by the State of Washington or treaty Indian tribal authority.

(c) Notwithstanding paragraph (a) of this section, nothing in this subpart will be construed to prohibit the retention of sockeye or pink salmon caught by any person while lawfully engaged
§ 300.95 Treaty Indian fisheries.

(a) Any treaty Indian must comply with this section when fishing for sockeye and pink salmon at the treaty Indian tribe’s treaty fishing places in the Fraser River Panel Area (U.S.) during the time the Commission or the Secretary exercises jurisdiction over these fisheries. Fishing by a treaty Indian outside the applicable Indian tribe’s treaty fishing places will be subject to the Fraser River Panel regulations and inseason orders applicable to all citizens, as well as to the restrictions set forth in this section.

(b) Nothing in this section will relieve a treaty Indian from any applicable law or regulation imposed by a treaty Indian tribe, or from requirements lawfully imposed by the United States or the State of Washington in accordance with the requirements of Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974).

(c) Identification. (1) Any treaty Indian fishing under the authority of this subpart must have in his or her possession at all times a valid identification card issued by the Bureau of Indian Affairs or by a treaty Indian tribe, identifying the holder as a person qualified to assist a treaty Indian. The identification card must include the name of the issuing tribe, the name, address, date of birth, and photograph of the assistant, and the name and identification number of the treaty Indian whom the assistant is authorized to assist.

(2) Any person assisting a treaty Indian under the authority of paragraph (d) of this section must have in his or her possession at all such times a valid identification card issued by the Bureau of Indian Affairs or by a treaty Indian tribe, identifying the holder as a person qualified to assist a treaty Indian. The identification card must include the name of the issuing tribe, the name, address, date of birth, and photograph of the assistant, and the name and identification number of the treaty Indian whom the assistant is authorized to assist.

(3) Identification described in paragraph (c) (1) or (2) of this section must be shown on demand to an authorized officer by the treaty Indian or authorized assistant.

(d) Fishing assistance. (1) Any member of a treaty Indian tribe fishing under this subpart may, if authorized by the treaty Indian’s tribe, receive fishing assistance from, and only from, the treaty Indian tribal member’s spouse, forebears, children, grandchildren, and siblings, as authorized by the U.S. District Court for the Western District of Washington in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974). For purposes of this section, the treaty Indian tribal member whom the assistant is authorized to assist must be present aboard the fishing vessel at all times while engaged in the exercise of treaty Indian fishing rights subject to this subpart.
(2) No treaty Indian may, while fishing at a treaty fishing place in accordance with treaty-secured fishing rights, permit any person 16 years of age or older other than the authorized holder of a currently valid identification card issued in accordance with the requirements of paragraphs (c) (1) and (2) of this section to fish for said treaty Indian, assist said treaty Indian in fishing, or use any gear or fishing location identified as said treaty Indian’s gear or location.

(3) Treaty Indians are prohibited from participating in a treaty Indian fishery under this section at any time persons who are not treaty Indians are aboard the fishing vessel or in contact with fishing gear operated from the fishing vessel, unless such persons are authorized employees or officers of a treaty Indian tribe or tribal fisheries management organization, the Northwest Indian Fisheries Commission, the Commission, or a fisheries management agency of the United States or the State of Washington.

§ 300.96 Penalties.

Any treaty Indian who commits any act that is unlawful under this subpart normally will be referred to the applicable tribe for prosecution and punishment. If such tribe fails to prosecute such person in a diligent manner for the offense(s) referred to the tribe, or if other good cause exists, such treaty Indian may be subject to the penalties and procedures described in the Magnuson Act.

§ 300.97 Inseason orders.

(a) During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Fraser River Panel. Inseason orders will be consistent with domestic legal obligations. Violation of such inseason orders is violation of this subpart.

(b) Notice of inseason orders. (1) Official notice of such inseason orders is available from NMFS (for orders applicable to all-citizen fisheries) and from the Northwest Indian Fisheries Commission (for orders applicable to treaty Indian fisheries) through Area Code 206 toll-free telephone hotlines. All-citizen fisheries: the hotline telephone number is published in the inseason notice procedures section of the annual management measures for West Coast Salmon Fisheries, published in the Federal Register; Treaty Indian fisheries hotline: 1-800-562-6142.

(2) Notice of inseason orders of the Secretary and other applicable tribal regulations may be published and released according to tribal procedures in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 364 F. Supp. 312 (W.D. Wash., 1974).

(3) Inseason orders may also be communicated through news releases to radio and television stations and newspapers in the Fraser River Panel Area (U.S.).

(4) Inseason orders of the Secretary will also be published in the Federal Register as soon as practicable after they are issued.

[61 FR 35550, July 5, 1996, as amended at 74 FR 44771, Aug. 31, 2009]

Subpart G—Antarctic Marine Living Resources


§ 300.100 Purpose and scope.

(a) This subpart implements the Antarctic Marine Living Resources Convention Act of 1984 (Act).

(b) This subpart regulates—

(1) The harvesting of Antarctic marine living resources or other associated activities by any person subject to the jurisdiction of the United States or by any vessel of the United States.

(2) The importation into the United States of any Antarctic marine living resource.

§ 300.101 Definitions.

In addition to the terms defined in §300.2, in the Act, and in the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980 (Convention), the terms used in this subpart have the following meanings. If a term is defined differently in §300.2, such Act, or such Convention,
the definition in this section shall apply.


Antarctic convergence means a line joining the following points along the parallels of latitude and meridians of longitude:

<table>
<thead>
<tr>
<th>Lat.</th>
<th>Long.</th>
</tr>
</thead>
<tbody>
<tr>
<td>50° S.</td>
<td>0.</td>
</tr>
<tr>
<td>50° S.</td>
<td>30° E.</td>
</tr>
<tr>
<td>45° S.</td>
<td>30° E.</td>
</tr>
<tr>
<td>45° S.</td>
<td>80° E.</td>
</tr>
<tr>
<td>55° S.</td>
<td>80° E.</td>
</tr>
<tr>
<td>55° S.</td>
<td>150° E.</td>
</tr>
<tr>
<td>60° S.</td>
<td>150° E.</td>
</tr>
<tr>
<td>60° S.</td>
<td>50° W.</td>
</tr>
<tr>
<td>50° S.</td>
<td>50° W.</td>
</tr>
<tr>
<td>50° S.</td>
<td>0.</td>
</tr>
</tbody>
</table>

Antarctic finfishes include the following:

<table>
<thead>
<tr>
<th>Scientific name</th>
<th>Common name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gobionotothen gibberifrons</td>
<td>Humped rockcod.</td>
</tr>
<tr>
<td>Notonyx rossii</td>
<td>Marbled rockcod.</td>
</tr>
<tr>
<td>Lepidionotothen kempi</td>
<td>Grey rockcod.</td>
</tr>
<tr>
<td>Dissostichus eleginoides</td>
<td>Patagonian toothfish.</td>
</tr>
<tr>
<td>Dissostichus mawsoni</td>
<td>Antarctic toothfish.</td>
</tr>
<tr>
<td>Electrona carlsbergi</td>
<td>Lanternfish.</td>
</tr>
<tr>
<td>Patagonothen brevicauda</td>
<td>Patagonian rockcod.</td>
</tr>
<tr>
<td>Trematomus spp.</td>
<td>Antarctic silverfish.</td>
</tr>
<tr>
<td>Chaenocephalus aceratus</td>
<td>Blackfin icefish.</td>
</tr>
<tr>
<td>Champsospondus gunnari</td>
<td>Spiny icefish.</td>
</tr>
<tr>
<td>Chionodraco rastrospinosus</td>
<td>Ocellated icefish.</td>
</tr>
<tr>
<td>Pseudocheilchthys georgianus</td>
<td>South Georgia icefish.</td>
</tr>
</tbody>
</table>

Antarctic marine living resources or AMLR(s) means:

(1) The populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence;

(2) All parts or products of those populations and species set forth in paragraph (1) of this definition.

Centralized Vessel Monitoring System (C-VMS) means a system that uses satellite-linked vessel monitoring devices to allow for the reporting of vessel positional data, either directly to the CCAMLR Secretariat or to the CCAMLR Secretariat through the relevant Flag State.

Commission means the Commission for the Conservation of Antarctic Marine Living Resources established under Article VII of the Convention.

Convention waters means all waters south of the Antarctic Convergence.

Dealer means the person who first receives AMLRs from a harvesting vessel or transshipment vessel or who imports AMLRs into, or re-exports AMLRs from, the United States.

Directed fishing, with respect to any species or stock of fish, means any fishing that results in such fish comprising more than 1 percent by weight, at any time, of the catch on board the vessel.

Dissostichus catch document (DCD) means the uniquely numbered catch documentation form approved by the Commission and issued by a flag state to its vessels authorized to harvest Dissostichus species.

Dissostichus species means Patagonian toothfish and/or Antarctic toothfish and their parts or products.

Export as used in §300.107(c) means any movement of a catch in its harvested or processed form from a territory under the control of the State or free trade zone of landing, or, where that State or free trade zone forms part of a customs union, any other Member State of that customs union.

Fish means finfish, mollusks, and crustaceans.

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 geographical, scientific, technical, recreational, and economic characteristics.

(2) Any fishing for such stocks.

Harvesting vessel means any vessel of the United States (this includes any boat, ship, or other craft), that is used for, equipped to be used for, or of a type that is normally used for harvesting.

Import as used in §§300.107(c) and 300.114 means the physical entering or bringing of a catch into any part of the geographical territory under the control of a State, except where the catch is landed or transshipped within the definitions of landing or transshipment.

Individual permit means an NSF permit issued under 45 CFR part 670; or an NSF award letter (demonstrating that the individual has received an award...
Int'l Fishing and Related Activities

§ 300.101

from NSF to do research in the Antarctic; or a marine mammal permit issued under §216.31 of this chapter; or an endangered species permit issued under §222.21 of this chapter.

Inspection vessel means a vessel carrying a CCAMLR inspector and displaying the pennant approved by the Commission to identify such vessel.

International observer means a scientific observer operating in accordance with the CCAMLR Scheme of International Scientific Observation and the terms of a bilateral arrangement concluded between the United States and a Member of CCAMLR for the placement of a U.S. national on board a vessel flagged by a Member of CCAMLR or for the placement of the national of a Member of CCAMLR on board a U.S. flagged vessel.

Land or Landing means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded; except for purposes of catch documentation as provided for in §300.107(c), land or landing means the initial transfer of catch in its harvested or processed form from a vessel to dockside or to another vessel in a port or free trade zone where the catch is certified by an authority of the Port State as landed.

Mobile transceiver unit means a vessel monitoring system or VMS device, as set forth at §300.116, installed on board a vessel that is used for vessel monitoring and transmitting the vessel’s position as required by this subpart.

National observer means a U.S. national placed and operating onboard a U.S. flagged vessel as a scientific observer or a foreign flagged vessel in accordance with §300.113.

NSF means National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Office for Law Enforcement (OLE) refers to the National Marine Fisheries Service, Office for Law Enforcement, Northeast Division.

Port State means the State that has control over a particular port area or free trade zone for the purposes of landing, transshipment, importing, exporting and re-exporting and whose authority serves as the authority for landing or transshipment certification.

Port-to-port means from the time the vessel leaves port to the time that the vessel returns to port and at all points in between.

Real-time means as soon as possible, but at least every 4 hours with no more than a 4-hour delay.

Recreational fishing means fishing with hook and line for personal use and not for sale.

Re-export as used in §§300.107(c) and 300.114 means any movement of a catch in its harvested or processed form from a territory under the control of a State, free trade zone, or Member State of a customs union of import unless that State, free trade zone, or any Member State of that customs union of import is the first place of import, in which case the movement is an export within the definition of export.

Scientific research activity means any activity for which a person has a permit from NMFS under §216.31 of this title or an award letter from NSF or a permit from the NSF under 45 CFR part 670. Scientific research activities may also include harvesting or other associated activities if such activities are designated as scientific research activities by the Assistant Administrator.

Seal excluder device means a barrier within the body of a trawl comprised of a metal frame, nylon mesh, or any material that results in an obstruction to seals between the mouth opening and the cod end of the trawl. The body of the trawl net forward of the barrier must include an escape opening through which seals entering the trawl can escape.

Specially Validated Dissostichus Catch Document (SVDCD) means a Dissostichus catch document that has been specially issued by a State to accompany seized or confiscated catch of Dissostichus spp. offered for sale or otherwise disposed of by the State.

Tranship or transshipment means the transfer of fish or fish products from one vessel to another; Except for purposes of catch documentation as provided for in §§300.107(c) and 300.114, transship or transshipment means the transfer at sea of a catch in its harvested or processed form from a vessel to another vessel or means of transport and, where such transfer takes place
§ 300.102 Relationship to other treaties, conventions, laws, and regulations.

(a) Other conventions and treaties to which the United States is a party and other Federal statutes and implementing regulations may impose additional restrictions on the harvesting and importation into the United States of AMLRs.


§ 300.103 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites.

(a) General. (1) Any person subject to the jurisdiction of the United States must apply for and be granted an entry permit authorizing specific activities prior to entering a CCAMLR Ecosystem Monitoring Program (CEMP) Protected Site designated in accordance with the CCAMLR Conservation Measure describing the Procedures for According Protection for CEMP Sites.

(2) If a CEMP Protected Site is also a site specially protected under the Antarctic Treaty (or the Protocol on Environmental Protection to the Antarctic Treaty and its Annexes, when it enters into force), an applicant seeking to enter such a Protected Site must apply to the Director of the NSF for a permit under applicable provisions of the ACA or any superseding legislation. The permit granted by NSF shall constitute a joint CEMP/ACA Protected Site permit and any person holding such a permit must comply with the appropriate CEMP Protected Site Management Plan. In all other cases, an applicant seeking a permit to enter a CEMP Protected Site must apply to the Assistant Administrator for a CEMP permit in accordance with the provisions of this section.

(b) Responsibility of CEMP permit holders and persons designated as agents under a CEMP permit. (1) The CEMP permit holder and person designated as agents under a CEMP permit are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under this subpart.

(2) The CEMP permit holder and agents designated under a CEMP permit are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the CEMP permit holder or agents, and regardless of knowledge concerning their occurrence.

(c) Prohibitions regarding the Antarctic Treaty System and other applicable treaties and statutes. Holders of permits to enter CEMP Protected Sites are not permitted to undertake any activities within a CEMP Protected Site that are not in compliance with the provisions of:

(1) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora (including the Protocol on Environmental Protection to the Antarctic Treaty and its Annexes when it enters into force), as implemented by the ACA and any superseding legislation. (Persons interested in conducting
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activities subject to the Antarctic Treaty or the Protocol should contact the Office of Polar Programs, NSF).


(d) Prohibitions on takings. Permits issued under this section do not authorize any takings as defined in the applicable statutes and implementing regulations governing the activities of persons in Antarctica.

(e) Issuance criteria. Permits designated in this section may be issued by the Assistant Administrator upon a determination that:

(1) The specific activities meet the requirements of the Act.

(2) There is sufficient reason, established in the permit application, that the scientific purpose for the intended entry cannot be served elsewhere.

(3) The actions permitted will not violate any provisions or prohibitions of the Protected Site’s Management Plan submitted in compliance with the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites.

(f) Application process. An applicant seeking a CEMP permit from the Assistant Administrator to enter a CEMP Protected Site shall include the following in the application.

(1) A detailed justification that the scientific objectives of the applicant cannot be accomplished elsewhere and a description of how said objectives will be accomplished within the terms of the Protected Site’s Management Plan.

(2) A statement signed by the applicant that the applicant has read and fully understands the provisions and prohibitions of the Protected Site’s Management Plan. Prospective applicants may obtain copies of the relevant Management Plans and the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites by requesting them from the Assistant Administrator.

(g) Conditions. CEMP permits issued under this section will contain special and general conditions including a condition that the permit holder shall submit a report describing the activities conducted under the permit within 30 days of the expiration of the CEMP permit.

(h) Duration. Permits issued under this section are valid for a period of up to five years. Applicants requesting a permit to reenter a Protected Site must include the most recent report required by the general condition in the previously issued CEMP permit describing the activities conducted under authority of that permit.

(i) Transfer. CEMP permits are not transferable or assignable. A CEMP permit is valid only for the person to whom it is issued.

(j) Modification. (1) CEMP permits can be modified by submitting a request to the Assistant Administrator. Such requests shall specify:

(i) The action proposed to be taken along with a summary of the reasons therefore.

(ii) The steps that the permit holder may take to demonstrate or achieve compliance with all lawful requirements.

(2) If a requested modification is not in compliance with the terms of the Protected Site’s Management Plan, the Assistant Administrator will treat the requested modification as an application for a new CEMP permit and so notify the holder. Modifications will be acted upon within 30 days of receipt. The CEMP permit holder must report to the Assistant Administrator any change in previously submitted information within 10 days of the change.

(3) Additional conditions and restrictions. The Assistant Administrator may revise the CEMP permit effective upon notification of the permit holder, to impose additional conditions and restrictions as necessary to achieve the purposes of the Convention, the Act and the CEMP Management Plan. The CEMP permit holder must, as soon as possible, notify any and all agents operating under the permit of any and all revisions or modifications to the permit.

(k) Revocation or suspension. CEMP permits may be revoked or suspended based upon information received by the Assistant Administrator and such revocation or suspension shall be effective upon notification to the permit holder.
§ 300.104 Scientific research.

(a) The management measures issued pursuant to the procedures at §300.111 do not apply to catches of less than 5 tons taken by any vessel for research purposes, unless otherwise indicated.

(b) Catches taken by any vessel for research purposes will be considered as part of any catch limit.

(c) The catch reporting procedure identified in management measures issued pursuant to the procedures at §300.111 applies whenever the catch within any 5-day reporting period exceeds 5 tons, unless more specific reporting requirements apply to the species being fished.

(d) Any person, organization or institution planning to use a vessel for research purposes, when the estimated catch is expected to be less than 50 tons, must provide the following vessel and research notification to the Assistant Administrator at least 2 months in advance of the planned research:

(1) Name and registration number of vessel.

(2) Division and subarea in which research is to be carried out.

(3) Estimated dates of entering and leaving CCAMLR Convention Area.

(4) Purposes of research.

(5) Fishing equipment to be used (bottom trawl, midwater trawl, longline, crab pots, other).

(e) The following measures apply to any person planning to use any vessel for research purposes, when the estimated catch is expected to be more than 50 tons:

(1) The person must use the CCAMLR Format for Reporting Plans for Finfish Surveys in the Convention Area when the Total Catch is Expected to be More Than 50 Tons to report the details of
the research plan to the Assistant Administrator at least 7 months in advance of the planned starting date for the research. A copy of the format is available from the Assistant Administrator.

(2) The format requires:
(i) The name of the CCAMLR Member.
(ii) Survey details.
(iii) Description of the vessel.
(iv) Description of the fishing gear to be used.
(v) Description of acoustic gear to be used.
(vi) Survey design and methods of data analyses.
(vii) Data to be collected.

(3) A summary of the results of any research fishing subject to these provisions must be provided to the Assistant Administrator within 150 days of the completion of the research fishing and a full report must be provided within 11 months.

(4) Catch and effort data resulting from the research fishing must be reported to the Assistant Administrator using the CCAMLR C4 haul-by-haul reporting format for research vessels.

§ 300.105 Initiating a new fishery.

(a) A new fishery, for purposes of this section, is a fishery on a species using a particular method in a statistical subarea for which:

(1) Information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing has not been submitted to CCAMLR;

(2) Catch and effort data have never been submitted to CCAMLR;

(3) Catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

(b) An individual subject to these regulations intending to develop a new fishery shall notify the Assistant Administrator no later than July 1 of the year in which he or she intends to initiate the fishery and shall not initiate the fishery pending CCAMLR review.

(c) The notification shall be accompanied by information on:

(1) The nature of the proposed fishery, including target species, methods of fishing, proposed region and any minimum level of catches that would be required to develop a viable fishery.

(2) Biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity.

(3) Details of dependent and associated species and the likelihood of them being affected by the proposed fishery.

(4) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the valuation of potential yield.

§ 300.106 Exploratory fisheries.

(a) An exploratory fishery, for purposes of this section, is a fishery that was previously defined as a new fishery under § 300.105.

(b) A fishery will continue to be classified as an exploratory fishery until sufficient information is available to:

(1) Evaluate the distribution, abundance, and demography of the target species, leading to an estimate of the fishery’s potential yield.

(2) Review the fishery’s potential impacts on dependent and related species.

(3) Allow the CCAMLR Scientific Committee to formulate and provide advice to the Commission on appropriate harvest catch levels and fishing gear.

(c) The operator of any vessel engaging in an exploratory fishery must submit, by the date specified in the operator’s harvesting permit, catch, effort, and related biological, ecological, and environmental data as required by a data collection plan for the fishery formulated by the CCAMLR Scientific Committee.

(d) In addition to the requirements in § 300.112, any individual planning to enter an exploratory fishery must notify the Assistant Administrator no later than 4 months in advance of the annual meeting of CCAMLR. The Assistant Administrator will not issue a permit to enter an exploratory fishery until after the requirements of § 300.112 have been met and the meeting of CCAMLR, which receives and considers the notice made to the Assistant Administrator, has been concluded.

[61 FR 35550, July 5, 1996, as amended at 72 FR 48509, Aug. 23, 2007]
§ 300.107 Reporting and recordkeeping requirements.

(a) Vessels. The operator of any vessel required to have a harvesting permit under this subpart must:

(1) Accurately maintain on board the vessel all CCAMLR reports and records required by its permit.

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector.

(3) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(4) Install a NMFS approved VMS unit on board U.S. vessels harvesting AMLR for use in real-time C-VMS port-to-port reporting to a NMFS-designated land-based fisheries monitoring center or centers. The requirements for the installation and operation of the VMS are set forth in § 300.116.

(b) Dealers. Dealers of AMLRs required to have a permit under this subpart must:

(1) Accurately maintain all reports and records required by their permits;

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector; and

(3) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(c) Catch documentation—(1) General.

(i) The CCAMLR DCD must accompany all shipments of Dissostichus species as required in this paragraph (c).

(ii) No shipment of Dissostichus species shall be released for entry into the United States unless accompanied by a complete and validated CCAMLR DCD.

(iii) No shipment of Dissostichus species identified as originating from a high seas area designated by the Food and Agriculture Organization of the United Nations as Statistical Area 51 or Statistical Area 57 in the eastern and western Indian Ocean outside and north of the Convention Area shall be issued a preapproval.

(2) Harvesting vessels. (i) In addition to any AMLR harvesting permit or a High Seas Fishing Compliance Act permit issued pursuant to § 300.12, a U.S. vessel harvesting or attempting to harvest Dissostichus species, wherever found, must possess a DCD issued by NMFS which is non-transferable. The master of the harvesting vessel must ensure that catch information specified on the DCD is accurately recorded.

(ii) Prior to offloading of Dissostichus species, the master of the harvesting vessel must:

(A) Electronically convey by the most rapid means possible catch information to NMFS and record on the DCD a confirmation number received from NMFS;

(B) Obtain on the DCD (or copies thereof) the signature(s) of the following persons: if catch is offloaded for transshipment, the master of the vessel(s) to which the catch is transferred; or if catch is offloaded for landing, the signature of both the responsible official(s) designated by NMFS in the harvesting permit, and the dealer(s) that receives the catch at the port(s) of landing; and

(C) Sign the DCD (or copies thereof), electronically convey by the most rapid means possible each copy to NMFS, and provide a copy to each recipient of the catch.

(iii) The master of the harvesting vessel must submit the original DCD (or all copies thereof with original signatures) to NMFS no later than 30 days after the end of the fishing season as authorized for that vessel on its harvesting permit.

(3) Transshipment vessels. (i) The master of a U.S. vessel issued a permit to transship Dissostichus species must, upon receipt of Dissostichus species, sign each DCD provided by the master of the harvesting vessel.

(ii) Prior to landing Dissostichus species, the master of the transshipping vessel must:

(A) Obtain on each DCD (or copies thereof) the signature(s) of both the responsible official(s) designated by NMFS in the permit, and the dealer(s) that receives the catch at the port(s) of landing and

(B) Sign each DCD (or copies thereof), and electronically convey by the most rapid means possible each copy to NMFS and to the flag state(s) of the harvesting vessel(s) and provide a copy.
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to each dealer receiving Dissostichus species.

(iii) The master of the transshipping vessel must submit all DCDs with original signatures to NMFS no later than 30 days after offloading and retain copies for a period of 2 years.

(4) Receivers upon landing. Any dealer who receives Dissostichus species from a harvesting vessel or from a transshipment vessel must sign the DCD(s) provided by the master of the vessel.

(5) Import. (i) In order to import frozen Dissostichus species into the United States, any dealer must:

(A) Submit a preapproval application including the document number and export reference number on the DCD corresponding to the intended import shipment and, if necessary, additional information for NMFS to verify the use of real-time C-VMS port-to-port regardless of where the fish were harvested; and receive preapproval from NMFS.

(B) Ensure that the quantity of toothfish listed on the DCD (or Dissostichus re-export document if product is to be re-exported) matches the quantity listed on the preapproval application within a variance of 10 percent.

(C) The document and export reference numbers described in paragraph (c)(5)(i)(A) of this section must be entered by the dealer on the preapproval application for the shipment and sent to the address designated by NMFS so that NMFS receives the documentation at least 15 working days prior to import.

(D) Retain a copy of the DCD for his/her records and provide copies to exporters as needed.

(ii) Dealers must retain at their place of business a copy of the DCD for a period of 2 years from the date on the DCD.

(iii) Any dealer who imports fresh Dissostichus species must complete a report of each shipment and submit the report to NMFS within 24 hours following importation. Verification of the use of real-time C-VMS port-to-port is not required for imports of fresh Dissostichus species.

(6) Re-export. (i) In order to re-export Dissostichus species, any dealer must:

(A) Submit to NMFS a completed paper-based NMFS application for a Dissostichus re-export document that includes the following information:

(1) The species, product type, and amount from the original DCD(s) that is requested for export in the particular export shipment;

(2) The number of the original DCD(s);

(3) The name and address of the importer and point of import for the original import into the United States, or by submitting a copy of the preapproval issued for the original import;

(4) One of the following:

(i) The Container Number for the shipment if shipment is to be re-exported by vessel;

(ii) The Flight Number and Airway Bill/Bill of Lading if shipment is to be re-exported by air;

(iii) The Truck Registration Number and Nationality if shipment is to be re-exported by ground transportation; or

(iv) The Railway Transport Number if shipment is to be re-exported by rail.

(B) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically-generated Dissostichus re-export document.

(ii) For frozen Dissostichus species, re-export documents will be generated upon verification of the use of real-time C-VMS port-to-port except for Dissostichus species harvested during fishing trips that began prior to September 24, 2007.

(iii) Dealers must include the original validated Dissostichus re-export document with the re-export shipment.

(iv) Any dealer who re-exports Dissostichus species must retain a copy of the re-export document at his/her place of business for a period of 2 years from the date on the DCD.

(7) Export. (i) In order to export U.S.-harvested Dissostichus species, any dealer must:

(A) Submit to NMFS a completed paper-based NMFS application for a Dissostichus export document that includes the following information:

(1) The species, product type, and amount from the original DCD(s) that
§ 300.108 Vessel and gear identification.

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

(2) The operator of each harvesting vessel not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix specific for the non-assigned vessel.

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

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

(c) Gear identification. (1) The operator of each harvesting vessel must ensure that all deployed fishing gear that is not physically and continuously attached to a harvesting vessel is clearly marked at the surface with a buoy displaying the vessel identification of the harvesting vessel (see paragraph (a) of this section) to which the gear belongs, a light visible for 2 miles at night in good visibility, and a radio buoy. Trawl codends passed from one vessel to another are considered continuously attached gear and do not have to be marked.

(2) The operator of each harvesting vessel must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with a buoy displaying the vessel identification of the harvesting vessel to which the gear belongs (see paragraph (a) of this section), a light visible for 2 miles at night in good visibility, and a radio buoy.

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

(d) Maintenance. The operator of each harvesting vessel must:

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

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

(3) Ensure that the proper navigational lights and shapes are displayed for the harvesting vessel’s activity and are properly functioning.

§ 300.109 Gear disposal.

(a) The operator of a harvesting vessel may not dump overboard, jettison or otherwise discard any article or substance that may interfere with other fishing vessels or gear, or that may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate USCG commander or authorized officer. These articles and substances include, but are not limited to, fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in a harvesting vessel’s gear.

(b) The operator of a harvesting vessel may not abandon fishing gear in Convention waters.

(c) The operator of a harvesting vessel must provide a copy of the CCAMLR information brochure “Marine Debris—A Potential Threat to Antarctic Marine Mammals” to each member of the crew of the harvesting vessel and must display copies of the CCAMLR placard “Avoidance of Incidental Mortality of Antarctic Marine Mammals” in the wheelhouse and crew quarters of the harvesting vessels. Copies of the brochure and placard will be provided to each holder of a harvesting permit by NMFS when issuing the permit.

§ 300.110 Mesh size.

(a) The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishing for the following Antarctic finfishes:

(1) Notothenia rossii and Dissostichus eleginoides—120 mm.

(2) Champsocephalus gunnari—90 mm.

(3) Gobionotothen gibberifrons, Notothenia kempi and Lepidochirus squamifrons—80 mm.

(b) Any means or device that would reduce the size or obstruct the opening of the meshes is prohibited.

(c) The following procedure will be used for determining compliance with mesh size requirements.

(1) Description of gauges. (i) Gauges for determining mesh sizes will be 2 mm thick, flat, of durable material and capable of retaining their shape. They may have either a series of parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper defined above. They will have a hole at the narrowest extremity.

(ii) Each gauge will be inscribed on its face with the width in millimeters both on the parallel-sided section, if any, and on the tapering section. In the case of the latter, the width will be inscribed every 1 mm interval, but the indication of the width may appear at regular intervals other than 1 mm.

(2) Use of the gauge. (i) The net will be stretched in the direction of the long diagonal of the meshes.

(ii) A gauge as described in paragraph (c)(1) of this section will be inserted by its narrowest extremity into the mesh opening in a direction perpendicular to the plane of the net.

(iii) The gauge may be inserted into the mesh opening either with a manual force or using a weight or dynamometer, until it is stopped at the tapering edges by the resistance of the mesh.

(3) Selection of meshes to be measured.

(i) Meshes to be measured will form a series of 20 consecutive meshes chosen in the direction of the long axis of the net, except that the meshes to be measured need not be consecutive if the application of paragraph (c)(3)(ii) of this section prevents it.

(ii) Meshes less than 50 cm from lacings, ropes, or codline will not be measured. This distance will be measured perpendicular to the lacings, ropes or codline with the net stretched in the direction of that measurement. No mesh will be measured which has been mended or broken or has attachments to the net fixed at that mesh.

(iii) Nets will be measured only when wet and unfrozen.

(4) The measurement of each mesh will be the width of the gauge at the
§ 300.112 Harvesting permits.

(a) General. (1) Every vessel subject to the jurisdiction of the United States that attempts to reduce or reduces any AMLR to possession must have a harvesting permit authorizing the attempt or reduction, unless the attempt or reduction occurs during recreational fishing or is covered by an individual permit. Boats launched from a vessel issued a harvesting permit do not require a separate permit, but are covered by the permit issued the launching vessel. Any enforcement action that results from the activities of a launched boat will be taken against the launching vessel.

(2) Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United States to harass, capture, harm, kill, harvest, or import marine mammals. No marine mammals may be taken in the course of commercial fishing operations unless the taking is allowed under the Marine Mammal Protection Act and/or the Endangered Species Act pursuant to an exemption or permit granted by the appropriate agency.

(b) Responsibility of owners and operators. (1) The owners and operators of each harvesting vessel are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under the Act and this subpart.

(2) The owners and operators of each such vessel are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the owners or operators, and regardless of knowledge concerning their occurrence.

(3) The owner of such vessel must report any sale, change in ownership, or other disposition of the vessel to the Assistant Administrator within 15 days of the occurrence.

(4) The owners and operators of each krill harvesting vessel using trawl gear in Convention Area fisheries must install a seal excluder device.
§ 300.112

(c) Application. Application forms for harvesting permits are available at www.nmfs.noaa.govقنواة_forms.htm.

(1) A separate fully completed and accurate application must be completed and received by NMFS for each vessel for which a harvesting permit is requested.

(2) Applications for permits to harvest species other than krill must be received by NMFS at least 90 days before the date anticipated for the beginning of harvesting.

(3) Applications for a permit to harvest krill must be received by NMFS no later than June 1 immediately prior to the season in which the harvesting would occur. The applications must, to the extent possible, identify the products to be derived from the anticipated krill catch.

(d) Issuance. The Assistant Administrator may issue a harvesting permit to a vessel if the Assistant Administrator determines that the harvesting described in the application will meet the requirements of the Act and will not:

(1) Decrease the size of any harvested population to levels below those that ensure its stable recruitment. For this purpose, the Convention recommends that its size not be allowed to fall below a level close to that which ensures the greatest net annual increment.

(2) Upset the ecological relationships between harvested, dependent, and related populations of AMLRs and the restoration of depleted populations to levels that will ensure stable recruitment.

(3) Cause changes or increase the risk of changes in the marine ecosystem that are not potentially reversible over 2 or 3 decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of AMLRs.

(4) Violate the management measures issued pursuant to § 300.111 of this subpart.

(5) Violate any other conservation measures in force with respect to the United States under the Convention or the Act.

(e) Duration. A harvesting permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

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

(g) Display. Each harvesting vessel when engaged in harvesting must either have on board an up-to-date copy of its harvesting permit or a fully completed and up-to-date harvesting vessel certificate and the vessel operator must produce it for inspection upon the request of an authorized officer or CCAMLR inspector. In order for the certificate to be considered complete, the vessel owner or operator must enter on it the name and IRCS of the vessel issued the harvesting permit, the number of the harvesting permit and its date of issuance and expiration, the harvesting authorized by the permit, and all conditions and restrictions contained in the permit. Blank certificates are available from the Assistant Administrator.

(h) Changes in information submitted by permit applicants or holders—(1) Changes in pending applications. Applicants for a harvesting permit must report to the Assistant Administrator in writing any change in the information contained in the application. The processing period for the application will be extended as necessary to review the change.

(2) Changes occurring after permit issuance—(i) Changes other than in the manner and amount of harvesting. The owner or operator of a vessel that has been issued a harvesting permit must report to the Assistant Administrator in writing any change in previously submitted information other than a proposed change in the location, manner, or amount of harvesting within 15 days of the change. Based on such reported information, the Assistant Administrator may revise the permit effective upon notification to the permit holder. As soon as possible, the vessel owner or operator must revise any harvesting vessel certificate evidencing the permit, accordingly.

(ii) Requested changes in the location, manner, or amount of harvesting. Any...
changes in the manner or amount of harvesting must be proposed in writing to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator through a permit revision or issuance of a new permit. If a requested change in the location, manner, or amount of harvesting could significantly affect the status of any Antarctic marine living resource, the Assistant Administrator will treat the requested change as an application for a new permit and so notify the holder.

(i) Additional conditions and restrictions. The Assistant Administrator may revise the harvesting permit, effective upon notification to the permit holder, to impose additional conditions and restrictions on the harvesting vessel as necessary to achieve the purposes of the Convention or the Act. The permit holder must, as soon as possible, direct the vessel operator to revise the harvesting vessel certificate, if any, accordingly.

(j) Revision, suspension, or revocation for violations. A harvesting permit may be revised, suspended, or revoked if the harvesting vessel is involved in the commission of any violation of its permit, the Act, or this subpart. Failure to report a change in the information contained in an application within 15 days of the change is a violation of this subpart and voids the application or permit, as applicable. If a change in vessel ownership is not reported, the violation is chargeable to the previous owner. Title 15 CFR part 904 governs permit sanctions under this subpart.

(k) Transshipment vessels. Any U.S. flagged vessel that receives or attempts to receive Dissostichus species from a harvesting vessel at sea, regardless of whether such transshipment occurs in waters under the jurisdiction of CCAMLR, must obtain from NMFS a harvesting permit authorizing transshipment. Transshipment vessels must comply with the permitting provisions of this section with respect to harvesting vessels.


§ 300.113 Scientific observers.

This section applies to national and international observers as defined in § 300.101.

(a) This section applies to a national observer aboard U.S. vessels harvesting in the Convention Area, national observers placed on foreign flagged vessels and international observers placed on U.S. vessels harvesting in the Convention Area.

(b) All U.S. vessels fishing in the Convention Area must carry one or more scientific observers as required by CCAMLR conservation and management measures or as specified in a NMFS-issued AMLR Harvesting Permit.

(c) All U.S. vessels conducting longline sink rate testing outside the Convention area and pursuant to CCAMLR protocols must carry one or more scientific observers as specified in a NMFS-issued AMLR Harvesting Permit.

(d) Procurement of observers by vessel. Owners of vessels required to carry scientific observers under this section must arrange for observer services in coordination with the NMFS Southwest Fisheries Science Center Antarctic Ecosystem Research Division. The vessel owner is required to pay for observer services through an observer service provider who has provided observer services to the Federal government within the past year. In situations where no qualified observer is available through a qualified observer provider, the Secretary may authorize a vessel owner to arrange for an observer by alternative methods. An observer may not be paid directly by the vessel owner.

(e) Insurance. The observer service provider or vessel owner must provide insurance for observers that provides compensation in the event of an injury or death during the entire deployment, from the point of hire location to return, equivalent to the standards of the North Pacific Groundfish Observer Program set forth in § 679.80 of this title.

(f) Educational requirements. National observer candidates must:

(1) Have a Bachelor’s degree or higher from an accredited college or university with a major in one of the natural sciences; or

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(2) Have successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course.

(g) Health requirements. National observers must have a signed and dated statement from a licensed physician that he or she has physically examined the observer. The statement must confirm that, based upon the physical examination, the observer does not have any health problems or conditions that would jeopardize that individual’s safety or the safety of others while deployed, or prevent the observer from performing his or her duties satisfactorily. The statement must declare that prior to the examination; the physician was made aware of the duties of an observer and the dangerous, remote and rigorous nature of the work. The physician’s statement must be submitted to the NMFS Southwest Fisheries Science Center Antarctic Ecosystem Research Division program office prior to approval of an observer. The physical exam must have occurred during the 12 months prior to the observer’s deployment. The physician’s statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(h) Vessel responsibilities. An operator of a vessel required to carry one or more scientific observers must:

(1) Accommodations and food. Provide, at no cost to the observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers of the vessel; and

(2) Safe conditions. (i) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(ii) Have on board:

(A) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I. NMFS will grant a waiver from the Voluntary Safety decal provision if the vessel is in compliance with the standards of the observer vessel safety check list developed by the Northeast Fisheries Science Center [http://www.nefsc.noaa.gov/femad/fsb/](http://www.nefsc.noaa.gov/femad/fsb/) or equivalent certification issued by the Flagging State;

(B) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(C) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(3) Health and safety regulations. Comply with the Observer health and safety regulations at part 600 of this title. NMFS will grant a waiver from the Voluntary Safety decal provision if the vessel is in compliance with the standards of the observer vessel safety check list.

(4) Transmission of data. Facilitate transmission of observer data by allowing observers, on request, to use the vessel’s communications equipment and personnel for the confidential entry, transmission, and receipt of work-related messages.

(5) Vessel position. Allow observers access to, and the use of, the vessel’s navigation equipment and personnel, on request, to determine the vessel’s position, course and speed.

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

(7) Prior notification. Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(8) Records. Allow observers to inspect and copy the vessel’s CCAMLR DCD, product transfer forms, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(9) Assistance. Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:
§ 300.113  

(i) Measuring decks, codends, and holding bins;  

(ii) Providing the observers with a safe work area adjacent to the sample collection site;  

(iii) Collecting bycatch when requested by the observers;  

(iv) Collecting and carrying baskets of fish when requested by observers; and  

(v) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.  

(10) Transfer at sea. (i) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.  

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.  

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.  

(iv) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.  

(j) Standards of observer conduct—(1) Observers: (i) Must not have a direct financial interest in the fishery being observed, including but not limited to:  

(A) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;  

(B) Any business involved with selling supplies or services to any vessel, shoreside or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;  

(C) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facility; or  

(ii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or non-performance of the observers’ official duties.  

(iv) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor while employed by an observer provider.  

(2) Provisions for remuneration of observers under this section do not constitute a conflict of interest.  

(k) Standards of observer behavior. Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:  

(1) Observers must perform their assigned duties as described in the CCAMLR Scientific Observers Manual and must complete the CCAMLR Scientific Observer Logbooks and submit them to the CCAMLR Data Manager at the intervals specified by the Data Manager.  

(2) Observers must accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.  

(3) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, or NMFS.  

(4) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:  

(i) Engaging in the use, possession, or distribution of illegal drugs; or  

(ii) Engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer’s official duties.  

(l) Sampling station. (1) Minimum work space aboard at sea processing
vessels. The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

2. Table aboard at-sea processing vessels. The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

3. Other requirement for at-sea processing vessels. The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

[72 FR 48510, Aug. 23, 2007]

§ 300.114 Dealer permits and preapproval.

(a) General. (1) A dealer intending to import or re-export AMLR must obtain an AMLR dealer permit valid for one year. Preapproval from NMFS is required for each shipment of frozen Dissostichus species. The permit holder may only conduct those specific activities stipulated by the permit.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit issued under §300.112(a)(1) or its importation has been authorized by a NMFS-issued dealer permit and preapproval issued under §300.114(a)(1). AMLRs may not be released for entry into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

(4) A dealer permit or preapproval issued under this section does not authorize the harvest or transshipment of any AMLR by or to a vessel of the United States.

(b) Application. Application forms for AMLR dealer permits and preapproval are available from NMFS. With the exception of the U.S. Customs 7501 entry number, a complete and accurate application must be received by NMFS for each preapproval at least 15 working days before the anticipated date of the first receipt, importation, or re-export. Dealers must supply the U.S. Customs 7501 entry number at least three working days prior to a Dissostichus species shipment's arrival.

(c) Fees. A fee to recover the administrative expenses associated with processing preapproval applications will be charged. The amount of the fee will be determined in accordance with procedures specified in the NOAA Finance Handbook for calculating administrative costs of special products and services. The fee is specified with the preapproval application form. The appropriate fee must accompany each application and be paid by check, draft, or money order.

(d) Issuance. NMFS may issue a dealer permit or preapproval if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any CCAMLR conservation measure or in violation of any regulation in this subpart. No preapproval will be issued for Dissostichus species without verifiable documentation, to include VMS reports with vessel location and messages, of the use of real-time C-VMS port-to-port by the vessel that harvested such Dissostichus species, except for Dissostichus species harvested during fishing trips that began prior to September 24, 2007.

(e) Duration. A permit issued under this section is valid from its date of issuance to its date of expiration unless it is revoked or suspended. A preapproval is valid until the product

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§ 300.116 Requirements for a vessel monitoring system for U.S. vessels.

(a) Requirement for use. Within 30 days after NMFS publishes in the Federal Register a list of approved transmitting units and associated communications service providers for the AMLR fishery, an owner or operator of a vessel that has been issued a harvesting permit for AMLR must ensure that such vessel has a NMFS-approved, operating VMS on board when on any fishing trip involving the harvesting of AMLR. 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.

(b) Installing and activating the VMS. Only a VMS that has been approved by NMFS for use in the AMLR fishery may be used. 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 an installation and activation checklist, which is available from OLE; and

(2) Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.
(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 OLE, 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 AMLR, 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.

(f) Installation and operation of the VMS. NMFS has authority over the installation and operation of the VMS unit. NMFS may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by NMFS.

§ 300.117 Prohibitions.

In addition to the prohibitions in §300.4, it is unlawful for any person to:

(a) Reduce to possession or attempt to reduce to possession any AMLRs without a permit for such activity as required by §300.112.

(b) Import into or export from the United States any AMLRs taken by vessels without a permit to harvest those resources as required by §300.112 (a)(1), or without applicable catch documentation as required by §300.107 (c)(1), or without a dealer permit as required by §300.113 (a)(1), or in violation of the terms and conditions for such import or export as specified on the permit.

(c) Engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States under Article IX of the Convention.

(d) Ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any AMLR that he or she knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States under article IX of the Convention or in violation of any regulation promulgated under this subpart, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the AMLR.

(e) Refuse to allow any CCAMLR inspector to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for the purpose of conducting an inspection authorized by the Act, this subpart, or any permit issued under the Act.

(f) Refuse to provide appropriate assistance, including access as necessary to communications equipment, to CCAMLR inspectors.

(g) Refuse to sign a written notification of alleged violations of Commission measures in effect prepared by a CCAMLR inspector.

(h) Assault, resist, oppose, impede, intimidate, or interfere with a CCAMLR inspector in the conduct of any boarding or inspection authorized by the Act, this subpart, or any permit issued under the Act.

(i) Use any vessel to engage in harvesting after the revocation, or during the period of suspension, of an applicable permit issued under the Act.

(j) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of a harvesting vessel or its gear as required by this subpart.

(k) Fish in a closed area.

(l) Trawl with a mesh size in any part of the trawl net smaller than that allowed for any directed fishing for Antarctic finfishes as specified in management measures issued pursuant to §300.111.

(m) Use any means or device that would reduce the size or obstruct the opening of the trawl meshes specified in management measures issued pursuant to §300.111.
(n) Possess fish in violation of the catch limit specified in management measures issued pursuant to §300.111.

(o) Discard netting or other substances in the Convention Area in violation of §300.109.

(p) Violate or attempt to violate any provision of this subpart, the Act, any other regulation promulgated under the Act or any permit issued under the Act.

(q) Provide incomplete or inaccurate information about the harvest, transshipment, landing, import or re-export of applicable species on any document required under this subpart.

(r) Receive AMLRs from a vessel without a dealer or harvesting permit issued under this subpart.

(s) Import Dissostichus spp. with a Specially Validated DCD.

(t) Import shipments of frozen Dissostichus spp. without a preapproval issued under §300.114.

(u) Assault, resist, oppose, impede, intimidate, harass, bribe, or interfere with an observer.

(v) Interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling.

(w) Tamper with, destroy, or discard an observer’s collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

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

(y) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer’s work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(z) Fish for or process fish without observer coverage required under §300.113.

(aa) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(bb) **Vessel monitoring systems.** (1) Use any vessel registered to an AMLR harvesting permit to conduct fishing operations unless that vessel carries an OLE type-approved mobile transceiver unit and complies with the requirements described in this subpart.

(2) Fail to install, activate, repair or replace a mobile transceiver unit prior to leaving port as specified in this subpart.

(3) Fail to operate and maintain a mobile transceiver unit on board the vessel at all times as specified in this subpart.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified in this subpart.

(5) Fail to contact OLE or follow OLE instructions when automatic position reporting has been interrupted as specified in this subpart.

(6) Register a VMS transceiver unit registered to more than one vessel at the same time.

(7) Connect or leave connected additional equipment to a VMS unit without the prior approval of the OLE.

(8) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or communication service provider.

(9) Fail to use real-time C-VMS port-to-port on board U.S. vessels harvesting AMLR in the Convention Area.

(cc) Fail to use the mitigation measures required in the course of longline fishing or longline fishing research in the Convention Area to minimize the incidental mortality of seabirds.
(dd) Fail to use the mitigation measures required in the Convention Area to minimize the incidental mortality of seabirds and marine mammals in the course of trawl fishing.

(ee) Set longlines in Subareas 48.6, 88.1 and 88.2 Divisions 58.4.1, 58.4.2, 58.4.3a, 58.4.3b and 58.5.2 during daylight hours without following the CCAMLR protocol designed to mitigate seabird interactions.

(ff) Trawl for krill in Convention Area fisheries without a seal excluder device.

(gg) Harvest any AMLR in Convention waters without a harvesting permit required by this subpart.

(hh) Ship, transport, offer for sale, sell, purchase, import, export, re-export or have custody, control, or possession of, any frozen *Dissostichus* species without verifiable documentation of the use of real-time C-VMS port-to-port by the vessel that harvested such *Dissostichus* species unless the *Dissostichus* species was harvested during a fishing trip that began prior to September 24, 2007.

§ 300.118 Facilitation of enforcement and inspection.

In addition to the facilitation of enforcement provisions of § 300.5, the following requirements apply to this subpart.

(a) Access and records. (1) The owners and operator of each harvesting vessel must provide authorized officers and CCAMLR inspectors access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to personal quarters and areas within personal quarters. If inspection of a particular area would interfere with specific on-going scientific research, and if the operator of the harvesting vessel makes such assertion and produces an individual permit that covers that specific research, the authorized officer or CCAMLR inspector will not disturb the area, but will record the information pertaining to the denial of access.

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

(3) Before leaving vessels that have been inspected, the CCAMLR inspector will give the master of the vessel a Certificate of Inspection and a written notification of any alleged violations of Commission measures in effect and will afford the master the opportunity to comment on it. The ship’s master must sign the notification to acknowledge receipt and the opportunity to comment on it.

(b) Reports by non-inspectors. All scientists, fishermen, and other non-inspectors present in the Convention area and subject to the jurisdiction of the United States are encouraged to report any violation of Commission conservation and management measures observed in the Convention area to the Office of Ocean Affairs (CCAMLR Violations), Department of State, Room 5801, Washington, DC 20520.

(c) Storage of AMLRs. The operator of each harvesting vessel storing AMLRs in a storage space on board the vessel must ensure that non-resource items are neither stowed beneath nor covered by resource items, unless required to maintain the stability and safety of the vessel. Non-resource items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other moveable non-resource items. These non-resource items may be in a resource storage space when necessary for the safety of the vessel or crew or for the storage of the items. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure the safety of crew and to prevent shifting of cargo within the space.
§ 300.119 Penalties.

Any person or harvesting vessel found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, 15 CFR part 904, and other applicable laws.

[61 FR 35550, July 5, 1996. Redesignated at 72 FR 48510, Aug. 23, 2007]
Figure 1 to Subpart G of Part 300—Boundaries of the Statistical Reporting Area in the Southern Ocean
Figure 2 to Subpart G of Part 300—The Use of Streamer Lines To Minimize the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research Operations in the Convention Area.
§ 300.120 Purpose.

This subpart implements fishery conservation and management measures as provided in fishery agreements pursuant to the Treaty Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Status of Quita Sueno, Roncador and Serrana (TIAS 10120) (Treaty).

§ 300.121 Definitions.

In addition to the terms defined in § 300.2, the Magnuson Act, and § 600.10 of this title, and in the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Magnuson Act, or the Treaty, the definition in this section shall apply.

Conch means Strombus gigas.

Factory vessel means a vessel that processes, transforms, or packages aquatic biological resources on board.

Lobster means one or both of the following:

1. Smoothtail lobster, Panulirus laevicauda.
2. Spiny lobster, Panulirus argus.

Regional Administrator means the Director, Southeast Region, or a designee.

Science and Research Director means the Director, Southeast Fisheries Science Center.

Treaty waters means the waters of one or more of the following:

1. Quita Sueno, enclosed by latitudes 13°55′N. and 14°43′N. between longitudes 80°55′W. and 81°28′W.
2. Serrana, enclosed by arcs 12 nautical miles from the low water line of the cays and islands in the general area of 14°22′N. lat., 80°20′W. long.
3. Roncador, enclosed by arcs 12 nautical miles from the low water line of Roncador Cay, in approximate position 13°35′N. lat., 80°05′W. long.

§ 300.122 Relation to other laws.

(a) The relation of this subpart to other laws is set forth in § 600.705 of this title and paragraph (b) of this section. Particular note should be made to the reference in § 600.705 to the applicability of title 46 U.S.C., under which a Certificate of Documentation is invalid when the vessel is placed under the command of a person who is not a citizen of the United States.

(b) Minimum size limitations for certain species, such as reef fish in the Gulf of Mexico, may apply to vessels transiting the EEZ with such species aboard.

§ 300.123 Certificates and permits.

(a) Applicability. An owner of a vessel of the United States that fishes in treaty waters is required to obtain an annual certificate issued by the Republic of Colombia and an annual vessel permit issued by the Regional Administrator.

(b) Application for certificate/permit. (1) An application for a permit must be submitted and signed by the vessel’s owner. An application may be submitted at any time, but should be submitted to the Regional Administrator not less than 90 days in advance of its need. Applications for the ensuing calendar year should be submitted to the Regional Administrator by October 1.

(2) An applicant must provide the following:

(i) A copy of the vessel’s valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.
(ii) Vessel name and official number.
(iii) Name, address, telephone number, and other identifying information of the vessel owner or, if the owner is a corporation or partnership, of the responsible corporate officer or general partner.
(iv) Principal port of landing of fish taken from treaty waters.
(v) Type of fishing to be conducted in treaty waters.
(vi) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.
(vii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.
§ 300.124 Recordkeeping and reporting.

(a) Arrival and departure reports. The operator of each vessel of the United States for which a certificate and permit have been issued under §300.123 must report by radio to the Port Captain, San Andres Island, voice radio call sign “Capitania de San Andres,” the vessel’s arrival in and departure from treaty waters. Radio reports must be made on 8222.0 kHz or 8276.5 kHz between 8:00 a.m. and 12 noon, local time (1300–1700, Greenwich mean time) Monday through Friday.

(b) Catch and effort reports. Each vessel of the United States must report its catch and effort on each trip into treaty waters to the Science and Research Director on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received no later than 7 days after the end of each fishing trip.

§ 300.125 Vessel identification.

(a) Official number. A vessel with a permit issued pursuant to §300.123, when in treaty waters, must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft. The official number must be permanently affixed to or painted on the vessel and must be in block arabic numerals in contrasting color to the background at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length, and at least 10 inches (25.4 cm) in height for all other vessel.

(b) Duties of operator. The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair.

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from an enforcement vessel or aircraft.
§ 300.126 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this title and the prohibited acts specified in § 300.4, it is unlawful for any person to do any of the following:

(a) Fish in treaty waters without the certificate and permit aboard, or fail to display the certificate and permit, as specified in § 300.123(a) and (f).

(b) Fail to notify the Regional Administrator of a change in application information, as specified in § 300.123(j).

(c) Fail to report a vessel's arrival in and departure from treaty waters, as required by § 300.124(a).

(d) Falsify or fail to display and maintain vessel identification, as required by § 300.125.

(e) Fail to comply immediately with instructions and signals issued by an enforcement officer of the Republic of Colombia, as specified in § 300.127.

(f) Operate a factory vessel in treaty waters, as specified in § 300.130(a).

(g) Use a monofilament gillnet in treaty waters, as specified in § 300.130(b).

(h) Use autonomous or semi-autonomous diving equipment in treaty waters, as specified in § 300.130(c).

(i) Use or possess in treaty waters a lobster trap or fish trap without a degradable panel, as specified in § 300.132(a).

(j) Possess conch smaller than the minimum size limit, as specified in § 300.131(a).

(k) Fish for or possess conch in the closed area or during the closed season, as specified in § 300.131(b) and (c).

(l) Retain on board a berried lobster or strip eggs from or otherwise molest a berried lobster, as specified in § 300.132(a).

(m) Possess a lobster smaller than the minimum size, as specified in § 300.132(b).

(n) Fail to return immediately to the water unharmed a berried or undersized lobster, as specified in § 300.132(a) and (b).

§ 300.127 Facilitation of enforcement.

(a) The provisions of § 600.730 of this title and paragraph (b) of this section apply to vessels of the United States fishing in treaty waters.

(b) The operator of, or any other person aboard, any vessel of the United States fishing in treaty waters must immediately comply with instructions and signals issued by an enforcement officer of the Republic of Colombia to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing this subpart.

§ 300.128 Penalties.

Any person committing or fishing vessel used in the commission of a violation of the Magnuson Act or any regulation issued under the Magnuson Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act, to part 600 of this title, to 15 CFR part 904, and to other applicable law. In addition, Colombian authorities may require a vessel involved in a violation of this subpart to leave treaty waters.

§ 300.129 Fishing year.

The fishing year for fishing in treaty waters begins on January 1 and ends on December 31.

§ 300.130 Vessel and gear restrictions.

(a) Factory vessels. Factory vessels are prohibited from operating in treaty waters.

(b) Monofilament gillnets. A monofilament gillnet made from nylon or similar synthetic material are prohibited from being used in treaty waters.

(c) Tanks and air hoses. Autonomous or semiautonomous diving equipment (tanks or air hoses) are prohibited from being used to take aquatic biological resources in treaty waters.

(d) Trap requirements. A lobster trap or fish trap used or possessed in treaty waters that is constructed of material other than wood must have an escape panel located in the upper half of the sides or on top of the trap that, when removed, will leave an opening no smaller than the throat or entrance of the trap. Such escape panel must be constructed of or attached to the trap with wood, cotton, or other degradable material.

(e) Poisons and explosives. [Reserved]
§ 300.131 Conch harvest limitations.

(a) Size limit. The minimum size limit for possession of conch in or from treaty waters is 7.94 oz (225 g) for an uncleaned meat and 3.53 oz (100 g) for a cleaned meat.

(b) Closed area. The treaty waters of Quita Sueno are closed to the harvest or possession of conch.

(c) Closed season. During the period July 1 through September 30 of each year, the treaty waters of Serrana and Roncador are closed to the harvest or possession of conch.

§ 300.132 Lobster harvest limitations.

(a) Berried lobsters. A berried (egg-bearing) lobster in treaty waters may not be retained on board. A berried lobster must be returned immediately to the water unharmed. A berried lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested to remove the eggs.

(b) Size limit. The minimum size limit for possession of lobster in or from treaty waters is 5.5 inches (13.97 cm), tail length. Tail length means the measurement, with the tail in a straight, flat position, from the anterior upper edge of the first abdominal (tail) segment to the tip of the closed tail. A lobster smaller than the minimum size limit must be returned immediately to the water unharmed.

Subpart I—United States-Canada Fisheries Enforcement

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

§ 300.140 Purpose and scope.

This subpart implements the Agreement Between the Government of the United States of America and the Government of Canada on Fisheries Enforcement executed at Ottawa, Canada, on September 26, 1990 (Agreement), allowing each party to the Agreement to take appropriate measures, consistent with international law, to prevent its nationals, residents and vessels from violating those national fisheries laws and regulations of the other party. This subpart applies, except where otherwise specified in this subpart, to all persons and all places (on water and on land) subject to the jurisdiction of the United States under the Magnuson Act. This includes, but is not limited to, activities of nationals, residents and vessels of the United States (including the owners and operators of such vessels) within waters subject to the fisheries jurisdiction of Canada as defined in this subpart, as well as on the high seas and in waters subject to the fisheries jurisdiction of the United States.

§ 300.141 Definitions.

In addition to the terms defined in §300.2 and those in the Magnuson Act and the Agreement, the terms used in this subpart have the following meanings. If a term is defined differently in §300.2, the Magnuson Act, or the Agreement, the definition in this section applies.

Applicable Canadian fisheries law means any Canadian law, regulation or similar provision relating in any manner to fishing by any fishing vessel other than a Canadian fishing vessel in waters subject to the fisheries jurisdiction of Canada, including, but not limited to, any provision relating to stowage of fishing gear by vessels passing through such waters, and to obstruction or interference with enforcement of any such law or regulation.

Authorized officer of Canada means any fishery officer, protection officer, officer of the Royal Canadian Mounted Police, or other employee authorized by the appropriate authority of any national or provincial agency of Canada to enforce any applicable Canadian fisheries law.

Canadian fishing vessel means any fishing vessel:

(1) That is registered or licensed in Canada under the Canada Shipping Act and is owned by one or more persons each of whom is a Canadian citizen, a person resident and domiciled in Canada, or a corporation incorporated under the laws of Canada or of a province, having its principal place of business in Canada; or

(2) That is not required by the Canada Shipping Act to be registered or licensed in Canada and is not registered or licensed elsewhere but is owned as described in paragraph (1) of this definition.
§ 300.143 Facilitation of enforcement.

(a) General. Persons aboard fishing vessels subject to this subpart must immediately comply with instructions and/or signals issued by an authorized officer of the United States or Canada, or by an enforcement vessel or aircraft, to stop the vessel, and with instructions to facilitate safe boarding and inspection for the purpose of enforcing any applicable Canadian fisheries law, the Agreement, or this subpart. All of
§ 300.144 Penalties and sanctions.

Any person, any fishing vessel, or the owner or operator of any such vessel, who violates any provision of the Agreement or this subpart, is subject to the civil and criminal fines, penalties, forfeitures, permit sanctions, or other sanctions provided in the Magnuson Act, part 600 of this title, 15 CFR part 904 (Civil Procedures), and any other applicable law or regulation.

Subpart J—U.S. Nationals Fishing in Russian Fisheries

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

§ 300.150 Purpose.


§ 300.151 Definitions.

In addition to the terms defined in § 300.2 and those in the Magnuson Act, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2 or the Magnuson Act, the definition in this section shall apply.

Affiliates means two persons (including individuals and entities) related in such a way that—

(1) One indirectly or directly controls or has power to control the other; or
(2) A third party controls or has power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a reorganized entity having the same or similar management, ownership, or employees as a former entity.


Embassy of the Russian Federation means the Fisheries Attache of the embassy located in Washington, D.C.

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

Fishing or to fish means any activity that does, is intended to, or can reasonably be expected to result in catching
or removing from the water fishery resources. Fishing also includes the acts of scouting, processing, and support.

Operator, with respect to any vessel, means the master or other individual on board and in charge of either the vessel, the vessel’s fishing operation, or both.

Owner, with respect to any vessel, means any person who owns that vessel in whole or in part, whether or not it is leased or chartered to or managed by another person, or any charterer, whether bareboat, time, or voyage, and any person who acts in the capacity of a charterer, or manager, 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, any officer, director, manager, controlling shareholder of any entity described in this definition, any agent designated as such by any person described in this definition, and any affiliate of any person described in this definition.

Processing means any operation by a vessel to receive fish from a fishing vessel and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the vessel’s behalf or to assist another vessel.

Scouting means any operation by a vessel exploring (on behalf of the vessel or another vessel) for the presence of fish by any means that do not involve the catching of fish.

Support means any operation by a vessel assisting fishing by another vessel, including—
(1) Transferring or transporting fish or fish products; or
(2) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

§ 300.152 Procedures.

(a) Application for annual permits. U.S. vessel owners and operators must have a valid permit issued by the Russian Federation obtained pursuant to a complete application submitted through NMFS before fishing in the Russian EZ or for Russian fishery resources. Application forms and copies of applicable laws and regulations of the Russian Federation may be obtained from NMFS Headquarters.

(b) Other application information. Applications for motherships, processing or transport vessels must identify the type of fishing gear to be employed or the fishing quotas if the vessel has received or is requesting a quota. To facilitate processing, NMFS requests that permit applications for more than 10 vessels be grouped by type and fishing area, and provide the name, address, telephone, and FAX number(s) of an individual who will be the official point of contact for an application.
(c) **Review of Applications.** NMFS will review each application, and, if it is complete, forward it to the Department of State for submission to the competent authorities of the Russian Federation. NMFS will notify the permit applicant when the permit is submitted to the Russian Federation. NMFS will return incomplete applications to the applicant.

(d) **Direct Communication.** U.S. applicants may communicate directly with the Russian Federation with regard to the status of their applications or permits and are encouraged to do so. Owners and operators should make direct contact and work with Russian industry and government authorities.

§ 300.153 Permit issuance.

(a) **Acceptance.** Once the Department of State has accepted the conditions and restrictions proposed by the Russian Federation and all fees have been paid, the competent authorities of the Russian Federation will approve the application. The Russian Federation will issue a permit to the vessel owner for each fishing vessel for which it has approved an application. That vessel will thereupon be authorized by the Russian Federation to fish in accordance with the Agreement and the terms and conditions set forth in the permit. The vessel owner is prohibited from transferring the permit to any other vessel or person. Any such transfer, or the sale or other transfer of the vessel, will immediately invalidate the permit. The vessel owner must notify NMFS of any change in permit application information submitted to NMFS Headquarters under §300.152 within 7 calendar days of the change.

(b) **Copies.** The vessel owner and operator must mail a copy of each permit and any conditions and restrictions issued for that vessel by the Russian Federation within 7 calendar days of its receipt to NMFS Headquarters.

(c) **Validity.** Any permit issued by the Russian Federation with respect to a vessel subject to this subpart will be deemed to be a valid permit only if:

(1) A completed permit application has been forwarded to the competent authorities of the Russian Federation as provided in §300.152(b)(1).

(2) Such application has been approved and a permit issued by the competent authorities of the Russian Federation as provided in paragraph (a) of this section.

(3) The U.S. Department of State has notified the competent authorities of the Russian Federation that it has accepted the conditions and restrictions as provided in paragraph (a) of this section. The permit will be rendered invalid by: The transfer or sale of the permit specified in paragraph (a) of this section; the failure to submit to NMFS any changes in permit application information as required by paragraph (a) of this section; or the failure to pay required permit fees.

(d) **Russian-imposed sanctions.** (1) The Russian Federation will impose appropriate fines, penalties, or forfeitures in accordance with its laws, for violations of its relevant laws or regulations.

(2) In the case of arrest and seizure of a U.S. vessel by Russian authorities, notification will be given promptly through diplomatic channels informing the United States of the facts and actions taken.

(3) The Russian Federation will release U.S. vessels and their crews promptly, subject to the posting of reasonable bond or other security.

(4) The sanctions for violations of limitations or restrictions on fishing operations will be appropriate fines, penalties, forfeitures, or revocations or suspensions of fishing privileges.

§ 300.154 Recordkeeping and reporting.

(a) **General.** The owner and operator of a vessel subject to this subpart are responsible for complying with all recordkeeping and reporting requirements in this part in a timely and accurate manner. Reports and records required by this subpart must be in English, in the formats specified, and unless otherwise specified, based on Greenwich mean time (GMT).

(b) **Vessel permit abstract report.** (1) The owner and operator of a vessel subject to this subpart must submit to NMFS Headquarters a permit abstract
§ 300.155 Requirements.

(a) Compliance with permit requirements. (1) U.S. nationals and vessels subject to this subpart must have a valid permit, as specified in §300.153(c) in order to fish for Russian fishery resources.

(2) U.S. nationals and vessels subject to this subpart that are fishing for Russian fishery resources must comply with all provisions, conditions, and restrictions of any applicable permit.

(b) Compliance with Russian law. U.S. nationals and vessels fishing for Russian fishery resources must comply with the relevant laws and regulations of the Russian Federation.

(c) Protection of marine mammals. U.S. nationals and vessels fishing for Russian fishery resources may not harass, hunt, capture, or kill any marine mammal within the Russian EZ, attempt to do so, except as may be provided for by an international agreement to which both the United States and Russia are parties, or in accordance with specific authorization and controls established by the Russian Federation. The provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 et seq. also apply to any person or vessel subject to the jurisdiction of the United States while in the Russian EZ, and it shall not be a defense to any violation of the MMPA that the person or vessel...
§ 300.156 Prohibited acts.

In addition to the prohibited acts specified at §300.4, it shall be unlawful for any U.S. national or vessel, or the owner or operator of any such vessel:

(a) To fish for Russian fishery resources without a valid permit issued by the competent authorities of the Russian Federation.

(b) To violate the provisions, conditions, and restrictions of an applicable permit.

(c) To violate the relevant laws and regulations of Russia.

(d) To harass, hunt, capture, or kill any marine mammal within the Russian EZ, or while fishing for Russian fishery resources, except as provided in §300.155 (c).

(e) To fail to comply immediately with enforcement and boarding procedures specified in §300.155 (d).

(f) To refuse to allow an authorized officer of the Russian Federation to board and inspect a vessel subject to this subpart for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the relevant laws and regulations of the Russian Federation.

(g) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the Russian Federation in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the relevant laws and regulations of the Russian Federation.

(h) To fail to pay fines or penalties or comply with forfeitures imposed for a violation of the relevant laws and regulations of the Russian Federation.

(i) To refuse or fail to allow a Russian observer to board a vessel subject to this subpart while fishing in the Russian EZ, or for Russian fishery resources.

(j) To fail to provide to a Russian observer aboard a vessel fishing in the Russian EZ or for Russian fishery resources, the courtesies and accommodations provided to ship’s officers.

(k) To assault, resist, oppose, impede, intimidate, threaten, interfere with, harass, or fail to cooperate, in any manner, with a Russian observer placed aboard a vessel subject to this subpart.
§ 300.161 Alternatives and exceptions.

(a) The requirements of §300.160 may be met by complying with one of the following alternatives to the marking requirement:

(1)(i) Conspicuously marking the outside of each container or package containing fish or wildlife with the word “fish” or “wildlife” as appropriate for its contents, or with the common name of its contents by species, and

(ii) Including an invoice, packing list, bill of lading, or similar document to accompany the shipment that accurately states the name and address of the shipper and consignee, states the total number of packages or containers in the shipment, and for each species in the shipment specifies: The common name that identifies the species (examples include: chinook (or king) salmon; bluefin tuna; and whitetail deer); and the number of that species (or other appropriate measure of quantity such as gross or net weight). The invoice, packing list, bill of lading, or equivalent document must be securely attached to the outside of one container or package in the shipment or otherwise physically accompany the shipment in a manner that makes it readily accessible for inspection; or

(2) Affixing the shipper’s wildlife import/export license number preceded by “FWS” on the outside of each container or package containing fish or wildlife if the shipper has a valid wildlife import/export license issued under authority of part 14 of this title. For each shipment marked in accordance with this paragraph (a)(2), the records maintained under §14.93(d) of this title must include a copy of the invoice, packing list, bill of lading, or other...
similar document that accurately states the information required by paragraph (a)(1)(ii) of this section.

(3) In the case of subcontainers or packages within a larger packing container, only the outermost container must be marked in accordance with this section, provided, that for live fish or wildlife that are packed in subcontainers within a larger packing container, if the subcontainers are numbered or labeled, the packing list, invoice, bill of lading, or other similar document, must reflect that number or label.

(4) A conveyance (truck, plane, boat, etc.) is not considered a container for purposes of requiring specific marking of the conveyance itself, provided that:

(i) The fish or wildlife within the conveyance is carried loosely or is readily identifiable, and is accompanied by the document required by paragraph (a)(1)(ii) of this section; or

(ii) The fish or wildlife is otherwise packaged and marked in accordance with this subpart.

(b) The requirements of §300.160 of chapter III of this title do not apply to containers or packages containing—

(1) Fox, nutria, rabbit, mink, chinchilla, marten, fisher, muskrat, and karakul that have been bred and born in captivity, or their products, if a signed statement certifying that the animals were bred and born in captivity accompanies the shipping documents;

(2) Fish or shellfish contained in retail consumer packages labeled pursuant to the Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq.; or

(3) Fish or shellfish that are landed by, and offloaded from, a fishing vessel (whether or not the catch has been carried by the fishing vessel interstate), as long as the fish or shellfish remain at the place where first offloaded.

Subpart L—Pacific Albacore Tuna Fisheries


Source: 69 FR 31535, June 4, 2004, unless otherwise noted.
§ 300.173 Vessel identification.

A U.S. vessel fishing under the Treaty as amended in 2002 must be marked with its name and vessel identification prominently displayed where they will be clearly visible both from the air and from a surface vessel. Vessel identification means the U.S. Coast Guard Documentation number (or if not documented, the state registration number) followed by the letter U in the same height and size as the numerals. Numerals and the letter U must meet the size requirements of §660.704 of chapter VI of this title.

§ 300.174 Logbook reports.

The owner of any U.S. vessel that fishes for albacore tuna in Canadian waters under the Treaty as amended in 2002 must maintain and submit to the Regional Administrator a logbook of catch and effort of such fishing. The logbook form will be provided to the vessel owner as soon as practicable after the request to be placed on the list of vessels. The logbook must be submitted to the Regional Administrator within 15 days of the end of a trip, regardless of whether the trip ends by reentry to U.S. waters or entry to Canada’s territorial sea, other Canadian waters in which fishing is not permitted, or a Canadian port. If the departure is due to exit to the high seas, the vessel operator must submit the logbook within 7 days of its next landing.

§ 300.175 Hail-in and hail-out reports.

(a) The operator of any U.S. vessel that wishes to engage in fishing in waters under the fisheries jurisdiction of Canada must file a hail-in report to the Reporting Office at least 24 hours prior to engaging in fishing in such waters.

(b) The operator of a U.S. vessel that has been fishing under the Treaty as amended in 2002 must file a hail-out report to the Reporting Office within 24 hours of departing waters under the fisheries jurisdiction of Canada.

§ 300.176 Prohibitions.

It is prohibited for the owner or operator of a U.S. fishing vessel to:

(a) Engage in fishing in waters under the fisheries jurisdiction of Canada if:

(1) The vessel has not been on the list of fisheries pursuant to §300.172 for at least 7 days;

(2) The vessel is not clearly marked as required under §300.173;

(3) The vessel operator has not filed a hail-in report with the Reporting Office as required under §300.175(a); or

(4) The Regional Administrator has announced that the U.S. limit on fishing under the Treaty as amended in 2002 has been reached.

(b) Fail to maintain and submit logbook records of catch and effort statistics as required under §300.174;

(c) Fail to report an exit from waters under the fisheries jurisdiction of Canada as required by §300.175(b).

Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species


Source: 69 FR 67277, Nov. 17, 2004, unless otherwise noted.

§ 300.180 Purpose and scope.

The regulations in this subpart are issued under the authority of the Atlantic Tunas Convention Act of 1975 (ATCA), Tuna Conventions Act of 1950, and Magnuson-Stevens Act. The regulations implement the recommendations of the International Commission for the Conservation of Atlantic Tunas
§ 300.181  Definitions.

Atlantic bluefin tuna means the species *Thunnus thynnus* found in the Atlantic Ocean.

BCD tag means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a BCD.

Bigeye tuna means the species *Thunnus obesus* found in any ocean area.

Bluefin Tuna Catch Document (BCD) means a bluefin tuna catch document issued by a nation implementing the ICCAT bluefin tuna catch documentation program.

BSD tag means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a bluefin tuna statistical document (BSD).

CBP means the U.S. Customs and Border Protection.

CCSBT means the Commission for the Conservation of Southern Bluefin Tuna established pursuant to the Convention for the Conservation of Southern Bluefin Tuna.

Consignment document means either an ICCAT Atlantic BCD or a catch document, issued by a nation to comply with the ICCAT BCD program; or an ICCAT, IATTC, IOTC, or CCSBT statistical document or a statistical document issued by a nation to comply with such statistical document programs.

Consignment documentation programs means the ICCAT, IOTC, IATTC or CCSBT catch document or statistical document programs.

Customs territory of the United States has the same meaning as in 19 CFR 101.1 and includes only the States, the District of Columbia, and Puerto Rico.

Dealer tag means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of Atlantic bluefin tuna sold to a dealer permitted under §635.4 of this title as required under §635.5(b) of this title.

Entered for consumption has the same meaning as in 19 CFR 141.9a(f) and generally refers to the filing of an entry summary for consumption with customs authorities, in proper form, with estimated duties attached.

Entry for consumption, for purposes of this subpart, has the same meaning as entry for consumption, withdrawal from warehouse for consumption, or entry for consumption of merchandise from a foreign trade zone, as provided under 19 CFR parts 101.1, 141, 144, and 146. For purposes of this subpart, “entry for consumption” generally means an import into the Customs territory of the United States or the separate customs territory of a U.S. insular possession, for domestic use, that is classified for customs purposes in the “consumption” category (entry type codes 00-08) or withdrawal from warehouse or foreign trade zone for consumption category (entry type codes 30-34 and 38). For purposes of this subpart, “entry for consumption” generally means an entry for consumption upon release from CBP or other customs custody, is not an entry for consumption under this definition.

Entry number, for purposes of this subpart, means the unique number/identifier assigned by customs authorities for each entry into a customs territory. For CBP, the entry number is assigned at the time of filing an entry summary (CBP Form 7501 or equivalent electronic filing) for entries into the Customs territory of the United States.

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. Fish or fish products regulated under this subpart means bluefin tuna, frozen bigeye tuna, southern bluefin tuna and swordfish and all such products of these species, except parts other than meat (e.g., heads, eyes, roe, guts, and tails), and shark fins. IATTC means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission. ICCAT means the International Commission for the Conservation of Atlantic Tunas established pursuant to the International Convention for the Conservation of Atlantic Tunas. Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing or introduction constitutes an importation within the meaning of the customs laws of the United States. Import, for purposes of this subpart, does not include any activity described in the previous sentence with respect to fish caught in the exclusive economic zone or by a vessel of the United States. For purposes of this subpart, goods brought into the United States from a U.S. insular possession, or vice-versa, are not considered imports.

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 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.

Insular possession of the United States or U.S. insular possession, for purposes of this subpart, means the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and other possessions listed under 19 CFR 7.2, that are outside the customs territory of the United States. Intermediate country means a country that exports to another country HMS previously imported as an entry for consumption by that nation. A shipment of HMS through a country on a through bill of lading, or in another manner that does not enter the shipment into that country as an entry for consumption, does not make that country an intermediate country under this definition. IOTC means the Indian Ocean Tuna Commission established pursuant to the Agreement for the Establishment of the Indian Ocean Tuna Commission approved by the Food and Agriculture Organization (FAO) Council of the United Nations. Pacific bluefin tuna means the species Thunnus orientalis found in the Pacific Ocean. Permit holder, for purposes of this subpart, means, unless otherwise specified, a person who obtains a trade permit under §300.182. Re-export, for purposes of this subpart, means the export of goods that were previously entered for consumption into the customs territory of a country. RFMO, as defined under this subpart, means regional fishery management organization, including CCSBT, IATTC, ICCAT, or IOTC. Separate customs territory of a U.S. insular possession means the customs territory of a U.S. insular possession when that possession’s customs territory is not a part of the Customs territory of the United States.
§ 300.182  HMS international trade permit.

(a) General. An importer, entering for consumption fish or fish products regulated under this subpart from any ocean area into the United States, or an exporter exporting or re-exporting such product, must possess a valid trade permit issued under this section. Importation of fish or fish products regulated under this subpart by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18. A resident agent or resident corporate surety provider, as specified under 19 CFR 141.18, must possess a valid trade permit when acting on behalf of a nonresident corporation when entering for consumption, exporting, or re-exporting fish or fish products regulated under this subpart from any ocean area.

(b) Application. A person must apply for a permit in writing on an appropriate form obtained from NMFS. The application must be completed, signed by the applicant, and submitted with required supporting documents, at least 30 days before the date on which the applicant wants to have the permit made effective. Application forms and instructions for their completion are available from NMFS.

(c) Issuance. NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required under this subpart. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) Duration. Any permit issued under this section is valid for the period specified on it, unless suspended or revoked.

(e) Alteration. Any permit that is substantially altered, erased, or mutilated is invalid.

(f) Replacement. NMFS may issue replacement permits. An application for a replacement permit is not considered a new application. An appropriate fee, consistent with paragraph (j) of this section, may be charged for issuance of a replacement permit.

(g) Transfer. A permit issued under this section is not transferable or assignable; it is valid only for the permit holder to whom it is issued.

(h) Inspection. The permit holder must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by NMFS for such purpose.

(i) Sanctions. The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) Fees. NMFS may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.
§ 300.183 Permit holder reporting and recordkeeping requirements.

(a) Biweekly reports. Any person required to obtain a trade permit under §300.182 must submit to NMFS, on forms supplied by NMFS, a biweekly report of entries for consumption, exports and re-exports of fish and fish products regulated under this subpart except shark fins.

(1) The report required to be submitted under this paragraph (a) must be received within 10 days after the end of each biweekly reporting period in which fish or fish products regulated under this subpart except shark fins were entered for consumption, exported, or re-exported. The bi-weekly reporting periods are the first day to the 15th day of each month, and the 16th day to the last day of each month.

(b) Recordkeeping. Any person required to obtain a trade permit under §300.182 must retain, at his/her principal place of business, a copy of each biweekly report and all supporting records for a period of 2 years from the date on which each report was submitted to NMFS.

(c) Other requirements and recordkeeping requirements. Any person required to obtain a trade permit under §300.182 is also subject to the reporting and recordkeeping requirements identified in §300.185.

(d) Inspection. Any person authorized to carry out the enforcement activities under the regulations in this subpart (authorized person) has the authority, without warrant or other process, to inspect, at any reasonable time: fish or fish products regulated under this subpart, biweekly reports, statistical documents, catch documents, re-export certificates, relevant sales receipts, import and export documentation, and any other records or reports made, retained, or submitted pursuant to this subpart. A permit holder must allow NMFS or an authorized person to inspect and copy, for any fish or fish products regulated under this subpart, any import and export documentation and any records required under this subpart, and the records, in any form, on which the completed reports are based, wherever they exist. Any agent of a person issued a trade permit under this part, or anyone responsible for importing, exporting, storing, packing, or selling fish or fish products regulated under this subpart, shall be subject to the inspection provisions of this section.
§ 300.184  
(e) Applicability of reporting and recordkeeping requirements. Reporting and recordkeeping requirements in this subpart apply to any person engaging in activities that require a trade permit, as set forth in §300.182(a), regardless of whether a trade permit has been issued to that person.  

[73 FR 31385, June 2, 2008]

§ 300.184 Species subject to permitting, documentation, reporting, and recordkeeping requirements.

The following fish or fish products are subject to the requirements of this subpart, regardless of ocean area of catch.

(a) Bluefin tuna. (1) The requirements of this subpart apply to bluefin tuna products including those identified by the following subheading numbers from the Harmonized Tariff Schedule of the United States (HTS):

(i) Fresh or chilled bluefin tuna (No. 0302.35.00.00) excluding fillets and other fish meat of HTS heading 0304.

(ii) Frozen bluefin tuna (No. 0303.45.00.00), excluding fillets and other fish meat of HTS heading 0304.

(2) In addition, bluefin tuna products in other forms (e.g., chunks, fillets, and products in airtight containers) that may be classified under any other HTS heading/subheading numbers are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, and tails) may be imported without said documentation.

(b) Southern bluefin tuna. (1) The requirements of this subpart apply to southern bluefin tuna products including those identified by the following subheading numbers from the HTS:

(i) Fresh or chilled southern bluefin tuna (No. 0302.36.00.00) excluding fillets and other fish meat of HTS heading 0304.

(ii) Frozen southern bluefin tuna (No. 0303.46.00.00), excluding fillets and other fish meat of HTS heading 0304.

(2) In addition, southern bluefin tuna products in other forms (e.g., chunks, fillets, and products in airtight containers) that may be classified under any other HTS heading/subheading numbers are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, and tails) may be imported without said documentation.

(c) Bigeye tuna. (1) The requirements of this subpart apply to frozen bigeye tuna products including those identified by the following subheading numbers from the HTS:

(i) Frozen bigeye tuna (No. 0303.44.00.00), excluding fillets and other fish meat of HTS heading 0304.

(ii) [Reserved]

(2) In addition, frozen bigeye tuna products in other forms (e.g., chunks and fillets) that may be classified under any other HTS heading/subheading numbers are subject to the documentation requirements of this subpart, except that frozen fish parts other than meat (e.g., heads, eyes, roe, guts, and tails), may be imported without said documentation.

(3) Bigeye tuna caught by purse seiners and pole and line (bait) vessels and destined for canneries within the United States, including all U.S. commonwealths, territories, and possessions, may be imported without the documentation required under this subpart.

(d) Swordfish. (1) The requirements of this subpart apply to swordfish products including those identified by the following subheading numbers from the HTS:

(i) Fresh or chilled swordfish, steaks (No. 0302.67.00.10).

(ii) Fresh or chilled swordfish (No. 0302.67.00.90), excluding fish fillets, steaks, and other fish meat of HTS heading 0304.

(iii) Frozen swordfish, steaks (No. 0303.61.00.10).

(iv) Frozen swordfish (No. 0303.61.00.90), excluding fillets, steaks, and other fish meat of HTS heading 0304.

(v) Fresh, or chilled swordfish, fillets and other fish meat (No. 0304.11.00.00).

(vi) Frozen swordfish, fillets (No. 0304.11.00.00).

(vii) Swordfish in bulk or in immediate containers weighing with their contents over 6.8 kg each (No. 0304.91.10.00).

(viii) Swordfish, other (No. 0304.91.90.00).

(2) In addition, swordfish products in other forms (e.g., chunks, fillets, and products in airtight containers) that
may be classified under any other HTS heading/subheading numbers, are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

(e) Shark fin. The permitting requirements of this subpart apply to shark fin products including those identified by the following subheading number from HTS: No. 0305.59.20.00.

§ 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.

(a) Imports—(1) Applicability of requirements. The documentation requirements in paragraph (a)(2) of this section apply to all imports of fish or fish products regulated under this subpart, into the Customs territory of the United States, except shark fins, or except when entered as a product of an American fishery landed overseas (HTS heading 9815). For insular possessions with customs territories separate from the Customs territory of the United States, documentation requirements in paragraph (a)(2) of this section apply only to entries for consumption. The reporting requirements of paragraph (a)(3) of this section do not apply to fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and are designated as an entry type other than entry for consumption as defined in §300.181.

(2) Documentation requirements. (i) All fish or fish products except for shark fins, regulated under this subpart, imported into the Customs territory of the United States or entered for consumption into a separate customs territory of a U.S. insular possession, from a country requiring a BCD tag on all such bluefin tuna available for sale, must be accompanied by the appropriate BCD tag issued by that country, and said BCD tag must remain on any bluefin tuna until it reaches its final destination. If the final import destination is the United States, which includes U.S. insular possessions, the BCD tag must remain on the bluefin tuna until it is cut.
into portions. If the bluefin tuna portions are subsequently packaged for domestic commercial use or re-export, the BCD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(ix) Customs forms can be obtained by contacting the local CBP port office; contact information is available at www.cbp.gov. For a U.S. insular possession, contact the local customs office for any forms required for entry.

(3) Reporting requirements. For fish or fish products regulated under this subpart, except shark fins, that are entered for consumption and whose final destination is within the United States, which includes U.S. insular possessions, a permit holder must submit to NMFS the original consignment document that accompanied the fish product as completed under paragraph (a)(2) of this section, to be received by NMFS along with the biweekly report as required under §300.183(a). A copy of the original completed consignment document must be submitted by said permit holder, to be received by NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was entered for consumption into the Customs territory of the United States, or the separate customs territory of a U.S. insular possession.

(b) Exports—(1) Applicability of requirements. The documentation and reporting requirements of this paragraph (b) apply to exports of fish or fish products regulated under this subpart, except shark fins, that were harvested by U.S. vessels and first landed in the United States, or harvested by vessels of a U.S. insular possession and first landed in that possession. This paragraph (b) also applies to products of American fisheries landed overseas.

(2) Documentation requirements. A permit holder must complete an original, approved, numbered, species-specific consignment document issued to that permit holder by NMFS for each export referenced under paragraph (b)(1) of this section. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific export consignment. A permit holder must provide on the consignment document the correct information and exporter certification. The consignment document must be validated, as specified in §300.187, by NMFS, or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export consignment.

(3) Reporting requirements. A permit holder must ensure that the original, approved, consignment document as completed under paragraph (b)(2) of this section accompanies the export of such products to their export destination. A copy of the consignment document must be received by NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was exported from the United States or a U.S. insular possession.

(c) Re-exports—(1) Applicability of requirements. The documentation and reporting requirements of this paragraph (c) apply to exports of fish or fish products regulated under this subpart, other than shark fins, that were previously entered for consumption into the Customs territory of the United States or the separate customs territory of a U.S. insular possession, through filing the documentation specified in paragraph (a) of this section. The requirements of this paragraph (c) do not apply to fish or fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and which are designated as an entry type other than entry for consumption as defined in §300.181.

(2) Documentation requirements. (i) If a permit holder re-exports a consignment of bluefin tuna, or subdivides or consolidates a consignment of fish or fish products regulated under this subpart, other than shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section, the permit holder must complete an original, approved, individually numbered, species-specific re-export certificate issued to that permit holder by NMFS for each such re-export consignment. Such an individually numbered document is not transferable and may be used only once by the permit holder.
§300.186 Completed and approved documents.

(a) NMFS-approved consignment documents and re-export certificates. A NMFS-approved consignment document or re-export certificate may be obtained from NMFS to accompany exports of fish or fish products regulated under this subpart from the Customs territory of the United States or the separate customs territory of a U.S. insular possession.

(b) Nationally approved forms from other countries. A nationally approved form from another country may be used for exports to the United States if that document strictly conforms to the information requirements and format of the applicable RFMO documents. An approved consignment document or re-export certificate for use in countries without a nationally approved form to accompany consignments to the United States may be obtained from the following websites, as appropriate:
§ 300.187 Validation requirements.

(a) Imports. The approved consignment document accompanying any import of any fish or fish product regulated under this subpart must be validated by a government official from the issuing country, unless NMFS waives this requirement pursuant to an applicable RFMO recommendation. NMFS will furnish a list of countries for which government validation requirements are waived to the appropriate customs officials. Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate statistical documents and re-export certificates for that country.

(b) Exports. The approved consignment document accompanying any export of fish or fish products regulated under this subpart must be validated, except pursuant to a waiver described in paragraph (d) of this section. Validation must be made by NMFS or another official authorized by NMFS.

(c) Re-exports. The approved re-export certificate accompanying any re-export of fish or fish products regulated under this subpart, as required under §300.185(c), must be validated, except pursuant to a waiver described in paragraph (d) of this section. Validation must be made by NMFS or another official authorized by NMFS.

(d) Validation waiver. Any waiver of government validation will be consistent with applicable RFMO recommendations concerning validation of consignment documents and re-export certificates. If authorized, such waiver of government validation may include exemptions from government validation for Pacific bluefin tuna with individual BCD tags affixed pursuant to paragraph (f) of this section or for Atlantic bluefin tuna with tags affixed pursuant to §635.5(b) of this title. Waivers will be specified on consignment documents and re-export certificates or accompanying instructions, or in a letter to permit holders from NMFS.

(e) Authorization for non-NMFS validation. An official from an organization or government agency seeking authorization to validate consignment documents or re-export certificates accompanying exports or re-exports from the United States, which includes U.S. commonwealths, territories, and possessions, must apply in writing, to NMFS, at an address designated by NMFS for such authorization. The application must indicate the procedures to be used for verification of information to be validated, list the names, addresses, and telephone/fax numbers of individuals to perform validation; procedures to be used to notify NMFS of validations; and an example of the stamp or seal to be applied to the consignment document or re-export certificate. NMFS, upon finding the applicant capable of verifying the information required on the consignment document or re-export certificate, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate consignment documents or re-export certificates accompanying exports or re-exports from the United States. The effective date of such authorization will be delayed as necessary for NMFS to notify the appropriate RFMO of other officials authorized to validate consignment document or re-export certificates. Non-government organizations given authorization to validate consignment documents or re-export certificates must renew such authorization on a yearly basis.

(f) BCD tags—(1) Issuance. NMFS will issue numbered BCD tags for use on Pacific bluefin tuna upon request to each permit holder.

(2) Transfer. BCD tags issued under this section are not transferable and are usable only by the permit holder to whom they are issued.

(3) Affixing BCD tags. At the discretion of permit holders, a tag issued under this section may be affixed to each Pacific bluefin tuna purchased or received by the permit holder. If so tagged, the tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

(4) Removal of tags. A tag, as defined in this subpart and affixed to any bluefin tuna, must remain on the tuna.
Int’l. Fishing and Related Activities

§ 300.189 Prohibitions.

In addition to the prohibitions specified in §300.4, and §§600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, the Atlantic Tunas Convention Act, the Magnuson-Stevens Act, the Tuna Conventions Act of 1950, or any other rules promulgated under those Acts. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Falsify information required on an application for a permit submitted under §300.182.

(b) Import as an entry for consumption, purchase, receive for export, export, or re-export any fish or fish products regulated under this subpart without a valid trade permit issued under §300.182.

(c) Fail to possess, and make available for inspection, a trade permit at the permit holder’s place of business, or alter any such permit as specified in §300.182.

(d) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in §300.183 or §300.185.

(e) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in §300.183 or §300.185.

(f) Fail to comply with the documentation requirements as specified in §300.185, §300.186 or §300.187, for fish or fish products regulated under this subpart that are imported, entered for consumption, exported, or re-exported.

(g) Fail to comply with the documentation requirements as specified in §300.186, for the importation, entry for consumption, exportation, or re-exportation of an Atlantic swordfish, or part thereof, that is less than the minimum size.

(h) Validate consignment documents or re-export certificates without authorization as specified in §300.187.

(i) Validate consignment documents or re-export certificates as provided for in §300.187 with false information.

(j) Remove any NMFS-issued numbered tag affixed to any Pacific bluefin tuna or any tag affixed to a bluefin tuna imported from a country with a
BCD tag program before removal is allowed under §300.187; fail to write the tag number on the shipping package or container as specified in §300.187; or reuse any NMFS-issued numbered tag affixed to any Pacific bluefin tuna, or any tag affixed to a bluefin tuna imported from a country with a BCD tag program, or any tag number previously written on a shipping package or container as prescribed by §300.187.

(k) Import, or attempt to import, any fish or fish product regulated under this subpart in a manner inconsistent with any ports of entry designated by NMFS as authorized by §300.188.

(l) Ship, transport, purchase, sell, offer for sale, import, enter for consumption, export, re-export, or have in custody, possession, or control any fish or fish product regulated under this subpart that was imported, entered for consumption, exported, or re-exported contrary to this subpart.

(m) Fail to provide a validated consignment document for imports at time of entry into the Customs territory of the United States of fish or fish products regulated under this subpart except shark fins, regardless of whether the importer, exporter, or re-exporter holds a valid trade permit issued pursuant to §300.182 or whether the fish products are imported as an entry for consumption.

(n) Import or accept an imported consignment of fish or fish products regulated under this subpart except shark fins, without an original, completed, approved, validated, species-specific consignment document and re-export certificate (if applicable) with the required information and exporter’s certification completed.

[61 FR 35550, July 5, 1996, as amended at 73 FR 31388, June 2, 2008]

Subpart N—Definition of Illegal, Unreported, or Unregulated Fishing

AUTHORITY: 16 U.S.C. 1826d et seq.

SOURCE: 72 FR 18405, Apr. 12, 2007, unless otherwise noted.

§300.200 Purpose.

The purpose of this subpart is to satisfy the requirement in section 403 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (‘‘Act’’) to publish a definition of the term ‘‘Illegal, unreported, or unregulated fishing’’ for purposes of the Act.

§300.201 Definition.

Illegal, unreported, or unregulated fishing means:

1. Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

2. Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; or

3. Fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

SOURCE: 74 FR 38554, Aug. 4, 2009, unless otherwise noted.

AUTHORITY: 16 U.S.C. 6901 et seq.

§300.210 Purpose and scope.

This subpart implements provisions of the Western and Central Pacific Fisheries Convention Implementation Act (Act) and applies to persons and vessels subject to the jurisdiction of the United States.

§300.211 Definitions.

In addition to the terms defined in §300.2 and those in the Act and in the Convention on the Conservation and Management of Highly Migratory Fish
Int'l. Fishing and Related Activities

§ 300.211

Stocks in the Western and Central Pacific Ocean, with Annexes (WCPF Convention), which was adopted at Honolulu, Hawaii, on September 5, 2000, by the Multilateral High-Level Conference on Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, the terms used in this subpart have the following meanings.


Aggregate or summary form means information structured in such a way which does not directly or indirectly disclose the identity or business of any person who submits such information.

Commercial, with respect to commercial fishing, means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce through sale, barter or trade.

Commission means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean established in accordance with the WCPF Convention, including its employees and contractors.

Confidential information means any observer information or any information submitted to the Secretary, a State fishery management agency, or a Marine Fisheries Commission by any person in compliance with any requirement or regulation under the Act or under the Magnuson-Stevens Fishery Conservation and Management Act.

Conservation and management measure means those conservation and management measures adopted by the Commission pursuant to Article 10 of the WCPF Convention.

Convention Area means all waters of the Pacific Ocean bounded to the south and to the east by the following line: From the south coast of Australia due south along the 141st meridian of east longitude to its intersection with the 55th parallel of south latitude; thence due east along the 55th parallel of south latitude to its intersection with the 150th meridian of east longitude; thence due south along the 150th meridian of east longitude to its intersection with the 60th parallel of south latitude; thence due east along the 60th parallel of south latitude to its intersection with the 130th meridian of west longitude; thence due north along the 130th meridian of west longitude to its intersection with the 4th parallel of south latitude; thence due west along the 4th parallel of south latitude to its intersection with the 150th meridian of west longitude; thence due north along the 150th meridian of west longitude.

Effort Limit Area for Purse Seine, or ELAPS, means, within the area between 20° N. latitude and 20° S. latitude, areas within the Convention Area that either are high seas or are within the jurisdiction of the United States, including the EEZ and territorial sea.

Fish aggregating device, or FAD, means any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any objects used for that purpose that are situated on board a vessel or otherwise out of the water. The meaning of FAD does not include a fishing vessel, provided that the fishing vessel is not used for the purpose of aggregating fish.

Fishing means using any vessel, vehicle, aircraft or hovercraft for any of the following activities, or attempting to do so:

(1) Searching for, catching, taking, or harvesting fish;
(2) Engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish for any purpose;
(3) Placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
(4) Engaging in any operations at sea directly in support of, or in preparation for, any of the activities previously described in paragraphs (1) through (3) of this definition, including, but not limited to, bunkering;
(5) Engaging in transshipment at sea, either unloading or loading fish.

Fishing day means, for the purpose of § 300.223, any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.
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Fishing trip means a period that a fishing vessel spends at sea between port visits and during which any fishing occurs.

Fishing vessel means any vessel used or intended for use for the purpose of fishing, including bunkering and other support vessels, carrier vessels and other vessels that unload or load fish in a transshipment, and any other vessel directly involved in fishing.

Hawaiian Archipelago means the Main and Northwestern Hawaiian Islands, including Midway Atoll.

High seas means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

Highly migratory species (or HMS) means any of the following species:

<table>
<thead>
<tr>
<th>Common name</th>
<th>Scientific name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albacore</td>
<td>Thunnus alalunga.</td>
</tr>
<tr>
<td>Pacific bluefin</td>
<td>Thunnus orientalis.</td>
</tr>
<tr>
<td>Southern bluefin</td>
<td>Thunnus maccoyii.</td>
</tr>
<tr>
<td>Tuna</td>
<td>Thunnus obesus.</td>
</tr>
<tr>
<td>Skipjack tuna</td>
<td>Katsuwonus pelamis.</td>
</tr>
<tr>
<td>Yellowfin tuna</td>
<td>Thunnus albacares.</td>
</tr>
<tr>
<td>Little tuna</td>
<td>Euthynus affinis.</td>
</tr>
<tr>
<td>Frigate mackerel</td>
<td>Auxis thazard; Auxis rochei.</td>
</tr>
<tr>
<td>Pomfrets</td>
<td>Family Brimidae.</td>
</tr>
<tr>
<td>Marlins</td>
<td>Tetraprurus angustirostris; Tetraprurus audax; Makaira mazara; Makaira indica; Makaira nigricans.</td>
</tr>
<tr>
<td>Sail-fishes</td>
<td>Istiophorus platypterus.</td>
</tr>
<tr>
<td>Swordfish</td>
<td>Xiphias gladius.</td>
</tr>
<tr>
<td>Dolphinfish</td>
<td>Coryphaena hippurus; Coryphaena equiselis.</td>
</tr>
<tr>
<td>Oceanic sharks</td>
<td>Hexanchus griseus; Cetorhinus maximus; Family Alopiidae; Rhinodon typus; Family Carcharhinidae; Family Sphyridae; Family Isuridae (or Lamnidae).</td>
</tr>
</tbody>
</table>

High seas fishing permit means a permit issued under §300.13.

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached, where “protected species zone” is used as defined at §665.12 of this title.

Marine Fisheries Commission means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific States Marine Fisheries Commission.

Member of the Commission means any Contracting Party to the WCPF Convention, and, unless otherwise stated in context, any territory that has been authorized by an appropriate Contracting Party to participate in the Commission and its subsidiary bodies pursuant to Article 43 of the WCPF Convention and any fishing entity that has agreed to be bound by the regime established by the WCPF Convention pursuant to Annex I of the WCPF Convention.

NOAA means the National Oceanic and Atmospheric Administration, Department of Commerce.

Observer employer/observer provider means any person that provides observers to fishing vessels, shoreside processors, or stationary floating processors under a requirement of the Act or the Magnuson-Stevens Fishery Conservation and Management Act.

Observer information means any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or processing observations, fish sampling or weighing data, vessel logbook data, vessel or processor-specific information.
(including any safety, location, or operating condition observations), and video, audio, photographic, or written documents.

Pacific Islands Regional Administrator means the Regional Administrator, Pacific Islands Region, NMFS, or a designee (1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814).

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

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.

Special Agent-In-Charge (or SAC) means the Special Agent-In-Charge, NOAA Office of Law Enforcement, Pacific Islands Division, or a designee (1601 Kapiolani Blvd., Suite 950, Honolulu, HI 96814; tel: (808) 203–2500; facsimile: (808) 203–2599; e-mail: pidvms@noaa.gov).

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

Transshipment means the unloading of fish from one fishing vessel and its direct transfer to, and loading on, another fishing vessel, either at sea or in port.

Vessel monitoring system (or VMS) means an automated, remote system that provides information about a vessel’s identity, location and activity, for the purposes of routine monitoring, control, surveillance and enforcement of area and time restrictions and other fishery management measures.

VMS unit, sometimes known as a “mobile transmitting unit,” means a transceiver or communications device, including all hardware and software, that is carried and operated on a vessel as part of a VMS.

WCPFC area endorsement means the authorization issued by NMFS under §300.212, supplementary to a valid high seas fishing permit and expressed as an endorsement to such permit, for a fishing vessel used for commercial fishing for highly migratory species on the high seas in the Convention Area.

WCPF Convention means the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (including any annexes, amendments, or protocols that are in force, or have come into force, for the United States) that was adopted at Honolulu, Hawaii, on September 5, 2000, by the Multilateral High-Level Conference on Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

WCPFC inspection vessel means any vessel that is:

1. Authorized by a member of the Commission to be used to undertake boarding and inspection of fishing vessels on the high seas pursuant to, and in accordance with, Article 26 of the WCPF Convention and procedures established by the Commission pursuant thereto;

2. Included in the Commission’s register of authorized inspection vessels and authorities or inspectors, established by the Commission in procedures pursuant to Article 26 of the WCPF Convention; and

3. Flying the WCPFC inspection flag established by the Commission.

WCPFC inspector means a person that is authorized by a member of the Commission to undertake boarding and inspection of fishing vessels on the high seas pursuant to, and in accordance with, the boarding and inspection procedures adopted by the Commission under Article 26 of the WCPF Convention, and referred to therein as a “fully authorized inspector” or “authorized inspector.”

WCPFC observer means a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission’s Regional Observer Programme, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the
§ 300.212 Vessel permit endorsements.

(a) Any fishing vessel of the United States used for commercial fishing for HMS on the high seas in the Convention Area must have on board a valid high seas fishing permit, or a copy thereof, that has a valid WCPFC Area Endorsement, or a copy thereof.

(b) Eligibility. Only a fishing vessel that has a valid high seas fishing permit is eligible to receive a WCPFC Area Endorsement.

(c) Application. (1) A WCPFC Area Endorsement may be applied for at the same time the underlying high seas permit is applied for, or at any time thereafter.

(2) The owner or operator of a high seas fishing vessel may apply for a WCPFC Area Endorsement by completing an application form, available from the Pacific Islands Regional Administrator, and submitting the complete and accurate application, signed by the applicant, to the Pacific Islands Regional Administrator, along with the required fees.

(3) The application must be accompanied by a bow-to-stern side-view photograph of the vessel in its current form and appearance. The photograph must meet the specifications prescribed on the application form and clearly show that the vessel is marked in accordance with the vessel identification requirements of § 300.217.

(d) Fees. NMFS will charge a fee to recover the administrative expenses of issuance of a WCPFC Area Endorsement. The amount of the fee will be determined in accordance with the procedures of the NOAA Finance Handbook, available from the Pacific Islands Regional Administrator, for determining administrative costs of each special product or service. The fee is specified in the application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the WCPFC Area Endorsement. Payment by a commercial instrument later determined to be insufficiently funded is grounds for invalidating the WCPFC Area Endorsement.

(e) Issuance. (1) The Pacific Islands Regional Administrator will issue a WCPFC Area Endorsement within 30 days of receipt of a complete application that meets the requirements of this section and upon payment of the appropriate fee.

(2) If an incomplete or improperly completed application is submitted, the Pacific Islands Regional Administrator will notify the applicant of such deficiency within 30 days of the date of receipt of the application. If the applicant fails to correct the deficiency and send a complete and accurate application to the Pacific Islands Regional Administrator within 30 days of the date of notification of deficiency, the application will be considered withdrawn and no further action will be taken to process the application. Following withdrawal, the applicant may at any time submit a new application for consideration.

(f) Validity. A WCPFC Area Endorsement issued under this subpart expires upon the expiration of the underlying high seas fishing permit, and shall be void whenever the underlying high seas fishing permit is void, suspended, sanctioned, or revoked. A WCPFC Area Endorsement is also subject to suspension or revocation independent of the high seas fishing permit. Renewal of a WCPFC Area Endorsement prior to its expiration is the responsibility of the WCPFC Area Endorsement holder.

(g) Change in application information. Any change in the required information provided in an approved or pending application for a WCPFC Area Endorsement must be reported by the vessel owner or operator to the Pacific Islands Regional Administrator in writing within 15 days of such change.
§ 300.214 Compliance with laws of other nations.

(a) The owner and operator of a fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required:

(1) May not use the vessel for fishing, retaining fish on board, or landing fish in areas under the jurisdiction of a nation other than the United States unless any license, permit, or other authorization that may be required by such other nation for such activity has been issued with respect to the vessel.

(2) Shall, when the vessel is in the Convention Area in areas under the jurisdiction of a member of the Commission other than the United States, operate the vessel in compliance with, and ensure its crew complies with, the applicable national laws of such member.

(b) The owner and operator of a fishing vessel of the United States shall ensure that:

(1) The vessel is not used for fishing for HMS, retaining HMS on board, or landing HMS in the Convention Area in areas under the jurisdiction of a nation other than the United States unless any license, permit, or other authorization that may be required by such other nation for such activity has been issued with respect to the vessel.

(2) If the vessel is used for commercial fishing for HMS, including transshipment of HMS, in the Convention Area in areas under the jurisdiction of a member of the Commission other than the United States, the vessel is operated in compliance with, and the vessel crew complies with, the applicable laws of such member, including any laws related to carrying vessel observers or the operation of VMS units.

(c) For the purpose of this section, the meaning of transshipment does not...
§ 300.215 Observers.

(a) Applicability. This section applies to any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required.

(b) Notifications. [Reserved]

(c) Accommodating observers. All fishing vessels subject to this section must carry, when directed to do so by NMFS, a WCPFC observer on fishing trips during which the vessel at any time enters or is within the Convention Area. The operator and each member of the crew of the fishing vessel shall act in accordance with this paragraph with respect to any WCPFC observer.

1. The operator and crew shall allow and assist WCPFC observers to:

   (i) Embark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator;

   (ii) Have access to and use of all facilities and equipment on board as necessary to conduct observer duties, including, but not limited to: full access to the bridge, the fish on board, and areas which may be used to hold, process, weigh and store fish; full access to the vessel’s records, including its logs and documentation, for the purpose of inspection and copying; access to, and use of, navigational equipment, charts and radios; and access to other information relating to fishing;

   (iii) Remove samples;

   (iv) Disembark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator; and

   (v) Carry out all duties safely.

2. The operator shall provide the WCPFC observer, while on board the vessel, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel, at no expense to the WCPFC observer.

3. The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass or interfere with WCPFC observers in the performance of their duties, or attempt to do any of the same.

(d) Related observer requirements. Observers deployed by NMFS pursuant to regulations issued under other statutory authorities on vessels used for commercial fishing for HMS in the Convention Area will be deemed by NMFS to have been deployed pursuant to this section.

§ 300.216 Transshipment.

(a) Transshipment monitoring. [Reserved]

(b) Transshipment restrictions. Fish may not be transshipped from a purse seine fishing vessel of the United States at sea in the Convention Area, and a fishing vessel of the United States may not be used to receive a transshipment of fish from a purse seine fishing vessel at sea in the Convention Area.

§ 300.217 Vessel identification.

(a) General. (1) A fishing vessel must be marked in accordance with the requirements of this section in order for a WCPFC Area Endorsement to be issued for the fishing vessel.

(2) Any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required shall be marked for identification purposes in accordance with this section, and all parts of such markings shall be clear, distinct, uncovered, and unobstructed.

(3) Any boat, skiff, or other watercraft carried on board the fishing vessel shall be marked with the same identification markings as required under this section for the fishing vessel and shall be marked in accordance with this section.

(b) Marking. (1) Vessels shall be marked in accordance with the identification requirements of §300.14(b)(2), and if an IRCs has not been assigned to the vessel, then the Federal, State, or other documentation number used in lieu of the IRCs must be preceded by the characters “USA” and a hyphen (that is, “USA-”).
§ 300.218 Reporting and recordkeeping requirements.

(a) Fishing reports.—(1) General. The owner or operator of any fishing vessel of the United States used for commercial fishing for HMS in the Pacific Ocean must maintain and report to NMFS catch and effort and other operational information for all such fishing activities. The reports must include at a minimum: identification information for the vessel; description of fishing gear used; dates, times and locations of fishing; and species and amounts of fish retained and discarded.

(2) Reporting options. Vessel owners and operators shall be deemed to meet the recordkeeping and reporting requirements of paragraph (a)(1) of this section by satisfying all applicable catch and effort reporting requirements as listed below:

(i) Western Pacific pelagic fisheries. Fishing activities subject to the reporting requirements of §665.14 of this title must be maintained and reported in the manner specified in that section.

(ii) West Coast HMS fisheries. Fishing activities subject to the reporting requirements of §660.708(a) of this title must be maintained and reported in the manner specified in that section.

(iii) Pacific tuna fisheries. Fishing activities subject to the reporting requirements of §300.22 must be maintained and reported in the manner specified in that section.

(iv) South Pacific tuna fisheries. Fishing activities subject to the reporting requirements of §300.34(c)(1) must be maintained and reported in the manner specified in that section.

(v) High seas fisheries. Fishing activities subject to the reporting requirements of §300.17(a) must be maintained and reported in the manner specified in §300.17(a) and (b).

(vi) Canada Albacore fisheries. Fishing activities subject to the reporting requirements of §300.174 must be maintained and reported in the manner specified in that section.

(vii) State-regulated fisheries. Catch and effort information for fishing activities for which reporting of effort, catch, and/or landings is required under State law must be maintained and reported in the manner specified under such State law.

(viii) Other fisheries. All other fishing activities subject to the requirement of paragraph (a)(1) of this section must be recorded on paper or electronic forms specified or provided by the Pacific Islands Regional Administrator. Such forms will specify the information required, which may include: identification information for the vessel; description of fishing gear used; dates, times and locations of fishing; and species and amounts of fish retained and discarded. All information specified by the Pacific Islands Regional Administrator on such forms must be recorded on paper or electronically within 24 hours of the completion of each fishing day. The information recorded must, for each fishing day, include a dated signature of the vessel operator or other type of authentication as specified by the Pacific Islands Regional Administrator. The vessel operator must, unless otherwise specified by the Pacific Islands Regional Administrator, submit the information for each fishing day to the Pacific Islands Regional Administrator within 72 hours of the first landing or port call after the fishing day, and must submit the information in the manner specified by the Pacific Islands Regional Administrator.

(3) Exceptions. (i) Catch and effort information for fishing activities that take place in waters under State jurisdiction must be maintained and reported only in cases where the reporting of such activity is required under State law or under Federal regulations
§ 300.219 Vessel monitoring system.

(a) SAC and VMS Helpdesk contact information and business hours. The contact information for the SAC for the purpose of this section is: 1601 Kapiolani Blvd., Suite 950, Honolulu, HI 96814; telephone: (808) 203–2500; facsimile: (808) 203–2599; e-mail: pidvms@noaa.gov. The business hours of the SAC for the purpose of this section are: Monday through Friday, except Federal holidays, 8 a.m. to 4:30 p.m., Hawaii Standard Time. The contact information for the NOAA Office of Law Enforcement’s VMS Helpdesk for the purpose of this section is: telephone: (888) 219–9228; e-mail: ole.helpdesk@noaa.gov. The business hours of the VMS Helpdesk for the purpose of this section are: Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

(b) Applicability. This section applies to any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required.

(c) Provision of vessel position information—(1) VMS unit installation. The vessel owner and operator shall obtain and have installed on the fishing vessel, in accordance with instructions provided by the SAC and the VMS unit manufacturer, a VMS unit that is type-approved by NMFS for fisheries governed under the Act. The vessel owner and operator shall authorize the Commission and NMFS to receive and relay transmissions from the VMS unit. The vessel owner and operator shall arrange for a NMFS-approved mobile communications service provider to receive and relay transmissions from the VMS unit to NMFS. NMFS makes available lists of type-approved VMS units and approved mobile communications service providers.

(2) VMS unit activation. If the VMS unit has not yet been activated as described in this paragraph, or if the VMS unit has been newly installed or reinstalled, or if the mobile communications service provider has changed since the previous activation, or if directed by the SAC, the vessel owner and operator shall, prior to the vessel leaving port:

(i) Turn on the VMS unit to make it operational;

(ii) Submit a written activation report, via mail, facsimile or e-mail, to the SAC, that includes: the vessel’s name; the vessel’s official number; the VMS unit manufacturer and identification number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(iii) Receive verbal or written confirmation from the SAC that proper transmissions are being received from the VMS unit.

(3) VMS unit operation. The vessel owner and operator shall continuously operate the VMS unit at all times, except that the VMS unit may be shut down while the vessel is at port or otherwise not at sea, provided that the owner and operator:

(i) Prior to shutting down the VMS unit, report to the SAC or the NOAA Office of Law Enforcement’s VMS Helpdesk via facsimile or e-mail, the following information: the intent to shut down the VMS unit; the vessel’s name; the vessel’s official number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(ii) When turning the VMS unit back on, report to the SAC or the NOAA Office of Law Enforcement’s VMS Helpdesk, via mail, facsimile or e-mail, the following information: that the VMS unit has been turned on; the vessel’s name; the vessel’s official number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(iii) Prior to leaving port, receive verbal or written confirmation from the SAC that proper transmissions are being received from the VMS unit.

(4) Failure of VMS unit. If the vessel owner or operator becomes aware that...
the VMS unit has become inoperable or that transmission of automatic position reports from the VMS unit has been interrupted, or if notified by NMFS or the USCG that automatic position reports are not being received from the VMS unit or that an inspection of the VMS unit has revealed a problem with the performance of the VMS unit, the vessel owner and operator shall comply with the following requirements:

(i) If the vessel is at port: The vessel owner or operator shall repair or replace the VMS unit and ensure it is operable before the vessel leaves port.

(ii) If the vessel is at sea: The vessel owner, operator, or designee shall contact the SAC by telephone, facsimile, or e-mail at the earliest opportunity during the SAC’s business hours and identify the caller and vessel. The vessel operator shall follow the instructions provided by the SAC, which could include, but are not limited to: ceasing fishing, stowing fishing gear, returning to port, and/or submitting periodic position reports at specified intervals by other means; and, repair or replace the VMS unit and ensure it is operable before starting the next trip.

(5) Related VMS requirements. Installing, carrying and operating a VMS unit in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units shall be deemed to satisfy the requirements of paragraph (c) of this section, provided that the VMS unit is operated continuously and at all times while the vessel is at sea, the VMS unit is type-approved by NMFS for fisheries governed under the Act, the owner and operator have authorized the Commission and NMFS to receive and relay transmissions from the VMS unit, and the specific requirements of paragraph (c)(4) of this section are complied with. If the VMS unit is owned by NMFS, the requirement under paragraph (c)(4) of this section to repair or replace the VMS unit will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the VMS unit is operable before leaving port or starting the next trip.

(d) Costs. The vessel owner and operator shall be responsible for all costs associated with the purchase, installation and maintenance of the VMS unit, and for all charges levied by the mobile communications service provider as necessary to ensure the transmission of automatic position reports to NMFS as required in paragraph (c) of this section. However, if the VMS unit is being carried and operated in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units, the vessel owner and operator shall not be responsible for costs that are the responsibility of NMFS under those regulations.

(e) Tampering. The vessel owner and operator shall ensure that the VMS unit is not tampered with, disabled, destroyed, damaged or operated improperly, and that its operation is not impeded or interfered with.

(f) Inspection. The vessel owner and operator shall make the VMS unit, including its antenna, connectors and antenna cable, available for inspection by authorized officers, by employees of the Commission, by persons appointed by the Executive Director of the Commission for this purpose, and, when the vessel is on the high seas in the Convention Area, by WCPFC inspectors.

(g) Access to data. The vessel owner and operator shall make the vessel’s position data obtained from the VMS unit or other means immediately and always available for inspection by NOAA personnel, USCG personnel, and authorized officers, and shall make the vessel’s position data for positions on the high seas in the Convention Area immediately and always available to WCPFC inspectors and the Commission.

(h) Communication devices. (1) To facilitate communication with management and enforcement authorities regarding the functioning of the VMS unit and other purposes, the vessel operator shall, while the vessel is at sea, carry on board and continuously monitor a two-way communication device that is capable of real-time communication with the SAC. The VMS unit used to fulfill the requirements of paragraph (c) of this section may not
§ 300.220 Confidentiality of information.

(a) Types of information covered. NOAA is authorized under the Act and other statutes to collect and maintain information. This section applies to confidential information collected under authority of the Act.

(b) Collection and maintenance of information—(1) General. (i) Any information required to be submitted to the Secretary, a State fishery management agency, or a Marine Fisheries Commission under the Act shall be provided to the Assistant Administrator.

(ii) Any observer information collected under the Act shall be provided to the Assistant Administrator.

(iii) Appropriate safeguards as specified by NOAA Administrative Order (NAO) 216–100 or other NOAA/NMFS internal procedures, apply to the collection and maintenance of any information collected pursuant to paragraphs (b)(1) or (b)(2) of this section, whether separated from identifying particulars or not, so as to ensure their confidentiality. Information submitted to the Secretary in compliance with this subpart shall not be disclosed except as authorized herein or by other law or regulation.

(2) Collection agreements with States or Marine Fisheries Commissions. (i) The Assistant Administrator may enter into an agreement with a State or a Marine Fisheries Commission authorizing the State or Marine Fisheries Commission to collect information on behalf of the Secretary.

(ii) To enter into a cooperative collection agreement with a State or a Marine Fisheries Commission, NMFS must ensure that:

(A) The State has authority to protect the information from disclosure in a manner at least as protective as these regulations.

(B) The Marine Fisheries Commission has enacted policies and procedures to protect the information from public disclosure.

(3) Collection services by observer employer/observer provider. The Assistant Administrator shall make the following determinations before issuing a permit or letting a contract or grant to an organization that provides observer services:

(i) That the observer employer/observer provider has enacted policies and procedures to protect the information from public disclosure;

(ii) That the observer employer/observer provider has entered into an agreement with the Assistant Administrator that prohibits public disclosure and specifies penalties for such disclosure; and

(iii) That the observer employer/observer provider requires each observer to sign an agreement with NOAA/NMFS that prohibits public disclosure of observer information and specifies penalties for such disclosure.

(c) Access to information—(1) General. This section establishes procedures intended to manage, preserve, and protect the confidentiality of information submitted in compliance with the Act and its implementing regulations. This section applies to those persons and organizations deemed eligible to access confidential information subject to the terms and conditions described in this section and the Act. All other persons requesting access to confidential information should follow the procedures.
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set forth in the Freedom of Information Act, 5 U.S.C. 552, 15 CFR parts 15 and 903, NAO 205–14, and Department of Commerce Administrative Orders 205–12 and 205–14, as applicable. Persons eligible to access confidential information under this section shall submit to NMFS a written request with the following information:

(i) The specific types of information requested;
(ii) The relevance of the information to requirements of the Act;
(iii) The duration of time that access will be required: continuous, infrequent, or one-time; and
(iv) An explanation of why the availability of information in aggregate or summary form from other sources would not satisfy the requested needs.

(2) Federal employees. Confidential information will only be accessible to the following:

(i) Federal employees who are responsible for administering, implementing, or enforcing the Act. Such persons are exempt from the provisions of paragraph (c)(1) of this section.
(ii) NMFS employees responsible for the collection, processing, and storage of the information or performing research that requires access to confidential information. Such persons are exempt from the provisions of paragraph (c)(1) of this section.
(iii) Other NOAA employees on a demonstrable need-to-know basis.
(iv) Persons that need access to confidential information to perform functions authorized under a Federal contract, cooperative agreement, or grant awarded by NOAA/NMFS.

(3) Commission. (i) Confidential information will be subject to disclosure to the Commission, but only if:

(A) The information is required to be submitted to the Commission under the requirements of the WCFP Convention or the decisions of the Commission;
(B) The provision of such information is in accord with any agreement between the United States and the Commission that includes provisions to prevent public disclosure of the identity or business of any person.

(ii) The provisions of paragraph (c)(1) of this section do not apply to the release of confidential information to the Commission.

(4) State employees. Confidential information may be made accessible to a State employee only by written request and only upon the determination by NMFS that at least one of the following conditions is met:

(i) The employee has a need for confidential information to further the Department of Commerce’s mission, and 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 Act and that the State will exercise this authority to prohibit public disclosure of the identity or business of any person.

(ii) The employee enforces the Act or fishery management plans prepared under the authority of the Magnuson-Stevens Conservation and Management Act, and the State for which the employee works has entered into a fishery enforcement agreement with the Secretary and the agreement is in effect.

(5) Marine Fisheries Commission employees. Confidential information may be made accessible to Marine Fisheries Commission employees only upon written request of the Marine Fisheries Commission and only if the request demonstrates a need for confidential information to further the Department of Commerce’s mission, and the executive director of the Marine Fisheries Commission has entered into a written agreement with the Assistant Administrator. The agreement shall contain a finding by the Assistant Administrator that the Marine Fisheries Commission has confidentiality protection policies and procedures to protect from public disclosure information that would reveal the identity or business of any person.
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(6) Homeland and national security activities. Confidential information may be made accessible to Federal employees for purposes of promoting homeland security or national security at the request of another Federal agency only if:

(i) Providing the information promotes homeland security or national security purposes including the USCG’s homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)); and

(ii) The requesting agency has entered into a written agreement with the Assistant Administrator. The agreement shall contain a finding by the Assistant Administrator that the requesting agency has confidentiality policies and procedures to protect the information from public disclosure.

(7) Observer and observer employer/observer provider. Confidential information used for purposes other than those contained in this subpart or in part 600 of this title may only be used by observers and observer employers/observer providers in order:

(i) To adjudicate observer certifications;

(ii) To allow the sharing of observer information among the observers and between observers and observer employers/observer providers as necessary to train and prepare observers for deployments on specific vessels; or

(iii) To validate the accuracy of the observer information collected.

(8) Persons having access to confidential information may be subject to criminal and civil penalties for unauthorized use or disclosure of confidential information. See 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NAO 216–100.

(d) Control system. (1) The Assistant Administrator maintains a control system to protect the identity or business of any person who submits information in compliance with any requirement or regulation under the Act. The control system:

(i) Identifies those persons who have access to the information;

(ii) Contains procedures to limit access to confidential information to authorized users; and

(iii) Provides handling and physical storage protocols for safeguarding of the information.

(2) This system requires that all persons who have authorized access to the information be informed of the confidentiality of the information. These persons, with the exception of employees and contractors of the Commission, are required to sign a statement that they:

(i) Have been informed that the information is confidential; and

(ii) Have reviewed and are familiar with the procedures to protect confidential information.

(e) Release of information. (1) The Assistant Administrator will not disclose to the public any confidential information, except:

(i) When the Secretary has obtained from the person who submitted the information an authorization to release the information to persons for reasons not otherwise provided for in this subpart. In situations where a person provides information through a second party, both parties are considered joint submitters of information and either party may request a release. The authorization to release such information will require:

(A) A written statement from the person(s) who submitted the information authorizing the release of the submitted information; and

(B) A finding by the Secretary that such release does not violate other requirements of the Act or other applicable laws.

(ii) Observer information as authorized by a fishery management plan (prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act) or regulations under the authority of the North Pacific Council to allow disclosure of observer information to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification.

(iii) When such information is required to be submitted for any determination under a limited access program.

(iv) When required by a court order.
§ 300.221 Facilitation of enforcement and inspection.

In addition to the facilitation of enforcement provisions of §300.5, the following requirements apply to this subpart.

(a) A fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required, including the vessel’s operator and each member of the vessel’s crew shall, when in the Convention Area, be subject to the following requirements:

(1) The Federal Certificate of Documentation or State or other documentation for the vessel, or a copy thereof, shall be carried on board the vessel. Any license, permit or other authorization to use the vessel to fish, retain fish, transship fish, or land fish issued by a nation or political entity other than the United States, or a copy thereof, shall be carried on board the vessel. These documents shall be made available for inspection by any authorized officer. If the vessel is on the high seas, the above-mentioned licenses, permits, and authorizations shall also be made available for inspection by any WCPFC inspector. If the vessel is in an area under the jurisdiction of a member of the Commission other than the United States, they shall be made available for inspection by any authorized enforcement official of that member.

(b) The operator and crew of a fishing vessel of the United States, when on the high seas in the Convention Area, shall be subject to the following requirements:

(1) The operator and crew shall immediately comply with instructions given by an officer on board a WCPFC inspection vessel to move the vessel to a safe location and/or to stop the vessel, provided that the officer has, prior to the issuance of such instructions:

(2) All requests from the public for confidential information will be processed in accordance with the requirements of 5 U.S.C. 552a, 15 CFR parts 4 and 903, NAO 205–14, and Department of Commerce Administrative Orders DAO 205–12 and DAO 205–14. Nothing in this section is intended to confer any right, claim, or entitlement to obtain access to confidential information not already established by law.

(3) NMFS does not release or allow access to confidential information in its possession to members of advisory groups of the Regional Fishery Management Councils established under the Magnuson-Stevens Fishery Conservation and Management Act, except as provided by law.

[75 FR 3352, Jan. 21, 2010]
(i) Provided information identifying his or her vessel as a WCPFC inspection vessel, including its name, registration number, IRCS and contact frequency; and

(ii) Communicated to the vessel operator his or her intention to board and inspect the vessel under the authority of the Commission and pursuant to the boarding and inspection procedures adopted by the Commission.

(2) The operator and crew shall accept and facilitate prompt and safe boarding by any WCPFC inspector, provided that an officer on board the WCPFC inspection vessel has, prior to such boarding:

(i) Provided information identifying his or her vessel as a WCPFC inspection vessel, including its name, registration number, IRCS and contact frequency; and

(ii) Communicated to the vessel operator an intention to board and inspect the vessel under the authority of the Commission and pursuant to the boarding and inspection procedures adopted by the Commission.

(3) Provided that the WCPFC inspector has presented to the vessel operator his or her identity card identifying him or her as an inspector authorized to carry out boarding and inspection procedures under the auspices of the Commission, and a copy of the text of the relevant conservation and management measures in force pursuant to the WCPF Convention in the relevant area of the high seas, the operator and crew shall:

(i) Cooperate with and assist any WCPFC inspector in the inspection of the vessel, including its authorizations to fish, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the conservation and management measures in force pursuant to the WCPF Convention;

(ii) Allow any WCPFC inspector to communicate with the crew of the WCPFC inspection vessel, the authorities of the WCPFC inspection vessel and the authorities of the vessel being inspected;

(iii) Provide any WCPFC inspector with reasonable facilities, including, where appropriate, food and accommodation; and

(iv) Facilitate safe disembarkation by any WCPFC inspector.

(4) If the operator or crew refuses to allow a WCPFC inspector to board and inspect the vessel in the manner described in this paragraph, they shall offer to the WCPFC inspector an explanation of the reason for such refusal.

(5) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, interfere with, unduly obstruct or delay any WCPFC inspector in the performance of such person’s duties, or attempt to do any of the same.

(c) When a fishing vessel of the United States that is used for commercial fishing for HMS is in the Convention Area and is either on the high seas without a valid WCPFC Area Endorsement or is in an area under the jurisdiction of a nation other than the United States without an authorization by that nation to fish in that area, all the fishing gear and fishing equipment on the fishing vessel shall be stowed in a manner so as not to be readily available for fishing, specifically:

(1) If the fishing vessel is used for purse seining and equipped with purse seine gear, the boom must be lowered as far as possible so that the vessel cannot be used for fishing but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and the launches must be secured.

(2) If the fishing vessel is used for longlining and equipped with longline gear, the branch or dropper lines and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

(3) If the fishing vessel is used for trolling and equipped with troll gear, no lines or hooks may be placed in the water; if outriggers are present on the vessel, they must be secured in a vertical position; if any power-operated haulers are located on deck they must be covered in such a manner that they are not readily available for use.

(4) If the fishing vessel is used for pole-and-line fishing and equipped with pole-and-line gear, any poles rigged
with lines and hooks must be stowed in such a manner that they are not readily available for use.

(5) For any other type of fishing vessel, all the fishing gear and equipment on the vessel must be stowed in a manner so as not to be readily available for use.

(d) For the purpose of this section, the meaning of transshipment does not include transfers that exclusively involve fish that have been previously landed and processed.

(75 FR 3354, Jan. 21, 2010)

§ 300.222 Prohibitions.

In addition to the prohibitions in §300.4, it is unlawful for any person to:

(a) Fail to obtain and have on board a fishing vessel a valid WCPFC Area Endorsement as required in §300.212.

(b) Fail to report a change in the information required in an application for a WCPFC Area Endorsement as required in §300.212(g).

(c) Fail to provide information on vessels and fishing authorizations or fail to report changes in such information as required in §300.213.

(d) Fish for, retain on board, or land fish, including HMS, in areas under the jurisdiction of a nation other than the United States without authorization by such nation to do so, as provided in §300.214(a)(1) and (b)(1).

(e) Operate a fishing vessel in violation of, or fail to ensure the vessel crew complies with, the applicable national laws of a member of the Commission other than the United States, including any laws related to carrying vessel observers or the operation of VMS units, as provided in §300.214(a)(1) and (b)(1).

(f) Fail to carry, allow on board, or assist a WCPFC observer as required in §300.215.

(g) Assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, or interfere with a WCPFC observer, or attempt to do any of the same, or fail to provide a WCPFC observer with food, accommodation or medical facilities, as required in §300.215.

(h) Offload, receive, or load fish from a purse seine vessel at sea in the Convention Area, in contravention of §300.216.

(i) Fail to mark a fishing vessel or a boat, skiff, or other watercraft on board the fishing vessel as required in §300.217, or remove, obscure, or obstruct such markings, or attempt to do so.

(j) Fail to maintain and report catch and effort information or transshipment information as required in §300.218.

(k) Fail to install, activate, or operate a VMS unit as required in §300.219(c).

(l) In the event of VMS unit failure or interruption, fail to repair or replace a VMS unit, fail to notify the SAC and follow the instructions provided, or otherwise fail to act as provided in §300.219(c)(4).

(m) Disable, destroy, damage or operate improperly a VMS unit installed under §300.219, or attempt to do any of the same, or fail to ensure that its operation is not impeded or interfered with, as provided in §300.219(e).

(n) Fail to make a VMS unit installed under §300.219 or the position data obtained from it available for inspection, as provided in §300.219(f) and (g).

(o) Fail to carry on board and monitor communication devices as required in §300.219(h).

(p) Fail to carry on board and make available the required vessel documentation and authorizations as required in §300.221(a)(1).

(q) Fail to continuously monitor the specified radio frequencies as required in §300.221(a)(2).

(r) Fail to carry on board, and keep accessible, an up-to-date copy of the International Code of Signals as required in §300.221(a)(3).

(s) Fail to provide access to, or fail to allow and assist, a WCPFC transshipment monitor as required in §300.221(a)(4).

(t) Fail to comply with the instructions of, or fail to accept and facilitate prompt and safe boarding by, a WCPFC inspector, or fail to cooperate and assist a WCPFC inspector in the inspection of a fishing vessel, as provided in §300.221(b).

(u) Fail to stow fishing gear or fishing equipment as required in §300.221(c).

(v) Use a fishing vessel equipped with purse seine gear to fish in the ELAPS
§ 300.223 Purse seine fishing restrictions.

All dates used in this section are in Universal Coordinated Time, also known as UTC; for example: the year 2009 starts at 00:00 on January 1, 2009 UTC and ends at 24:00 on December 31, 2009 UTC; and August 1, 2009, begins at 00:00 UTC and ends at 24:00 UTC.

(a) Fishing effort limits. This section establishes limits on the number of fishing days that fishing vessels of the United States equipped with purse seine gear may collectively spend in the ELAPS.

(1) The limits are as follows:
   (i) For each of the years 2009, 2010, and 2011, there is a limit of 3,882 fishing days.
   (ii) For each of the two-year periods 2009–2010 and 2010–2011, there is a limit of 6,470 fishing days.
   (iii) For the three-year period 2009–2011, there is a limit of 7,764 fishing days.

(2) NMFS will determine the number of fishing days spent in the ELAPS in each of the applicable time periods using data submitted in logbooks and other available information. After NMFS determines that the limit in any applicable time period is expected to be reached by a specific future date, and at least seven calendar days in advance of the closure date, NMFS will publish a notice in the Federal Register announcing that the purse seine fishery in the ELAPS will be closed starting on that specific future date and will remain closed until the end of the applicable time period.

(b) Set a purse seine around, near or in association with a FAD or deploy or service a FAD in contravention of § 300.223(b).

(c) Use a fishing vessel equipped with purse seine gear to fish in an area closed under § 300.223(c).

(d) Discard fish at sea in the ELAPS in contravention of § 300.223(d).

(e) Fail to carry an observer as required in § 300.223(e).

(f) Fail to comply with the sea turtle mitigation gear and handling requirements of § 300.223(f).

(g) Use a fishing vessel to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of § 300.224(e)(1) or (e)(2).

(h) Use a fishing vessel to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of § 300.224(e)(3).

(i) Fail to stow longline gear as required in § 300.224(e)(4).

\textit{In\'l. Fishing and Related Activities}  

\textbf{§ 300.223}  

(c) Closed areas. (1) Effective January 1, 2010, through December 31, 2011, a fishing vessel of the United States may not be used to fish with purse seine gear on the high seas within either Area A or Area B, the respective boundaries of which are the four lines connecting, in the most direct fashion, the coordinates specified as follows:

(i) Area A: 7° N. latitude and 134° E. longitude; 7° N. latitude and 153° E. longitude; 0° latitude and 153° E. longitude; and 0° latitude and 134° E. longitude.

(ii) Area B: 4° N. latitude and 156° E. longitude; 4° N. latitude and 176° E. longitude; 12° S. latitude and 176° E. longitude; and 12° S. latitude and 156° E. longitude.

(2) NMFS may, through publication of a notice in the FEDERAL REGISTER, nullify any or all of the area closures specified in paragraph (c)(1) of this section.

(d) Catch retention. (1) Based on its determination as to whether an adequate number of WCPFC observers is available for the purse seine vessels of all Members of the Commission as necessary to ensure compliance by such vessels with the catch retention requirements established by the Commission, NMFS will, through publication of a notice in the FEDERAL REGISTER, announce the effective date of the provisions of paragraph (d) of this section. The effective date will be no earlier than January 1, 2010.

(2) If, after announcing the effective date of the these requirements under paragraph (1) of this section, NMFS determines that there is no longer an adequate number of WCPFC observers available for the purse seine vessels of all Members of the Commission as necessary to ensure compliance by such vessels with the catch retention requirements established by the Commission, NMFS may, through publication of a notice in the FEDERAL REGISTER, nullify any or all of the requirements specified in paragraph (d) of this section.

(3) Effective from the date announced pursuant to paragraph (d)(1) of this section through December 31, 2011, a fishing vessel of the United States equipped with purse seine gear may not discard at sea within the Convention Area any bigeye tuna \textit{(Thunnus obesus)}, yellowfin tuna \textit{(Thunnus albacares)}, or skipjack tuna \textit{(Katsuwonus pelamis)}, except in the following circumstances and with the following conditions:

(i) Fish that are unfit for human consumption, including but not limited to fish that are spoiled, pulverized, severed, or partially consumed at the time they are brought on board, may be discarded.

(ii) If at the end of a fishing trip there is insufficient well space to accommodate all the fish captured in a given purse seine set, fish captured in that set may be discarded, provided that no additional purse seine sets are made during the fishing trip.

(iii) If a serious malfunction of equipment occurs that necessitates that fish be discarded.

(e) Observer coverage. (1) From August 1 through September 30, 2009, a fishing vessel of the United States that is equipped with purse seine gear may not be used to fish in the Convention Area without a WCPFC observer or an observer deployed by NMFS on board. This requirement does not apply to fishing trips that meet any of the following conditions:

(i) The portion of the fishing trip within the Convention Area takes place entirely within areas under U.S. jurisdiction or entirely within areas under jurisdiction of a single nation other than the United States.

(ii) No fishing takes place during the fishing trip in the Convention Area in the area between 20° N. latitude and 20° S. latitude.

(iii) The Pacific Islands Regional Administrator has determined that an observer is not available for the fishing trip and a written copy of the Pacific Islands Regional Administrator’s determination, which must include the approximate start date of the fishing trip and the port of departure, is carried on board the fishing vessel during the entirety of the fishing trip.

(2) Effective January 1, 2010, through December 31, 2011, a fishing vessel of the United States may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board. This requirement does not apply to fishing trips that meet any of the following conditions:
§ 300.223 50 CFR Ch. III (10–1–10 Edition)

(i) The portion of the fishing trip within the Convention Area takes place entirely within areas under U.S. jurisdiction or entirely within the areas under jurisdiction of a single nation other than the United States.

(ii) No fishing takes place during the fishing trip in the Convention Area in the area between 20° N. latitude and 20° S. latitude.

(iii) The Pacific Islands Regional Administrator has determined that a WCPFC observer is not available for the fishing trip and a written copy of the Pacific Islands Regional Administrator’s determination, which must include the approximate start date of the fishing trip and the port of departure, is carried on board the fishing vessel during the entirety of the fishing trip.

(3) Owners, operators, and crew of fishing vessels subject to paragraphs (e)(1) or (e)(2) of this section must accommodate WCPFC observers in accordance with § 300.215(c).

(4) Meeting any of the conditions in paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), (e)(2)(i), (e)(2)(ii), or (e)(2)(iii) of this section does not exempt a fishing vessel from having to carry and accommodate a WCPFC observer pursuant to § 300.215 or other applicable regulations.

(f) Sea turtle take mitigation measures.

(1) Possession and use of required mitigation gear. Any owner or operator of a fishing vessel of the United States equipped with purse seine gear that is used to fish in the Convention Area must carry aboard the vessel the following gear:

(i) Dip net. A dip net is intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of removing sea turtles from fishing gear, bringing sea turtles aboard the vessel when appropriate, and releasing sea turtles from the vessel. The minimum design standards for dip nets that meet the requirements of this section are:

(A) An extended reach handle. The dip net must have an extended reach handle with a minimum length of 150 percent of the freeboard height. The extended reach handle must be made of wood or other rigid material able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion.

(B) Size of dip net. The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 36 inches (96.52 cm). The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm x 7.62 cm) in size.

(ii) Optional turtle hoist. A turtle hoist is used for the same purpose as a dip net. It is not a required piece of gear, but a turtle hoist may be carried on board and used instead of the dip net to handle sea turtles as required in paragraph (f)(2) of this section. The minimum design standards for turtle hoists that are used instead of dip nets to meet the requirements of this section are:

(A) Frame and net. The turtle hoist must consist of one or more rigid frames to which a bag of mesh netting is securely attached. The frame or smallest of the frames must have a minimum opening (e.g., inside diameter, if circular in shape) of 31 inches (78.74 cm) and be capable of supporting a minimum of 100 lb (34.1 kg). The frame or frames may be hinged or otherwise designed so they can be folded for ease of storage, provided that they have no sharp edges and can be quickly reassembled. The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm x 7.62 cm) in size.

(B) Lines. Lines used to lower and raise the frame and net must be securely attached to the frame in multiple places such that the frame remains stable when lowered and raised.

(2) Handling requirements. Any owner or operator of a fishing vessel of the United States equipped with purse seine gear that is used to fish in the Convention Area must, if a sea turtle is observed to be enclosed or entangled in a purse seine, a FAD, or other fishing gear, comply with these handling requirements, including using the required mitigation gear specified in paragraph (f)(1) of this section as prescribed in these handling requirements. Any captured or entangled sea turtle must be handled in a manner to minimize injury and promote survival.

(i) Sea turtles enclosed in purse seines. If the sea turtle is observed enclosed in a purse seine but not entangled, it
must be released immediately from the purse seine with the dip net or turtle hoist.

(ii) Sea turtles entangled in purse seines. If the sea turtle is observed entangled in a purse seine, the net roll must be stopped as soon as the sea turtle comes out of the water, and must not start again until the turtle has been disentangled and released. The sea turtle must be handled and released in accordance with paragraphs (f)(2)(iv), (f)(2)(v), (f)(2)(vi), and (f)(2)(vii) of this section.

(iii) Sea turtles entangled in FADs. If the sea turtle is observed entangled in a FAD, it must be disentangled or the FAD must be cut immediately so as to remove the sea turtle. The sea turtle must be handled and released in accordance with paragraphs (f)(2)(iv), (f)(2)(v), (f)(2)(vi), and (f)(2)(vii) of this section.

(iv) Disentangled sea turtles that cannot be brought aboard. After disentanglement, if the sea turtle is not already on board the vessel and it is too large to be brought aboard or cannot be brought aboard without sustaining further injury, it shall be left where it is in the water, or gently moved, using the dip net or turtle hoist if necessary, to an area away from the fishing gear and away from the propeller.

(v) Disentangled sea turtles that can be brought aboard. After disentanglement, if the sea turtle is not too large to be brought aboard and can be brought aboard without sustaining further injury, the following actions shall be taken:

(A) Using the dip net or a turtle hoist, the sea turtle must be brought aboard immediately; and

(B) The sea turtle must be handled in accordance with the procedures in paragraphs (f)(2)(vi) and (f)(2)(vii) of this section.

(vi) Sea turtle resuscitation. If a sea turtle brought aboard appears dead or comatose, the following actions must be taken:

(A) The sea turtle must be placed on its belly (on the bottom shell or plastron) so that it is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation varies with the size of the sea turtle; greater elevations are needed for larger sea turtles;

(B) A reflex test must be administered at least once every 3 hours. The test is to be performed by gently touching the eye and pinching the tail of a sea turtle to determine if the sea turtle is responsive;

(C) The sea turtle must be kept shaded and damp or moist (but under no circumstances place the sea turtle into a container holding water). A water-soaked towel placed over the eyes (not covering the nostrils), carapace and flippers is the most effective method of keeping a sea turtle moist; and

(D) If the sea turtle revives and becomes active, it must be returned to the sea in the manner described in paragraph (f)(2)(vii) of this section. Sea turtles that fail to revive within the 24-hour period must also be returned to the sea in the manner described in paragraph (f)(2)(vii) of this section, unless NMFS requests that the turtle or part thereof be kept on board and delivered to NMFS for research purposes.

(vii) Sea turtle release. After handling a sea turtle in accordance with the requirements of paragraphs (f)(2)(v) and (f)(2)(vi) of this section, the sea turtle must be returned to the ocean after identification unless NMFS requests the retention of a dead sea turtle for research. In releasing a sea turtle the vessel owner or operator must:

(A) Place the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped;

(B) Using the dip net or a turtle hoist to release the sea turtle with little impact, gently release the sea turtle away from any deployed gear; and

(C) Observe that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(viii) Other sea turtle requirements. No sea turtle, including a dead turtle, may be consumed or sold. A sea turtle may be landed, offloaded, transshipped or kept below deck only if NMFS requests the retention of a dead sea turtle or a part thereof for research.

[74 FR 38554, Aug. 4, 2009]
§ 300.224 Longline fishing restrictions.

(a) For each of the years 2009, 2010, and 2011, there is a limit of 3,763 metric tons of bigeye tuna that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States during the calendar year.

(b) Bigeye tuna landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands will not be counted against the limits established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under §660.707 or §665.21 of this title.

(c) Bigeye tuna caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under §665.21(c) of this title will not be counted against the limits established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under §660.707 or §665.21 of this title.

(d) NMFS will monitor retained catches of bigeye tuna with respect to the limit established under paragraph (a) of this section in each of the calendar years using data submitted in logbooks and other available information. After NMFS determines that the limit in any of the applicable years is expected to be reached by a specific future date, and at least seven calendar days in advance of that specific future date, NMFS will publish a notice in the Federal Register announcing that specific prohibitions will be in effect starting on that specific future date and ending at the end of the calendar year.

(e) Once an announcement is made pursuant to paragraph (d) of this section, the following restrictions will apply during the period specified in the announcement:

(1) A fishing vessel of the United States may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(i) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. The 14-day landing requirement does not apply to a vessel that has declared to NMFS, pursuant to §665.22(a) of this title, that the current trip type is shallow-setting.

(ii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under §660.707 or §665.21 of this title.

(iii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under §665.21(c) of this title, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under §660.707 or §665.21 of this title.

(2) Bigeye tuna caught by longline gear in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under §660.707 or §665.21 of this title.

(3) A fishing vessel of the United States, other than a vessel meeting the requirements of paragraphs (e)(1)(i) or
§ 300.302 Port entry by foreign, listed IUU vessels.

The Assistant Administrator may, in accordance with applicable provisions of RFMO conservation and management measures, deny a foreign, listed IUU vessel entry to any port or place subject to the jurisdiction of the

(1) International Commission for the Conservation of Atlantic Tunas (ICCAT),
(2) Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR),
(3) Northwest Atlantic Fisheries Organization (NAFO),
(4) Western and Central Pacific Fisheries Commission (WCPFC),
(5) Inter-American Tropical Tuna Commission (IATTC), and
(6) Parties to the Agreement on the International Dolphin Conservation Program (AIDCP).

(b) For purposes of this subpart, the above organizations are referred to as regional fishery management organizations (RFMOs). Each of these RFMOs adopts or approves an IUU vessel list in accordance with their respective rules and procedures. The lists are publicly available at each RFMO’s Web site. The regulations in this subpart apply to all persons subject to the jurisdiction of the United States, wherever they are.

§ 300.301 Definitions.

In addition to the terms defined in § 300.2, the terms used in this subpart have the following meanings.

Landing means to begin to offload fish, or to offload fish from any vessel.

Listed IUU Vessel means a vessel that is included on a final IUU vessel list adopted or approved by an RFMO to which the United States is a party.

Processing means the preparation or packaging of fish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil.

Transshipping means the offloading, unloading, or transferring of fish or fish products from one vessel to another.

§ 300.302 Port entry by foreign, listed IUU vessels.

The Assistant Administrator may, in accordance with applicable provisions of RFMO conservation and management measures, deny a foreign, listed IUU vessel entry to any port or place subject to the jurisdiction of the

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§ 300.303  Port access by foreign, listed IUU vessels.

If a foreign, listed IUU vessel is allowed to enter a port or place subject to the jurisdiction of the United States, the Assistant Administrator may, in accordance with applicable provisions of RFMO conservation and management measures, take one or more of the following actions:

(a) Inspect the vessel;
(b) Deny the vessel access to port services, including but not limited to refueling, resupplying, or disembarking or embarking of crew; or
(c) Prohibit the vessel from engaging in commercial transactions including, but not limited to, transshipping or landing product.

§ 300.304  Prohibitions.

(a) It is unlawful for a foreign, listed IUU vessel denied entry under §300.302 to enter any port or place subject to the jurisdiction of the United States.
(b) It is unlawful for any foreign, listed IUU vessel to obtain port services or engage in commercial transactions, or attempt to obtain such services or engage in such transactions, if such activities have been denied or prohibited under §300.303(b) and/or §300.303(c), or if the vessel has been denied entry under §300.302.
(c) It is unlawful for any person, without prior authorization from the Assistant Administrator, to engage in commercial transactions with listed IUU vessels. Such transactions include, but are not limited to:
   (1) Transshipment;
   (2) Processing fish harvested or landed by a listed IUU vessel or processing fish using a listed IUU vessel;
   (3) Joint fishing operations;
   (4) Providing supplies, fuel, crew, or otherwise supporting a listed IUU vessel; or
   (5) Chartering or entering in a chartering arrangement with a listed IUU vessel.
(d) The prohibitions listed in §300.304(c) shall not apply when the Assistant Administrator has authorized a listed IUU vessel to access such port services or engage in such commercial transactions, in accordance with applicable provisions of RFMO conservation and management measures, including in cases of force majeure and where the Assistant Administrator has determined that such services are essential to the safety, health, and welfare of the crew.
CHAPTER IV—JOINT REGULATIONS (UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR AND NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE); ENDANGERED SPECIES COMMITTEE REGULATIONS

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SUBCHAPTER A

PART 401—ANADROMOUS FISH-ERIES CONSERVATION, DEVELOP-MENT AND ENHANCEMENT

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SOURCE: 40 FR 26678, June 25, 1975, unless otherwise noted.

§ 401.1 Administration.

The Director of the U.S. Fish and Wildlife Service and the Director of the National Marine Fisheries Service shall jointly administer the Anadromous Fish Conservation Act for the Secretaries.

§ 401.2 Definitions.

As used in this part, terms shall have the meanings ascribed in this section.

(a) Secretary. The Secretary of Commerce, the Secretary of the Interior, or their authorized representatives.


(c) Eligible states. Any coastal State of the United States, the State of Vermont, and the States bordering the Great Lakes. The area within the Columbia River basin is excluded.

(d) State fishery agency. Any department(s), division(s), commis- sion(s), or official(s) of a State empowered under its laws to regulate a commercial or sport fishery.

(e) Non-Federal interest. Any organization, association, institution, business, school, individual, or group of individuals, municipality and others outside the Federal Government, in addition to State fishery agencies, which desire to cooperate within the terms of the Act.

(f) Cooperator. One or more States acting jointly or severally or other non-Federal interests, participating in a project agreement or grant-in-aid award with the Secretary.

(g) Anadromous fish. Aquatic, gill breathing, vertebrate animals bearing paired fins which migrate to and spawn in fresh water, but which spend part of their life in an oceanic environment; also fish in the Great Lakes that ascend streams to spawn.

(h) Application for Federal assistance. A description of work to be accomplished, including objectives and needs, expected results and benefits, approach, cost, location and time required for completion.

(i) Project agreement. The formal document executed between the Secretary of the Interior and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

(j) Grant-in-Aid award. The formal document executed between the Secretary of Commerce and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

§ 401.3 Submission of documents.

Applications for Federal assistance and other documents for projects relating generally to recreational fisheries shall be submitted to the concerned Regional Office of the U.S. Fish and Wildlife Service, or for projects relating generally to commercial fisheries of the concerned Regional Office of the National Marine Fisheries Service.
§ 401.4 Activities prohibited.

Law enforcement, public relations, harvesting, marketing and processing activities, construction of fisherman use facilities, and activities concerned with landlocked anadromous fish populations (except fish in the Great Lakes that ascend streams to spawn) may not be financed under the Act.

§ 401.5 Coordination with States.

The Secretary will approve an Application For Federal Assistance only after he has coordinated the application with the State office established to review applications under Executive Order 12372 (if the State has established such an office and wishes to review these applications) and other non-Federal entities which have management authority over the resource to be affected.

[48 FR 29137, June 24, 1983]

§ 401.6 Prosecution of work.

(a) Project work shall be carried through to a state of completion acceptable to the Secretary with reasonable promptness. Failure to render satisfactory performance reports or failure to complete the project to the satisfaction of the Secretary shall be cause for suspension of Federal assistance for the project until the project provisions are satisfactorily met. Federal assistance may be terminated upon determination by the Secretary that satisfactory progress has not been maintained. The Secretary shall have the right to inspect and review work at any time.

(b) Research and development work shall be continuously coordinated by the Cooperators with studies conducted by others to avoid unnecessary duplication.

(c) All work shall be performed in accordance with applicable local laws, except when in conflict with Federal laws or regulations, in which case Federal laws or regulations shall prevail.

§ 401.7 General information for the Secretary.

Before any Federal funds may be obligated for any project an applicant shall furnish to the Secretary, upon his request, information regarding the laws affecting anadromous fish and the authority of the applicant to participate in the benefits of the Act.

(a) Document signature. Individuals authorized to sign project documents under the Commercial Fisheries Research and Development Act of 1964 (78 Stat. 197, as amended), 16 U.S.C. 779 through 779f, or the Federal Aid in Sport Fish Restoration Act (64 Stat. 430, as amended), 16 U.S.C. 777 through 777f, may likewise sign project documents contemplated in this part.

(b) Program information. The Secretary may, from time to time, request, and the Cooperators shall furnish, information relating to the administration and maintenance of any project established under the Act.

§ 401.8 Availability of funds.

The period of availability of funds to the States or other non-Federal interests for obligation shall be established by the administering Federal agency.

§ 401.9 Payments to cooperators.

Payments shall be made to Cooperators in accordance with provisions of grant-in-aid awards or project agreements.

§ 401.10 Request for payment.

Request for payment shall be on forms provided by the Secretary, certified as therein prescribed, and submitted to the Regional Director by the Cooperator.

§ 401.11 Property as matching funds.

The non-Federal share of the cost of projects may be in the form of real or personal property. Specific procedures to be used by grantees in placing the value on real or personal property for matching funds are set forth in Attachment F of Federal Management Circular 74-7.

§ 401.12 Ownership of property.

When real property is acquired pursuant to the provisions of the Act, title to such property, or interests therein, shall be vested in the United States, and the conveying instrument shall recite the United States of America as the grantee. However, if the Secretary determines that under the terms of the application for Federal assistance and
grant-in-aid award or project agreement, the intent and purpose of the Act may be better served by other ownership of such property, an appropriate transfer may be made. When real or personal property is utilized as matching funds, title to such property shall be in the Cooperator unless otherwise specified in the grant-in-aid award or project agreement.

§ 401.13 Personnel.

The Cooperator shall maintain an adequate and competent force of employees to initiate and carry approved work to satisfactory completion.

§ 401.14 Inspection.

Cooperator supervision of each project shall include adequate and continuous inspection. The project will be subject at all times to Federal inspection.

§ 401.15 Record retention.

All records of accounts and reports with supporting documentation therefor, as set forth in Attachment C of Federal Management Circular 74–7, will be retained by the Cooperator for a period of 3 years after submission of the final expenditure report on the project. Record retention for a period longer than 3 years is required if audit findings have not been resolved.

§ 401.16 Records and reporting.

Performance reports and other reports shall be furnished as requested by the Secretary. Cost records shall be maintained separately for each project. The accounts and records maintained by the Cooperator, together with all supporting documents, shall be open at all times to the inspection of authorized representatives of the United States, and copies thereof shall be furnished when requested.

(Approved by the Office of Management and Budget under control number 0648–0102)

§ 401.17 Safety and accident prevention.

In the performance of each project, the Cooperator shall comply with all applicable Federal, State, and local laws governing safety, health and sanitation.

§ 401.18 Contracts.

A Cooperator may use its own regulations or guidelines in obtaining services by contract or otherwise, provided that they adhere to applicable Federal laws, regulations, policies, guidelines, and requirements, as set forth in Attachment 0 of Federal Management Circular 74–7. However, the Cooperator is the responsible authority, without recourse to the Federal agency, regarding the settlement of such contractual issues.

§ 401.19 Statements and payrolls.

The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR part 3), made pursuant to the Copeland “Anti-Kickback” Act (38 U.S.C. 974), as amended, are made a part of the regulations in this part by reference. The Cooperator will comply with the regulations in this part and any amendments or modifications thereof, and the Cooperator’s prime contractor will be responsible for the submission of statements required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitation, variations, tolerances, and exemptions.

§ 401.20 Officials not to benefit.

No Member of, or Delegate to, Congress, or resident Commissioner, shall be admitted to any share or any part of any project agreement made under the Act, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

§ 401.21 Patents and inventions.

Determination of the patent rights in any inventions or discoveries resulting from work under project agreements entered into pursuant to the Act shall be consistent with the “Government Patent Policy” (President’s memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).
§ 401.22 Civil rights.
Each application for Federal assistance, grant-in-aid award, or project agreement shall be supported by a statement of assurances executed by the Cooperator providing that the project will be carried out in accordance with title VI, Nondiscrimination in federally Assisted Programs of the Civil Rights Act of 1964 and with the Secretary’s regulations promulgated thereunder.

§ 401.23 Audits.
The State is required to conduct an audit at least every two years in accordance with the provisions of Attachment P OMB Circular A–102. Failure to conduct audits as required may result in withholding of grant payments or such other sanctions as the Secretary may deem appropriate.
[49 FR 30074, July 26, 1984]

PART 402—INTERAGENCY CO-OPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

Subpart A—General
§ 402.01 Scope.
(a) This part interprets and implements sections 7(a)–(d) [16 U.S.C. 1536(a)–(d)] of the Endangered Species Act of 1973, as amended (“Act”). Section 7(a) grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants (“listed species”) and habitat of such species that has been designated as critical (“critical habitat”). Section 7(a)(1) of the Act directs Federal agencies, in consultation with and with the assistance of the Secretary of the Interior or of Commerce, as appropriate, to utilize their authorities to further the purposes of the Act by carrying out conservation programs for listed species. Such affirmative conservation programs must comply with applicable permit requirements (50 CFR parts 17, 220, 222, and 227) for listed species and should be coordinated with the appropriate Secretary. Section 7(a)(2) of the Act requires every Federal agency, in consultation with and with the assistance of the Secretary, to insure that...
any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or results in the destruction or adverse modification of critical habitat. Section 7(a)(3) of the Act authorizes a prospective permit or license applicant to request the issuing Federal agency to enter into early consultation with the Service on a proposed action to determine whether such action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Section 7(a)(4) of the Act requires Federal agencies to confer with the Secretary on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Section 7(b) of the Act requires the Secretary, after the conclusion of early or formal consultation, to issue a written statement setting forth the Secretary’s opinion detailing how the agency action affects listed species or critical habitat. Biological assessments are required under section 7(c) of the Act if listed species or critical habitat may be present in the area affected by any major construction activity as defined in § 404.02. Section 7(d) of the Act prohibits Federal agencies and applicants from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would avoid jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Section 7(e)(1) of the Act provide procedures for granting exemptions from the requirements of section 7(a)(2). Regulations governing the submission of exemption applications are found at 50 CFR part 451, and regulations governing the exemption process are found at 50 CFR parts 450, 452, and 453.

(b) The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibilities for administering the Act. The Lists of Endangered and Threatened Wildlife and Plants are found in 50 CFR 17.11 and 17.12 and the designated critical habitats are found in 50 CFR 17.95 and 17.96 and 50 CFR part 226. Endangered or threatened species under the jurisdiction of the NMFS are located in 50 CFR 222.23(a) and 227.4. If the subject species is cited in 50 CFR 222.23(a) or 227.4, the Federal agency shall contact the NMFS. For all other listed species the Federal Agency shall contact the FWS.

§ 402.02 Definitions.


Action means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to:

(a) actions intended to conserve listed species or their habitat;
(b) the promulgation of regulations;
(c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or
(d) actions directly or indirectly causing modifications to the land, water, or air.

Action area means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.

Applicant refers to any person, as defined in section 3(13) of the Act, who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.

Biological assessment refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation potential effects of the action on such species and habitat.

Biological opinion is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Conference is a process which involves informal discussions between a Federal agency and the Service under section 402.05.
7(a)(4) of the Act regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.

Conservation recommendations are suggestions of the Service regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information.

Critical habitat refers to an area designated as critical habitat listed in 50 CFR parts 17 or 226.

Cumulative effects are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.

Designated non-Federal representative refers to a person designated by the Federal agency as its representative to conduct informal consultation and/or to prepare any biological assessment.

Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Director refers to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his authorized representative; or the Fish and Wildlife Service regional director, or his authorized representative, for the region where the action would be carried out.

Early consultation is a process requested by a Federal agency on behalf of a prospective applicant under section 7(a)(3) of the Act.

Effects of the action refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

Formal consultation is a process between the Service and the Federal agency that commences with the Federal agency’s written request for consultation under section 7(a)(2) of the Act and concludes with the Service’s issuance of the biological opinion under section 7(b)(3) of the Act.

Incidental take refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.

Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.

Jeopardize the continued existence of means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

Listed species means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11–17.12.

Major construction activity is a construction project (or other undertaking having similar physical impacts) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act [NEPA, 42 U.S.C. 4332(2)(C)].
Preliminary biological opinion refers to an opinion issued as a result of early consultation.

Proposed critical habitat means habitat proposed in the FEDERAL REGISTER to be designated or revised as critical habitat under section 4 of the Act for any listed or proposed species.

Proposed species means any species of fish, wildlife, or plant that is proposed in the FEDERAL REGISTER to be listed under section 4 of the Act.

Reasonable and prudent alternatives refer to alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

Reasonable and prudent measures refer to those actions the Director believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take.

Recovery means improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.

Service means the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

(a) Where emergency circumstances mandate the need to consult in an expedited manner, consultation may be conducted informally through alternative procedures that the Director determines to be consistent with the requirements of sections 7(a)–(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.

(b) Formal consultation shall be initiated as soon as practicable after the emergency is under control. The Federal agency shall submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. The Service will evaluate such information and issue a biological opinion including the information and recommendations given during the emergency consultation.

(a) Consultation, conference, and biological assessment procedures under section 7 may be consolidated with interagency cooperation procedures required by other statutes, such as the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq., implemented at 40 CFR Parts 1500–1508) or the Fish and Wildlife Coordination Act (FWCA) (16 U.S.C. 661 et seq.). Satisfying the requirements of these other statutes, however, does not in itself relieve a Federal agency of its obligations to comply with the procedures set forth in this part or the substantive requirements of section 7. The Service will attempt to provide a coordinated review and analysis of all environmental requirements.

(b) Where the consultation or conference has been consolidated with the interagency cooperation procedures required by other statutes such as NEPA
or FWCA, the results should be included in the documents required by those statutes.

§ 402.07 Designation of lead agency.

When a particular action involves more than one Federal agency, the consultation and conference responsibilities may be fulfilled through a lead agency. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies would become involved, the magnitude of their respective involvement, and their relative expertise with respect to the environmental effects of the action. The Director shall be notified of the designation in writing by the lead agency.

§ 402.08 Designation of non-Federal representative.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Director of such designation. If a permit or license applicant is involved and is not the designated non-Federal representative, then the applicant and Federal agency must agree on the choice of the designated non-Federal representative. If a biological assessment is prepared by the designated non-Federal representative, the Federal agency shall furnish guidance and supervision and shall independently review and evaluate the scope and contents of the biological assessment. The ultimate responsibility for compliance with section 7 remains with the Federal agency.

§ 402.09 Irreversible or irretrievable commitment of resources.

After initiation or reinitiation of consultation required under section 7(a)(2) of the Act, the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2). This prohibition is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied. This provision does not apply to the conference requirement for proposed species or proposed critical habitat under section 7(a)(4) of the Act.

Subpart B—Consultation Procedures

§ 402.10 Conference on proposed species or proposed critical habitat.

(a) Each Federal agency shall confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is designed to assist the Federal agency and any applicant in identifying and resolving potential conflicts at an early stage in the planning process.

(b) The Federal agency shall initiate the conference with the Director. The Service may request a conference if, after a review of available information, it determines that a conference is required for a particular action.

(c) A conference between a Federal agency and the Service shall consist of informal discussions concerning an action that is likely to jeopardize the continued existence of the proposed species or result in the destruction or adverse modification of the proposed critical habitat at issue. Applicants may be involved in these informal discussions to the greatest extent practicable. During the conference, the Service will make advisory recommendations, if any, on ways to minimize or avoid adverse effects. If the proposed species is subsequently listed or the proposed critical habitat is designated prior to completion of the action, the Federal agency must review the action to determine whether formal consultation is required.

(d) If requested by the Federal agency and deemed appropriate by the Service, the conference may be conducted in accordance with the procedures for formal consultation in §402.14. An opinion issued at the conclusion of the conference may be adopted as the biological opinion when the species is listed or critical habitat is designated, but only
§402.12 Biological assessments.

(d) Procedures and responsibilities. The procedures and responsibilities for early consultation are the same as outlined in §402.14(c)-(j) for formal consultation, except that all references to the "applicant" shall be treated as the "prospective applicant" and all references to the "biological opinion" or the "opinion" shall be treated as the "preliminary biological opinion" for the purpose of this section.

(e) Preliminary biological opinion. The contents and conclusions of a preliminary biological opinion are the same as for a biological opinion issued after formal consultation except that the incidental take statement provided with a preliminary biological opinion does not constitute authority to take listed species.

(f) Confirmation of preliminary biological opinion as final biological opinion. A preliminary biological opinion may be confirmed as a biological opinion issued after formal consultation if the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the early consultation. A written request for confirmation of the preliminary biological opinion should be submitted after the prospective applicant applies to the Federal agency for a permit or license but prior to the issuance of such permit or license. Within 45 days of receipt of the Federal agency’s request, the Service shall either:

(1) Confirm that the preliminary biological opinion stands as a final biological opinion; or

(2) If the findings noted above cannot be made, request that the Federal agency initiate formal consultation.

§402.12 Biological assessments.

(a) Purpose. A biological assessment shall evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary.

(b) Preparation requirement. (1) The procedures of this section are required if no significant new information is developed (including that developed during the rulemaking process on the proposed listing or critical habitat designation) and no significant changes to the Federal action are made that would alter the content of the opinion. An incidental take statement provided with a conference opinion does not become effective unless the Service adopts the opinion once the listing is final.

(e) The conclusions reached during a conference and any recommendations shall be documented by the Service and provided to the Federal agency and to any applicant. The style and magnitude of this document will vary with the complexity of the conference. If formal consultation also is required for a particular action, then the Service will provide the results of the conference with the biological opinion.

§402.11 Early consultation.

(a) Purpose. Early consultation is designed to reduce the likelihood of conflicts between listed species or critical habitat and proposed actions and occurs prior to the filing of an application for a Federal permit or license. Although early consultation is conducted between the Service and the Federal agency, the prospective applicant should be involved throughout the consultation process.

(b) Request by prospective applicant. If a prospective applicant has reason to believe that the prospective action may affect listed species or critical habitat, it may request the Federal agency to enter into early consultation with the Service. The prospective applicant must certify in writing to the Federal agency that (1) it has a definitive proposal outlining the action and its effects and (2) it intends to implement its proposal, if authorized.

(c) Initiation of early consultation. If the Federal agency receives the prospective applicant’s certification in paragraph (b) of this section, then the Federal agency shall initiate early consultation with the Service. This request shall be in writing and contain the information outlined in §402.14(c) and, if the action is a major construction activity, the biological assessment as outlined in §402.12.
for Federal actions that are "major construction activities"; provided that a contract for construction was not entered into or actual construction was not begun on or before November 10, 1978. Any person, including those who may wish to apply for an exemption from section 7(a)(2) of the Act, may prepare a biological assessment under the supervision of the Federal agency and in cooperation with the Service consistent with the procedures and requirements of this section. An exemption from the requirements of section 7(a)(2) is not permanent unless a biological assessment has been prepared.

(2) The biological assessment shall be completed before any contract for construction is entered into and before construction is begun.

c) Request for information. The Federal agency or the designated non-Federal representative shall convey to the Director either (1) a written request for a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area; or (2) a written notification of the species and critical habitat that are being included in the biological assessment.

d) Director's response. Within 30 days of receipt of the notification of, or the request for, a species list, the Director shall either concur with or revise the list or, in those cases where no list has been provided, advise the Federal agency or the designated non-Federal representative in writing whether, based on the best scientific and commercial data available, any listed or proposed species or designated or proposed critical habitat may be present in the action area. In addition to listed and proposed species, the Director will provide a list of candidate species that may be present in the action area. Candidate species refers to any species being considered by the Service for listing as endangered or threatened species but not yet the subject of a proposed rule. Although candidate species have no legal status and are accorded no protection under the Act, their inclusion will alert the Federal agency of potential proposals or listings.

(1) If the Director advises that no listed species or critical habitat may be present, the Federal agency need not prepare a biological assessment and further consultation is not required. If only proposed species or proposed critical habitat may be present in the action area, then the Federal agency must confer with the Service if required under §402.10, but preparation of a biological assessment is not required unless the proposed listing and/or designation becomes final.

(2) If a listed species or critical habitat may be present in the action area, the Director will provide a species list or concur with the species list provided. The Director also will provide available information (or references thereto) regarding these species and critical habitat, and may recommend discretionary studies or surveys that may provide a better information base for the preparation of an assessment. Any recommendation for studies or surveys is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act.

e) Verification of current accuracy of species list. If the Federal agency or the designated non-Federal representative does not begin preparation of the biological assessment within 90 days of receipt of (or concurrence with) the species list, the Federal agency or the designated non-Federal representative must verify (formally or informally) with the Service the current accuracy of the species list at the time the preparation of the assessment is begun.

f) Contents. The contents of a biological assessment are at the discretion of the Federal agency and will depend on the nature of the Federal action. The following may be considered for inclusion:

(1) The results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally.

(2) The views of recognized experts on the species at issue.

(3) A review of the literature and other information.

(4) An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.
(5) An analysis of alternate actions considered by the Federal agency for the proposed action.

(g) Incorporation by reference. If a proposed action requiring the preparation of a biological assessment is identical, or very similar, to a previous action for which a biological assessment was prepared, the Federal agency may fulfill the biological assessment requirement for the proposed action by incorporating by reference the earlier biological assessment, plus any supporting data from other documents that are pertinent to the consultation, into a written certification that:

(1) The proposed action involves similar impacts to the same species in the same geographic area;

(2) No new species have been listed or proposed or no new critical habitat designated or proposed for the action area; and

(3) The biological assessment has been supplemented with any relevant changes in information.

(h) Permit requirements. If conducting a biological assessment will involve the taking of a listed species, a permit under section 10 of the Act (16 U.S.C. 1539) and part 17 of this title (with respect to species under the jurisdiction of the FWS) or parts 220, 222, and 227 of this title (with respect to species under the jurisdiction of the NMFS) is required.

(i) Completion time. The Federal agency or the designated non-Federal representative shall complete the biological assessment within 180 days after its initiation (receipt of or concurrence with the species list) unless a different period of time is agreed to by the Director and the Federal agency. If a permit or license applicant is involved, the 180-day period may not be extended unless the agency provides the applicant, before the close of the 180-day period, with a written statement setting forth the estimated length of the proposed extension and the reasons why such an extension is necessary.

(j) Submission of biological assessment. The Federal agency shall submit the completed biological assessment to the Director for review. The Director will respond in writing within 30 days as to whether or not he concurs with the findings of the biological assessment.

At the option of the Federal agency, formal consultation may be initiated under §402.14(c) concurrently with the submission of the assessment.

(k) Use of the biological assessment. (1) The Federal agency shall use the biological assessment in determining whether formal consultation or a conference is required under §402.14 or §402.10, respectively. If the biological assessment indicates that there are no listed species or critical habitat present that are likely to be adversely affected by the action and the Director concurs as specified in paragraph (j) of this section, then formal consultation is not required. If the biological assessment indicates that the action is not likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, and the Director concurs, then a conference is not required.

(2) The Director may use the results of the biological assessment in (i) determining whether to request the Federal agency to initiate formal consultation or a conference, (ii) formulating a biological opinion, or (iii) formulating a preliminary biological opinion.

§ 402.13 Informal consultation.

(a) Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.

(b) During informal consultation, the Service may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.

[74 FR 20423, May 4, 2009]
§ 402.14 Formal consultation.

(a) Requirement for formal consultation. Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except as noted in paragraph (b) of this section. The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request.

(b) Exceptions. (1) A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under §402.12 or as a result of informal consultation with the Service under §402.13, the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat.

(2) A Federal agency need not initiate formal consultation if a preliminary biological opinion, issued after early consultation under §402.11, is confirmed as the final biological opinion.

(c) Initiation of formal consultation. A written request to initiate formal consultation shall be submitted to the Director and shall include:

(1) A description of the action to be considered;

(2) A description of the specific area that may be affected by the action;

(3) A description of any listed species or critical habitat that may be affected by the action;

(4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;

(5) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and

(6) Any other relevant available information on the action, the affected listed species, or critical habitat.

Formal consultation shall not be initiated by the Federal agency until any required biological assessment has been completed and submitted to the Director in accordance with §402.12. Any request for formal consultation may encompass, subject to the approval of the Director, a number of similar individual actions within a given geographical area or a segment of a comprehensive plan. This does not relieve the Federal agency of the requirements for considering the effects of the action as a whole.

(d) Responsibility to provide best scientific and commercial data available. The Federal agency requesting formal consultation shall provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat. This information may include the results of studies or surveys conducted by the Federal agency or the designated non-Federal representative. The Federal agency shall provide any applicant with the opportunity to submit information for consideration during the consultation.

(e) Duration and extension of formal consultation. Formal consultation concludes within 90 days after its initiation unless extended as provided below. If an applicant is not involved, the Service and the Federal agency may mutually agree to extend the consultation for a specific time period. If an applicant is involved, the Service and the Federal agency may mutually agree to extend the consultation provided that the Service submits to the applicant, before the close of the 90 days, a written statement setting forth:

(1) The reasons why a longer period is required,

(2) The information that is required to complete the consultation, and

(3) The estimated date on which the consultation will be completed.

A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant. Within 45 days after concluding formal consultation, the Service shall deliver a biological opinion to the Federal agency and any applicant.
§ 402.14 Additional data.

When the Service determines that additional data would provide a better information base from which to formulate a biological opinion, the Director may request an extension of formal consultation and request that the Federal agency obtain additional data to determine how or to what extent the action may affect listed species or critical habitat. If formal consultation is extended by mutual agreement according to § 402.14(e), the Federal agency shall obtain, to the extent practicable, data which can be developed within the scope of the extension. The responsibility for conducting and funding any studies belongs to the Federal agency and the applicant, not the Service. The Service’s request for additional data is not to be construed as the Service’s opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act. If no extension of formal consultation is agreed to, the Director will issue a biological opinion using the best scientific and commercial data available.

(g) Service responsibilities. Service responsibilities during formal consultation are as follows:

(1) Review all relevant information provided by the Federal agency or otherwise available. Such review may include an on-site inspection of the action area with representatives of the Federal agency and the applicant.

(2) Evaluate the current status of the listed species or critical habitat.

(3) Evaluate the effects of the action and cumulative effects on the listed species or critical habitat.

(4) Formulate its biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

(5) Discuss with the Federal agency and any applicant the Service’s review and evaluation conducted under paragraphs (g)(1) through (3) of this section, the basis for any finding in the biological opinion, and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the agency and the applicant can take to avoid violation of section 7(a)(2).

The Service will utilize the expertise of the Federal agency and any applicant in identifying these alternatives. If requested, the Service shall make available to the Federal agency the draft biological opinion for the purpose of analyzing the reasonable and prudent alternatives. The 45-day period in which the biological opinion must be delivered will not be suspended unless the Federal agency secures the written consent of the applicant to an extension to a specific date. The applicant may request a copy of the draft opinion from the Federal agency. All comments on the draft biological opinion must be submitted to the Service through the Federal agency, although the applicant may send a copy of its comments directly to the Service. The Service will not issue its biological opinion prior to the 45-day or extended deadline while the draft is under review by the Federal agency. However, if the Federal agency submits comments to the Service regarding the draft biological opinion within 10 days of the deadline for issuing the opinion, the Service is entitled to an automatic 10-day extension on the deadline.

(6) Formulate discretionary conservation recommendations, if any, which will assist the Federal agency in reducing or eliminating the impacts that its proposed action may have on listed species or critical habitat.

(7) Formulate a statement concerning incidental take, if such take may occur.

(8) In formulating its biological opinion, any reasonable and prudent alternatives, and any reasonable and prudent measures, the Service will use the best scientific and commercial data available and will give appropriate consideration to any beneficial actions taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation.

(h) Biological opinions. The biological opinion shall include:

(1) A summary of the information on which the opinion is based;

(2) A detailed discussion of the effects of the action on listed species or critical habitat; and

(3) The Service’s opinion on whether the action is likely to jeopardize the continued existence of a listed species.
or result in the destruction or adverse modification of critical habitat (a "jeopardy biological opinion"); or, the action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a "no jeopardy" biological opinion). A "jeopardy" biological opinion shall include reasonable and prudent alternatives, if any. If the Service is unable to develop such alternatives, it will indicate that to the best of its knowledge there are no reasonable and prudent alternatives.

(i) Incidental take. (1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), and, in the case of marine mammals, where the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972, the Service will provide with the biological opinion a statement concerning incidental take that:

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking on the species;

(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;

(iii) In the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 and applicable regulations with regard to such taking;

(iv) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under paragraphs (i)(1)(ii) and (i)(1)(iii) of this section; and

(v) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

(2) Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.

(3) In order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement. The reporting requirements will be established in accordance with 50 CFR 13.45 and 18.27 for FWS and 50 CFR 220.45 and 228.5 for NMFS.

(4) If during the course of the action the amount or extent of incidental taking, as specified under paragraph (i)(1)(i) of this Section, is exceeded, the Federal agency must reinitiate consultation immediately.

(5) Any taking which is subject to a statement as specified in paragraph (i)(1) of this section and which is in compliance with the terms and conditions of that statement is not a prohibited taking under the Act, and no other authorization or permit under the Act is required.

(j) Conservation recommendations. The Service may provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.

(k) Incremental steps. When the action is authorized by a statute that allows the agency to take incremental steps toward the completion of the action, the Service shall, if requested by the Federal agency, issue a biological opinion on the incremental step being considered, including its views on the entire action. Upon the issuance of such a biological opinion, the Federal agency may proceed with or authorize the incremental steps of the action if:

(1) The biological opinion does not conclude that the incremental step would violate section 7(a)(2);

(2) The Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step;

(3) The Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action;

(4) The incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and
§ 402.31 Purpose.

The purpose of these counterpart regulations is to enhance the efficiency and effectiveness of the consultation process under section 7 of the ESA for or to an extent not previously considered;

(c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or

(d) If a new species is listed or critical habitat designated that may be affected by the identified action.

Subpart C—Counterpart Regulations for Implementing the National Fire Plan

SOURCE: 68 FR 68264, Dec. 8, 2003, unless otherwise noted.

§ 402.30 Definitions.

The definitions in § 402.02 are applicable to this subpart. In addition, the following definitions are applicable only to this subpart.

Action Agency refers to the Department of Agriculture Forest Service (FS) or the Department of the Interior Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), or National Park Service (NPS).

Alternative Consultation Agreement (ACA) is the agreement described in § 402.33 of this subpart.

Fire Plan Project is an action determined by the Action Agency to be within the scope of the NFP as defined in this section.

National Fire Plan (NFP) is the September 8, 2000, report to the President from the Departments of the Interior and Agriculture entitled “Managing the Impact of Wildfire on Communities and the Environment” outlining a new approach to managing fires, together with the accompanying budget requests, strategies, plans, and direction, or any amendments thereto.

Service Director refers to the FWS Director or the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

§ 402.31 Purpose.

The purpose of these counterpart regulations is to enhance the efficiency and effectiveness of the consultation process under section 7 of the ESA for
Fire Plan Projects by providing an optional alternative to the procedures found in §§402.13 and 402.14(b) of this part. These regulations permit an Action Agency to enter into an Alternative Consultation Agreement (ACA) with the Service, as described in §402.33, which will allow the Action Agency to determine that a Fire Plan Project is “not likely to adversely affect” (NLAA) a listed species or designated critical habitat without formal or informal consultation with the Service or written concurrence from the Service. An NLAA determination for a Fire Plan Project made under an ACA, as described in §402.33, completes the Action Agency’s statutory obligation to consult with the Service for that Project. In situations where the Action Agency does not make an NLAA determination under the ACA, the Action Agency would still be required to conduct formal consultation with the Service when required by §402.14. This process will be as protective to listed species and designated critical habitat as the process established in subpart B of this part. The standards and requirements for formal consultation under subpart B for Fire Plan Projects that do not receive an NLAA determination are unchanged.

§ 402.32 Scope.

(a) Section 402.33 establishes a process by which an Action Agency may determine that a proposed Fire Plan Project is not likely to adversely affect any listed species or designated critical habitat without conducting formal or informal consultation or obtaining written concurrence from the Service.

(b) Section 402.34 establishes the Service’s oversight responsibility and the standard for review under this subpart.

(c) Nothing in this subpart C precludes an Action Agency at its discretion from initiating early, informal, or formal consultation as described in §§402.11, 402.13, and 402.14, respectively.

(d) The authority granted in this subpart is applicable to an Action Agency only where the Action Agency has entered into an ACA with the Service. An ACA entered into with one Service is valid with regard to listed species and designated critical habitat under the jurisdiction of that Service whether or not the Action Agency has entered into an ACA with the other Service.

§ 402.33 Procedures.

(a) The Action Agency may make an NLAA determination for a Fire Plan Project without informal consultation or written concurrence from the Director if the Action Agency has entered into and implemented an ACA. The Action Agency need not initiate formal consultation on a Fire Plan Project if the Action Agency has made an NLAA determination for the Project under this subpart. The Action Agency and the Service will use the following procedures in establishing an ACA.

1) Initiation: The Action Agency submits a written notification to the Service Director of its intent to enter into an ACA.

2) Development and Adoption of the Alternative Consultation Agreement: The Action Agency enters into an ACA with the Service Director. The ACA will, at a minimum, include the following components:

(i) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations under this subpart C.

(ii) Procedures for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency.

(iii) A description of the standards the Action Agency will apply in assessing the effects of the action, including direct and indirect effects of the action and effects of any actions that are interrelated or interdependent with the proposed action.

(iv) Provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency’s effects analysis of proposed actions.

(v) A mutually agreed upon program for monitoring and periodic program evaluation to occur at the end of the first year following signature of the ACA and periodically thereafter.

(vi) Provisions for the Action Agency to maintain a list of Fire Plan Projects for which the Action Agency has made
NLAA determinations. The Action Agency will also maintain the necessary records to allow the Service to complete the periodic program evaluations.

(3) **Training:** Upon completion of the ACA, the Action Agency and the Service will implement the training program outlined in the ACA to the mutual satisfaction of the Action Agency and the Service.

(b) The Action Agency may, at its discretion, allow any subunit of the Action Agency to implement this subpart as soon as the subunit has fulfilled the training requirements of the ACA, upon written notification to the Service. The Action Agency shall at all times have responsibility for the adequacy of all NLAA determinations it makes under this subpart.

(c) The ACA and any related oversight or monitoring reports shall be made available to the public through a notice of availability in the *Federal Register*.

§ 402.34 Oversight.

(a) Through the periodic program evaluation set forth in the ACA, the Service will determine whether the implementation of this subpart by the Action Agency is consistent with the best available scientific and commercial information, the ESA, and section 7 regulations.

(b) The Service Director may use the results of the periodic program evaluation described in the ACA to recommend changes to the Action Agency’s implementation of the ACA. If and as appropriate, the Service Director may suspend any subunit participating in the ACA or exclude any subunit from the ACA.

(c) The Service Director retains discretion to terminate the ACA if the Action Agency fails to comply with the requirements of this subpart, section 7 of the ESA, or the terms of the ACA. Termination, suspension, or modification of an ACA does not affect the validity of any NLAA determinations made previously under the authority of this subpart.

Subpart D—Counterpart Regulations Governing Actions by the U.S. Environmental Protection Agency Under the Federal Insecticide, Fungicide and Rodenticide Act

**SOURCE:** 69 FR 47759, Aug. 5, 2004, unless otherwise noted.

§ 402.40 Definitions.

The definitions in § 402.02 are applicable to this subpart. In addition, the following definitions are applicable only to this subpart.

(a) **Alternative consultation agreement** is the agreement described in § 402.45.

(b) **Effects determination** is a written determination by the U.S. Environmental Protection Agency (EPA) addressing the effects of a FIFRA action on listed species or critical habitat. The contents of an effects determination will depend on the nature of the action. An effects determination submitted under § 402.46 or § 402.47 shall contain the information described in § 402.14(c)(1)–(6) and a summary of the information on which the determination is based, detailing how the FIFRA action affects the listed species or critical habitat. EPA may consider the following additional sections for inclusion in an effects determination:

1. A conclusion whether or not the FIFRA action is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. EPA may consider the following additional sections for inclusion in an effects determination:

2. A description of the impact of any anticipated incidental taking of such listed species resulting from the FIFRA action, reasonable and prudent measures considered necessary or appropriate to minimize such impact, and terms and conditions necessary to implement such measures; and

3. A summary of any information or recommendations from an applicant. An effects determination shall be based on the best scientific and commercial data available.

(c) **FIFRA action** is an action by EPA to approve, permit or authorize the sale, distribution or use of a pesticide
under sections 136–136y of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq. (FIFRA). In any consultation under this subpart, EPA shall determine the nature and scope of a FIFRA action.

(d) *Listed species* is a species listed as endangered or threatened under section 4 of the Act.

(e) *Partial biological opinion* is the document provided under §402.47(a), pending the conclusion of consultation under §402.47(b), stating the opinion of the Service as to whether or not a FIFRA action is likely to jeopardize the continued existence of one or more listed species or result in the destruction or adverse modification of one or more critical habitats, and describing the impact of any anticipated incidental taking of such listed species resulting from the FIFRA action, reasonable and prudent measures considered necessary or appropriate to minimize such impact, and terms and conditions necessary to implement such measures.

(f) *Service Director* refers to the Director of the U.S. Fish and Wildlife Service or the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

(g) *Service Representative* is the person or persons designated to participate in advance coordination as provided in this subpart.

§ 402.41 Purpose.

The purpose of these counterpart regulations is to enhance the efficiency and effectiveness of the existing consultation process under section 7 of the Endangered Species Act (Act), 16 U.S.C. 1531 et seq., by providing Fish and Wildlife Service and the National Marine Fisheries Service (referred to jointly as “Services” and individually as “Service”) and EPA with additional means to satisfy the requirements of section 7(a)(2) of the Act for certain regulatory actions under FIFRA. These additional means will permit the Services and EPA to more effectively use the scientific and commercial data generated through the FIFRA regulatory process as part of the best scientific and commercial data available to protect listed species and critical habitat. The procedures authorized by these counterpart regulations will be as protective of listed species and critical habitat as the process established in subpart B of this part.

§ 402.42 Scope and applicability.

(a) Available consultation procedures.

This subpart describes consultation procedures available to EPA to satisfy the obligations of section 7(a)(2) of the Act in addition to those in subpart B of this part for FIFRA actions authorized, funded, or carried out by EPA in which EPA has discretionary Federal involvement or control. EPA retains discretion to initiate early, informal, or formal consultation as described in §§402.11, 402.13, and 402.14 for any FIFRA action. The procedures in this subpart may be employed for FIFRA actions as follows:

1. Interagency exchanges of information under §402.43 and advance coordination under §402.44 are available for any FIFRA action.

2. Alternative consultation under §402.45 is available for a listed species or critical habitat if EPA determines the FIFRA action is not likely to adversely affect the listed species or critical habitat.

3. Optional formal consultation under §402.46 is available for any FIFRA action with respect to any listed species or critical habitat.

4. The special procedures in §402.47 are available for consultations on FIFRA actions that will be unusually complex due to factors such as the geographic area or number of species that may be affected by the action.

5. EPA shall engage in consultation as to all listed species and critical habitat that may be affected by a FIFRA action, and may in its discretion employ more than one of the available consultation procedures for a FIFRA action that may affect more than one listed species or critical habitat.

6. EPA shall engage in consultation on actions involving requests for emergency exemptions under section 18 of FIFRA that may affect listed species or critical habitat, and may choose to do so under §402.05 or other provisions of this subpart or subpart B of this part. Any required formal consultation shall be initiated as soon as practicable after the emergency is under control.
For the purposes of §402.05(b) the definition of formal consultation in §402.02 includes the procedures in §402.46.

(7) EPA must prepare a biological assessment for a FIFRA action to the extent required by §402.12.

(8) EPA must comply with §402.15 for all FIFRA actions.

(9) After a consultation under this subpart has been concluded, EPA shall reinitiate consultation as required by §402.16 as soon as practicable after a circumstance requiring reinitiation occurs, and may employ the procedures in this subpart or subpart B of this part in any reinitiated consultation.

(b) Exchanges of scientific information. As part of any of the additional consultation procedures provided in this subpart, EPA and the Services shall establish mutually-agreeable procedures for regular and timely exchanges of scientific information to achieve accurate and informed decision-making under this subpart and to ensure that the FIFRA process considers the best scientific and commercial data available on listed species and critical habitat in a manner consistent with the requirements of FIFRA and ESA.

§402.43 Interagency exchanges of information.

EPA may convey to the Service a written request for a list of any listed species or critical habitat that may be present in any area that may be affected by a FIFRA action. Within 30 days of receipt of such a request the Service shall advise EPA in writing whether, based on the best scientific and commercial data available, any listed species or critical habitat may be present in any such area. EPA may thereafter request the Service to provide available information (or references thereto) describing the applicable environmental baseline for each species or habitat that EPA determines may be affected by a FIFRA action, and the Service shall provide such information within 30 days of the request.

§402.44 Advance coordination for FIFRA actions.

(a) Advance coordination. EPA may request the Service to designate a Service Representative to work with EPA in the development of an effects determination for one or more listed species or critical habitat. EPA shall make such a request in writing and shall provide sufficient detail as to a FIFRA action planned for consultation to enable the Service to designate a representative with appropriate training and experience who shall normally be available to complete advance coordination with EPA within 60 days of the date of designation. Within 14 days of receiving such a request, the Service shall advise EPA of the designated Service Representative.

(b) Participation of Service Representative in preparation of effects determination. The Service Representative designated under paragraph (a) of this section shall participate with EPA staff in the preparation of the effects determination identified under paragraph (a) of this section. EPA shall use its best efforts to include the designated Service Representative in all relevant discussions on the effects determination, to provide the designated Service Representative with access to all documentation used to prepare the effects determination, and to provide the designated Service Representative office and staff support sufficient to allow the Service Representative to participate meaningfully in the preparation of the effects determination. EPA shall consider all information timely identified by the designated Service Representative during the preparation of the effects determination.

§402.45 Alternative consultation on FIFRA actions that are not likely to adversely affect listed species or critical habitat.

(a) Consultation obligations for FIFRA actions that are not likely to adversely affect listed species or critical habitat when alternative consultation agreement is in effect. If EPA and the Service have entered into an alternative consultation agreement as provided below, EPA may make a determination that a FIFRA action is not likely to adversely affect a listed species or critical habitat without informal consultation or written concurrence from the Director, and upon making such a determination for a listed species or critical habitat, EPA
need not initiate any additional consultation on that FIFRA action as to that listed species or critical habitat. As part of any subsequent request for formal consultation on that FIFRA action under this subpart or subpart B of this part, EPA shall include a list of all listed species and critical habitat for which EPA has concluded consultation under this section.

(b) Procedures for adopting and implementing an alternative consultation agreement. EPA and the Service may enter into an alternative consultation agreement using the following procedures:

(1) Initiation. EPA submits a written notification to the Service Director of its intent to enter into an alternative consultation agreement.

(2) Required contents of the alternative consultation agreement. The alternative consultation agreement will, at a minimum, include the following components:

(i) Adequacy of EPA Determinations under the ESA. The alternative consultation agreement shall describe actions that EPA and the Service have taken to ensure that EPA’s determinations regarding the effects of its actions on listed species or critical habitat are consistent with the ESA and applicable implementing regulations.

(ii) Training. The alternative consultation agreement shall describe actions that EPA and the Service intend to take to ensure that EPA and Service personnel are adequately trained to carry out their respective roles under the alternative consultation agreement. The alternative consultation agreement shall provide that all effects determinations made by EPA under this subpart have been reviewed and concurred on by an EPA staff member who holds a current certification as having received appropriate training under the alternative consultation agreement.

(iii) Incorporation of new information. The alternative consultation agreement shall describe processes that EPA and the Service intend to use to ensure that new information relevant to EPA’s effects determinations is timely and appropriately considered.

(iv) Incorporation of scientific advances. The alternative consultation agreement shall describe processes that EPA and the Service intend to use to ensure that the ecological risk assessment methodologies supporting EPA’s effects determinations incorporate relevant scientific advances.

(v) Oversight. The alternative consultation agreement shall describe the program and associated record keeping procedures that the Service and EPA intend to use to evaluate EPA’s processes for making effects determinations consistent with these regulations and the alternative consultation agreement. The alternative consultation agreement shall provide that the Service’s oversight will be based on periodic evaluation of EPA’s program for making effects determinations under this subpart. Periodic program evaluation will occur at the end of the first year following signature of the alternative consultation agreement and should normally occur at least every five years thereafter.

(vi) Records. The alternative consultation agreement shall include a provision for EPA to maintain a list of FIFRA actions for which EPA has made determinations under this section and to provide the list to the Services on request. EPA will also maintain the necessary records to allow the Service to complete program evaluations.

(vii) Review of Alternative Consultation Agreement. The alternative consultation agreement shall include provisions for regular review and, as appropriate, modification of the agreement by EPA and the Service, and for departure from its terms in a particular case to the extent deemed necessary by both EPA and the Service.

(3) Training. After EPA and the Service enter into the alternative consultation agreement, EPA and the Service will implement the training program outlined in the alternative consultation agreement to the mutual satisfaction of EPA and the Service.

(4) Public availability. The alternative consultation agreement and any related oversight or monitoring reports shall be made available to the public to the extent provided by law.

(c) Oversight of alternative consultation agreement implementation. Through the program evaluations set forth in the
alternative consultation agreement, the Service will determine whether the implementation of this section by EPA is consistent with the best scientific and commercial information available, the ESA, and applicable implementing regulations. The Service Director may use the results of the program evaluations described in the alternative consultation agreement to recommend changes to EPA’s implementation of the alternative consultation agreement. The Service Director retains discretion to terminate or suspend the alternative consultation agreement if, in using the procedures in this subpart, EPA fails to comply with the requirements of this subpart, section 7 of the ESA, or the terms of the alternative consultation agreement. Termination, suspension, or modification of an alternative consultation agreement does not affect the validity of any NLAA determinations made previously under the authority of this subpart.

§ 402.46 Optional formal consultation procedure for FIFRA actions.

(a) Initiation of consultation. EPA may initiate consultation on a FIFRA action under this section by delivering to the Service a written request for consultation. The written request shall be accompanied by an effects determination as defined in § 402.40(b) and a list or summary of all references and data relied upon in the determination. All such references and data shall be made available to the Service on request and shall constitute part of the Service’s administrative record for the consultation. The time for conclusion of the consultation under section 7(b)(1) of the Act is calculated from the date the Service receives the written request from EPA. Any subsequent interchanges regarding EPA’s submission, including interchanges about the completeness of the effects determination, shall occur during consultation and do not extend the time for conclusion of the consultation unless EPA withdraws the request for consultation.

(b) Additional information determination. For an effects determination prepared without advance coordination under § 402.44, the Service may determine that additional available information would provide a better information base for the effects determination, in which case the Service Director shall notify the EPA Administrator within 45 days of the date the Service receives the effects determination. The notification shall describe such additional information in detail, and shall identify a means for obtaining that information within the time period available for consultation. EPA shall provide a copy of the Service Director’s notification to any applicant. EPA may thereafter revise its effects determination, and may resubmit the revised effects determination to the Service. If EPA advises the Service it will not resubmit a revised effects determination to the Service, its initiation of consultation on the effects determination is deemed withdrawn.

(c) Service responsibilities. (1) Within the later of 90 days of the date the Service receives EPA’s written request for consultation or 45 days of the date the Service receives an effects determination resubmitted under paragraph (b) of this section, and consistent with section 7(b)(1) of the Act, the Service shall take one of the following actions:

(i) If the Service finds that the effects determination contains the information required by § 402.40(b) and satisfies the requirements of section 7(b)(4) of the Act, and the Service concludes that the FIFRA action that is the subject of the consultation complies with section 7(a)(2) of the Act, the Service will issue a written statement adopting the effects determination; or

(ii) The Service will provide EPA a draft of a written statement modifying the effects determination, which shall meet the requirements of § 402.14(i), and as modified adopting the effects determination, and shall provide a detailed explanation of the scientific and commercial data and rationale supporting any modification it makes; or

(iii) The Service will provide EPA a draft of a biological opinion finding that the FIFRA action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat, and describing any reasonable and prudent alternatives if available.
(2) If the Service acts under paragraphs (c)(1)(ii) or (c)(1)(iii) of this section, EPA shall, on request from an applicant, provide the applicant a copy of the draft written statement or draft biological opinion received from the Service. The Service shall at the request of EPA or an applicant discuss with EPA and the applicant the Service's review and evaluation under this section, and the basis for its findings. EPA and any applicant may submit written comments to the Service within 30 days after EPA receives the draft written statement or opinion from the Service unless the Service, EPA and any applicant agree to an extended deadline consistent with section 7(b)(1) of the Act.

(3) The Service will issue a final written statement or final biological opinion within 45 days after EPA receives the draft statement or opinion from the Service unless the deadline is extended under section 7(b)(1) of the Act.

(d) Opinion of the Secretary. The written statement or opinion by the Service under paragraphs (c)(1) or (c)(3) of this section shall constitute the opinion of the Secretary and the incidental take statement, reasonable and prudent measures, and terms and conditions under section 7(b) of the Act.

(e) Delegation of Authority for Service decisions. Any written statement modifying an effects determination or any biological opinion issued under this section shall be signed by the Service Director and such authority may not be delegated below the level of Assistant Director for Endangered Species (FWS) or Director of Office of Protected Resources (NOAA Fisheries).

§ 402.47 Special consultation procedures for complex FIFRA actions.

(a) Successive effects determinations. If EPA determines after conferring with the Service that consultation on a FIFRA action will be unusually complex due to factors such as the geographic area or number of species that may be affected by the action, EPA may address the effects of the action through successive effects determinations under this subpart addressing groupings or categories of species or habitats as established by EPA. EPA may initiate consultation based upon each such effects determination using the procedure in §402.46(a), and the provisions of §402.46(b) and (c) shall apply to any such consultation. When consultation is conducted under this section, the written statement or opinion provided by the Service under §402.46(c) constitutes a partial biological opinion as to the species or habitats that are the subject of the consultation. While not constituting completion of consultation under section 7(a)(2), EPA retains authority to use such a partial biological opinion along with other available information in making a finding under section 7(d) of the Act.

(b) Opinion of the Secretary. After conclusion of all consultation on the FIFRA action, the partial biological opinions issued under paragraph (a) of this section shall then collectively constitute the opinion of the Secretary and the incidental take statement, reasonable and prudent measures, and terms and conditions under section 7(b) of the Act except to the extent a partial biological opinion is modified by the Service in accordance with the procedures in §402.46(c). The Service shall so advise EPA in writing upon issuance of the last partial biological opinion for the consultation.

§ 402.48 Conference on proposed species or proposed critical habitat.

EPA may employ the procedures described in §402.10 to confer on any species proposed for listing or any habitat proposed for designation as critical habitat. For the purposes of §402.10(d), the procedures in §402.46 are a permissible form of formal consultation.
§ 403.01 Purpose and scope of regulations.

The regulations contained in this part implement section 109 of the Act which, upon a finding by the Secretary of compliance with certain requirements, provides for the transfer of marine mammal management authority to the states.

(a) The regulations of this part apply the procedures for the transfer of marine mammal management authority to a state, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority to the Federal Government.

(b) Nothing in this part shall prevent:

(1) The taking of a marine mammal by or on behalf of a Federal, state or local government official, in accordance with §18.22 or §216.22 of this Title and section 109(h) of the Act, or

(2) The adoption or enforcement of any state law or regulation relating to any marine mammal taken before December 21, 1972.

(c) The information collection requirements contained in §§403.03, 403.06, and 403.07 of this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq., because there are fewer than 10 respondents annually.

§ 403.02 Definitions.

The following definitions apply to this part:

(a) The term species includes any population stock.

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

(c) State management program means existing and proposed state statutes, regulations, policies and other authorities which form the framework for the conservation of a species of marine mammals.

(d) State regulation means the whole or part of a state agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a state agency and which is duly promulgated in accordance with established procedure.


(f) The Secretary means the Secretary of the Interior or the Secretary of Commerce, depending on the species involved. Under section 3(11) of the Act, the Secretary of Commerce has jurisdiction over members of the order Cetacea and members, other than walruses, of the order Pinnipedia; the Secretary of the Interior has jurisdiction over all other mammals. These secretarial authorities have been delegated to the National Marine Fisheries Service and the Fish and Wildlife Service, respectively.

(g) The Service or Services means the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), as appropriate depending on the species involved. Any determination or finding required by this part to be made by the “Service” must be made by the Director of the FWS or by the Assistant Administrator of the NMFS, or their delegees, as appropriate.

§ 403.03 Review and approval of State request for management authority.

(a) Any state may request the transfer of management authority for a species of marine mammals by submitting a written request to the Director of the Fish and Wildlife Service (“Director”) for species of marine mammals under
the jurisdiction of the FWS, or to the Assistant Administrator for Fisheries of the National Marine Fisheries Service ("Assistant Administrator") for species of marine mammals under the jurisdiction of the NMFS. The request must include:

(1) Copies of existing and proposed statutes, regulations, policies and other authorities of state law which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraphs (d) (1) through (3) of this section;

(2) A narrative discussion of the statutes, regulations, policies and other authorities which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section, which explains the program in terms of the requirements of the Act and the regulations of this part; and

(3) Supplementary information as required by paragraph (c) of this section.

(b) A request for transfer of marine mammal management authority will not be approved unless it contains the following:

(1) The scientific and common names and estimated range of the species of marine mammals subject to the state management program.

(2) Provisions of state law concerning the take of marine mammals that—

(i) Require that the taking of marine mammals be humane as defined by section 3(4) of the Act;

(ii) Do not permit the taking of marine mammals until the following have occurred:

(A) The state, pursuant to the requirements of §403.04 of this part, has determined that the species is at its Optimum Sustainable Population (OSP) and determined the maximum number of animals that may be taken without reducing the species below its OSP, and, in the case of Alaska, when a species is below OSP, the maximum numbers that can be taken for subsistence uses while allowing the species to increase toward its OSP;

(B) A cooperative allocation agreement, if required under §403.05(a) of this part, is implemented;

(iii) Do not permit take in excess of the maximum number of animals that may be taken as determined pursuant to §403.04 of this part; provided that for Alaska, subsistence take may be allowed in accordance with paragraph (d) of this section, and if the species is below OSP, any level of take allowed for subsistence use shall permit the species to increase toward OSP;

(iv) Do not permit take that is for scientific research or public display purposes except such take by or on behalf of the state, or pursuant to a Federal permit issued under §18.31 or §216.31 of this title; and

(v) Regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5) of the Act.

(3) Provisions for annually acquiring and evaluating data and other new evidence relating to OSP of the species and the maximum allowable take, and if warranted on the basis of such evaluation, for requiring reevaluations of OSP and maximum allowable take determinations pursuant to §403.04.

(4) Procedures for the resolution of differences between the state and the appropriate Service that might arise during the development of a cooperative allocation agreement pursuant to §403.05(a) of this part.

(5) Procedures for the submission of an annual report meeting the requirements of §403.06(b) of this part to the appropriate Service regarding the administration of the state management program during the reporting period.

(6) A description of—

(i) The organization of state offices involved in the administration and enforcement of the state management program;

(ii) Any permit system relating to the marine mammals, the laws that apply to such permits, and the procedures to be used in granting or withholding such permits;

(iii) State laws relating to judicial review of administrative decisions as they relate to the state management program;

(iv) State laws relating to administrative rulemaking as they relate to the state management program;
(c) In addition to the aspects of the state management program required to be submitted by paragraph (b) of this section, the state shall submit information, in summary form, relating to:

1. The anticipated staffing and funding of state offices involved in the administration and enforcement of the state management program;

2. Anticipated research and enforcement activities relating to conservation of the species for which management authority is sought; and

3. Such other materials and information as the Service may request or which the state may deem necessary or advisable to demonstrate the compatibility of the state management program with the policy and purposes of the Act and the rules and regulations issued under the Act.

(d) In addition to the requirements contained in paragraphs (b) and (c) of this section, a request for the transfer of marine mammal management authority by the State of Alaska must contain the following concerning subsistence use of the species—

1. A statute and regulations concerning the take of marine mammals that ensure that

   i. The taking of marine mammals species for subsistence uses will be the priority consumptive uses of the species;

   ii. If restrictions on subsistence uses of the species are required, such restrictions shall be based upon the customary and direct dependence upon the species as the mainstay of livelihood, local residency, and the availability of alternative resources; and

   iii. The taking of marine mammal species for subsistence uses is accomplished in a non-wasteful manner;

2. Statutes or regulations that ensure that the appropriate state agency will—

   i. Authorize nonsubsistence consumptive uses of a marine mammal species only if such uses will have no significant adverse impact on subsistence uses of the species;

   ii. Regulate nonsubsistence consumptive uses in a manner which, to the maximum extent practicable, provides economic opportunities, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, for residents of rural coastal villages of Alaska who engage in subsistence uses of the species; and

   iii. Make written findings supporting the authorizations and regulations described in this paragraph based solely on the administrative record before the agency;

3. A narrative discussion of the statutes or regulations required under paragraph (d)(2) of this section, and any additional policies or procedures concerning the regulation of nonsubsistence consumptive uses of marine mammals. This discussion must explain how the State’s program satisfies the requirements of section 109(f) of the Act, namely that the regulation of nonsubsistence consumptive uses of marine mammals provides, to the maximum extent practicable, economic opportunities for the residents of rural coastal villages of Alaska who engage in subsistence uses of the species.

(e) To assist states in preparing the state management program for submission, the Service will also, at the written request of any state, make a preliminary review of any aspects of the state management program. This review will be advisory in nature and shall not be binding upon the Services. Notwithstanding preliminary review by the Service, once any proposed aspect of the state management program has been prepared and submitted in final form, it shall be subject to final review and approval under paragraphs (f) through (h) of this section.

(f)(1) After receiving the state’s request, for management authority, the Service shall make an initial determination on whether the state’s management program meets the requirements of the Act and these regulations.

(2) Within 45 days after receiving the state’s request, unless the state and the Service agree to another time period, the Service shall publish a general notice of its initial determination in the Federal Register together with, in the case of a positive determination, the text of a proposed rule to transfer management authority to the state. The general notice shall contain a summary of the major components of the state’s management program and shall indicate where the full text of the
management program may be inspected or copied. The public shall be allowed to submit written comments and to request an informal public hearing on the Service's initial determination and the state's management program within 60 days of publication of the general notice.

(g) If requested, the Service may conduct an informal public hearing after publishing 30 days' advance notice of the date, location, and time of such hearing in the FEDERAL REGISTER.

(h) After considering all comments and other relevant information, the Service shall publish in the FEDERAL REGISTER its final determination on whether the state has developed and will implement a management program that meets the requirement of the Act and these regulations. In the case of a positive final determination, the Service shall publish with the notice a final regulation transferring management authority for the species to the state after the following requirements are satisfied:

(1) The state’s determinations pursuant to §403.04 of this part are final and implemented under state law;
(2) Any cooperative allocation agreement required under §403.05(a) of this part is implemented; and
(3) The state has enacted and submitted to the Service laws and policies that are substantially the same as those provided pursuant to §403.03(a) in proposed form in the state's management program.

§403.04 Determinations and hearings under section 109(c) of the MMPA.

(a) Introduction. In order to gain approval of its marine mammal management program the state must provide for a process, consistent with section 109(c) of the Act, to determine the optimum sustainable population of the species and the maximum number of animals that may be taken from populations it manages without reducing the species below OSP. The state process must be completed before the state may exercise any management authority over the subject marine mammals, and it must include the elements set forth below.

(b) Basis, purpose, and scope. The process set forth in this section is applicable to and required for only the determination of the OSP of the species and maximum number that may be taken without reducing it below its OSP and, in the case of Alaska if the species is below OSP, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP. The state need not allow the maximum take, as determined in accordance with this process, that is biologically permissible. The state may change regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. within the maximum biologically permissible take pursuant to its other rulemaking criteria, authority, and procedures. Compliance with the process set forth in this section would not be required again unless the state proposes to modify its determinations of the status of the species with respect to its OSP or the maximum permissible take from that species.

(c) Initial determination by the State. The state agency with responsibility for managing the species in the event management authority is transferred to the state shall make initial determinations on the basis of the best scientific evidence available of:

(1) Whether or not it is at its OSP; (2) if so, the maximum number of that species that may be taken without reducing it below its OSP; and (3) if not, in the case of Alaska, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP.

(d) Notice and review of initial determinations and request for hearing. The state agency shall provide notice of its initial determinations to the Service and the public and shall provide access to or copies of the documentation supporting its determinations to the Service and the public. The state agency shall indicate, in the notice of its initial determinations, the location(s) and hours during which such documentation may be inspected, and the costs, if any of copies of such documentation. The state agency shall also indicate in the notice that any interested person may request a hearing regarding the initial determinations, and the state...
shall provide a reasonable time, not less than 30 days, for making the request, taking into account the time required to advise the public of the initial determinations and to make the supporting documentation readily available to interested persons for their consideration. If a request for a hearing is not made within the prescribed time period, the initial determinations shall be treated as final.

(e) Notice of hearing. If a request for a hearing is made within the prescribed time period by any interested person, the state agency shall provide notice of the hearing to the Service and the public not less than 30 days in advance of the scheduled date(s) of the hearing(s). The notice shall include the date(s), location(s), and purpose of the hearing, a recitation of the initial determinations, the name(s) of the person(s) who will preside at the hearing, and the manner and date by which interested persons must notify the state agency or presiding officer(s) of their desire to participate in the hearing. The state shall also make available and distribute upon request a list of witnesses and description of the documentation and other evidence that will be relied upon by the state’s witnesses in support of its initial determinations sufficiently in advance of the hearing date so as to allow interested persons to prepare questions and supporting or rebuttal testimony for the hearing.

(1) Conduct of the hearing. (1) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(2) The state shall sponsor all written documentation in support of its determinations with witnesses who are able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein provided that, except by agreement of the parties, the state agency may not call any witnesses or introduce any documentation into the record unless the advance notice requirements of paragraph (e) of this section are met with respect to such witnesses or documentation.

(3) Any interested person who has notified the state agency of his desire to participate in the hearing pursuant to paragraph (e) of this section may participate in the hearing by presenting oral or written testimony or cross-examining the witnesses or other parties with respect to matters relevant to the state’s initial determinations, provided that any such written documentation must be sponsored by a witness who is able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein.

(f) Review of the hearing record and final determinations. (1) The state agency shall provide for either:

(i) Review and evaluation of the hearing record by the presiding officer(s) and transmittal by the presiding officer(s) of recommended final determinations to the decision-maker(s) in the state agency; or

(ii) Review and evaluation of the hearing record and final determinations by the state agency without benefit of any recommendations by the presiding officer(s). In any event, the final determinations by the state agency, and/or presiding officer(s) in making his (their) recommended determinations, may not rely on oral or written evidence which was not presented at the hearing and made available to the parties for cross-examination and rebuttal testimony. Any such oral or written information transmitted to the presiding officer(s) or other members of the state agency responsible for the final determinations shall be treated as ex parte communications and may not be considered part of the record for decision.

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§ 403.05  State and Federal responsibilities after transfer of management authority.

(a) After determinations required by section 403.04 of this part have been made in respect to a species whose range extends beyond the territorial waters of the state, the state shall not exercise management authority until a cooperative allocation agreement with the Secretary has been signed and the Service has transferred management authority pursuant to § 403.03(h). The cooperative allocation agreement shall provide procedures for allocating, on a timely basis, the maximum amount of take as determined by the state pursuant to § 403.04 of this part. Such allocation shall give first priority to incidental take within the zone described in section 3(14)(B) of the Act as provided for under section 101(a) of the Act, except that in the case of Alaska, first priority shall be given to subsistence use.

(b) For those species to which paragraph (a) of this section applies, the state may request the Service to regulate the taking of the species within the zone described in section 3(14)(B) of the Act for subsistence use and/or hunting in a manner consistent with the regulation by the state of such taking within the state. If such a request is made, the Service shall adopt and enforce within such zone, such of the state’s regulatory provisions as the Service considers to be consistent with the administration within such zone of section 101(a) of the Act.

(c) If management authority for a species has been transferred to a state pursuant to this subpart, the Service shall provide to the state an opportunity to review all requests for permits to remove live animals from habitat within the state for scientific research or public display purposes. If the state finds that issuance of the permit would not be consistent with its management program for the species:

1. The state shall so inform the Service, together with the reasons for such finding, within 30 days of its receipt of the application, and the Service shall not issue the permit; and

2. The Service shall provide to the permit applicant and the state an opportunity to adjust the permit application or otherwise reconcile it with the state management program for the species.

§ 403.06  Monitoring and review of State management program.

(a) The Service has responsibility to monitor and review implementation of all state management programs approved pursuant to this part.

(b) In order to facilitate such review, each state to which management authority has been transferred shall submit an annual report, not later than 120 days after the close of such state’s first full fiscal or calendar year following the effective date of the Service’s approval of the State management program, and at the same time each following year, or at such other time as may be agreed upon. The report shall contain the following information current for each reporting period:

1. Any changes in the state laws which comprise those aspects of the state management program submitted pursuant to § 403.03(b), and, in the case of Alaska, § 403.03(d), of this part;
(2) Pertinent new data on the marine mammal species or the marine ecosystems in question including a summary of the status, trend and general health of the species;

(3) A summary of available information relating to takings under the state management program;

(4) A summary of state actions to protect species’ habitat;

(5) A summary of all state research activity on the species;

(6) Any significant changes in the information provided with the original request for transfer of management authority;

(7) A summary of enforcement activity;

(8) A summary of budget and staffing levels for the marine mammal activities in the categories of research, management and enforcement;

(9) Any other information which the Service may request, consistent with the Act as amended, or which the state deems necessary or advisable to facilitate review by the Service of state management of the species.

(c) Each state having an approved management program shall file a report, in a timely manner, not to exceed 45 days from the occurrence of any of the following:

(1) Any change in a relevant state law (amendments, repeaters, or new legislation or regulations or judicial precedent) as submitted pursuant to paragraphs (b)(2) through (b)(5), and in the case of Alaska, paragraph (d), of §403.03 of this part that may impair the State’s ability to implement the program;

(2) Any significant natural or man-made occurrence or any new scientific information that may warrant reconsideration of the determinations made pursuant to §403.04 of this part.

(d) All components of the state request for transfer of management authority, as well as annual reports submitted under paragraph (b) of this section and any reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Office of the Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, or, as appropriate, at the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235, and at the appropriate Service’s regional office.

§ 403.07 Revocation and return of State management authority.

(a) Revocation of management. The Service shall have responsibility to review management of a species transferred to a state under this part and to determine whether or not the implementation of the state management program continues to comply with the requirements of the Act, this part and the state’s approved management program.

(1) Upon receipt of any substantial factual information suggesting that the state management program is not being implemented or is being implemented in a manner inconsistent with the Act, this part, or the state’s approved management program, the Service shall, as soon as practicable but not later than 30 days after receipt, determine whether or not the state continues to comply with the requirements of the Act, this part and the state’s approved management program.

(2) Whenever pursuant to a review as specified in paragraph (a)(1) of this section, the Service determines that any substantial aspect of the state management program is not in compliance with the requirements of the Act, this part or the state’s approved management program, it shall provide written notice to the state of its intent to revoke management authority, together with a statement, in detail, of those actions or failures to act upon which such intent to revoke is based. The Service shall publish notice of such intent to revoke in the Federal Register and invite public comment thereon, and shall conduct an informal public hearing on the matter if requested by the state or if the Service otherwise determines it to be necessary. The Service shall provide to the state an opportunity for consultation between the Service and the state concerning such actions or failures and necessary remedial actions to be taken by the state.
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(3) If within 90 days after notice is provided under paragraph (a)(2) of this section, the state has not taken such remedial measures as are necessary, in the judgment of the Service, to bring the state management program into compliance with the provisions of the Act, this part and the state’s approved management program, the Service shall revoke the transfer of management authority by written notice to the state and publication in the FEDERAL REGISTER.

(b) Voluntary return of management authority to the Service. (1) If a state desires to return management of a species of marine mammals to the Service, it shall provide the Service notice of intent to return management. The Service shall accept the return of management, and such return shall become effective, upon publication of a notice in the FEDERAL REGISTER to this effect.

(2) If implementation of any aspect of the state management program is enjoined by court order, the state shall advise the Service of such injunction and its effect on the state management program. If the state determines that the effect of the injunction is to preclude effective conservation and management of the species under the terms of the state management program, it shall so notify the Service and such notification shall be treated as a notice of intent to return management as provided in paragraph (b)(1) of this section. If the state determines that the injunction does not preclude effective conservation and management of marine mammals under the terms of the state management program, it shall so notify the Service together with the basis for the state’s determination and such notice shall be treated as a report submitted pursuant to the terms of §403.06(c)(1) of this part. In either case, the state shall provide notice to the Service as soon as practicable but not more than 30 days after issuance of the injunction. Management authority returned to the Service pursuant to this paragraph may be re-transferred to the state, notwithstanding the requirements of §403.03, when, in the judgment of the Service, the cause for return of management authority to the Service has been alleviated in such a way as to allow effective conservation and management of the species consistent with the requirements of the Act and this part.

(c) When revocation of a management authority pursuant to paragraph (a) of this section becomes final, or when a state returns management pursuant to paragraph (b) of this section, the Service shall resume such management authority and provide for the conservation of the species within the state in accordance with the provisions of the Act.

§ 403.08 List of States to which management has been transferred.

The following states have received management authority pursuant to this part for the species listed and, where appropriate, cooperative allocation agreements pursuant to §403.65(c) are in force: [Reserved]

PART 404—NORTHWESTERN HAWAIIAN ISLANDS MARINE NATIONAL MONUMENT

Sec. 404.1 Scope and purpose.
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APPENDIX A TO PART 404—MAP OF THE MONUMENT OUTER BOUNDARY AND ECOLOGICAL RESERVES, SPECIAL PRESERVATION AREAS, AND MIDWAY ATOLL SPECIAL MANAGEMENT AREA

APPENDIX C TO PART 404—APPROVED VESSEL MONITORING SYSTEMS

APPENDIX D TO PART 404—BOUNDARY COORDINATES FOR PAPAHĀNAUMOKUĀkea Marine National Monument Areas To Be Avoided

APPENDIX E TO PART 404—BOUNDARY COORDINATES FOR PAPAHĀNAUMOKUĀkea Marine National Monument Areas To Be Avoided
§ 404.1 Scope and purpose.

The regulations in this part codify the provisions of Presidential Proclamation 8031, and govern the administration of the Northwestern Hawaiian Islands Marine National Monument. These regulations are jointly implemented by the Secretaries of the Interior, through the U.S. Fish and Wildlife Service (USFWS), and Commerce, through the National Oceanic and Atmospheric Administration (NOAA). Nothing in these regulations shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

§ 404.2 Boundary.

The Northwestern Hawaiian Islands Marine National Monument consists of all lands and interest in lands owned or controlled by the Government of the United States within the boundaries of the Monument, including emergent and submerged lands and waters of the Northwestern Hawaiian Islands. The map in Appendix A to this part 404 depicts the outer boundary of the Monument, which consists of the geodetic lines connecting the coordinates specified in the Proclamation.

§ 404.3 Definitions.

The following definitions are applicable only to this Part.

**Areas to be avoided** means the four designated areas that should be avoided by vessels that are conducting passage through the Monument without interruption. Appendix C sets forth the coordinates of these areas.

**Attract or Attracting** means luring or attempting to lure a living resource by any means, except the mere presence of human beings (e.g., swimmers, divers, boaters).

**Bottomfish Species** means Bottomfish management unit species as defined at 50 CFR 665.12.

**Categories of hazardous cargoes** means goods classified in the International Maritime Dangerous Goods (IMDG) Code; substances classified in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code); oils as defined in MARPOL Annex I; noxious liquid substances as defined in MARPOL Annex II; harmful substances as defined in MARPOL Annex III; and radioactive materials specified in the Code for the Safe Carriage of the Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on Board Ships (INF Code).

**Commercial Bottomfishing** means commercial fishing for bottomfish species.

**Commercial passenger vessel** means a vessel that carries individuals who have paid for such carriage.

**Commercial pelagic trolling** means commercial fishing for pelagic species.

**Deserting a vessel** means:

1. Leaving a vessel aground or adrift:
   (i) Without notifying the Secretaries of the vessel going aground or adrift within 12 hours of its discovery and developing and presenting to the Secretaries a preliminary salvage plan within 24 hours of such notification;
   (ii) After expressing or manifesting intention to not undertake or to cease salvage efforts; or
   (iii) When the Secretaries are unable, after reasonable efforts, to reach the owner/operator within 12 hours of the vessel’s condition being reported to authorities.

2. Leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

**Ecological Reserve** means the areas of the Monument, identified in the Proclamation, consisting of contiguous, diverse habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and...
also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Monument. Specific coordinates for Ecological Reserves within the Monument are found in the Proclamation, and the Ecological Reserves consist of the areas within the geodetic lines connecting these coordinates. The Ecological Reserves are depicted on the map in Appendix A to part 404.

**Ecological integrity** means a condition determined to be characteristic of an ecosystem that has the ability to maintain the function, structure, and abundance of natural biological communities, including rates of change in response to natural environmental variation.

**Fishing year** means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

**IMO** means the International Maritime Organization.

**Introduced Species** means:

1. A species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Monument; or
2. Any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

**Landing** means offloading fish from a fishing vessel or causing fish to be offloaded from a fishing vessel.

**Midway Atoll Special Management Area** means the area of the Monument surrounding Midway Atoll out to a distance of 12 nautical miles, established for the enhanced management, protection, and preservation of Monument wildlife and historical resources. The geographic coordinates of this area, which consists of the area within the geodetic lines connecting these coordinates, are found in the Proclamation. The Midway Atoll Special Management Area is depicted on the map in Appendix A to part 404.

**Mobile transceiver unit** means a vessel monitoring system or VMS device, as described in Appendix E to this Part, installed on board a vessel that is used for vessel monitoring and transmitting the vessel’s position as required by this Part.

**Monument** means the Northwestern Hawaiian Islands Marine National Monument.

**Native Hawaiian Practices** means cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of Monument resources for direct personal consumption while in the Monument.

**Ocean-based ecotourism** means a class of fee-for-service activities that involves visiting the Monument for study, enjoyment, or volunteer assistance for purposes of conservation and management.

**Office for Law Enforcement (OLE)** refers to NOAA, National Marine Fisheries Service, Office for Law Enforcement.

**Pelagic Species** means Pacific Pelagic Management Unit Species as defined at 50 CFR 665.12.

**Pono** means appropriate, correct, and deemed necessary by traditional standards in the Hawaiian culture.

**Proclamation** means Presidential Proclamation 8031, dated June 15, 2006 (71 FR 36443).

**Recreational activity** means an activity conducted for personal enjoyment that does not result in the extraction of Monument resources and that does not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, SCUBA diving, snorkeling, and boating.

**Reporting area** means the area within the coordinates set forth in Appendix D.

**Secretaries** means the Secretary of Commerce and the Secretary of the Interior or their designees.

**Special Preservation Area (SPA)** means discrete, biologically important areas of the Monument, identified in the Proclamation, within which uses are subject to conditions, restrictions, and prohibitions, including but not limited to access restrictions. SPAs are used to avoid concentrations of uses that could...
result in declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Specific coordinates for Special Preservation Areas within the Monument are found in the Proclamation, and the Special Preservation Areas consist of the areas within the geodetic lines connecting these coordinates. The Special Preservation Areas are depicted on the map in Appendix A to part 404.

**Special ocean use** means an activity or use of the Monument that is engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and does not destroy, cause the loss of, or injure Monument resources. This includes ocean-based ecotourism and other activities such as educational and research activities that are engaged in to generate revenue, but does not include commercial fishing for bottomfish or pelagic species conducted pursuant to a valid permit issued by NOAA.

**Stowed and not available for immediate use** means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

**Sustenance fishing** means fishing for bottomfish or pelagic species in which all catch is consumed within the Monument, and that is incidental to an activity permitted under this part.

**Vessel monitoring system or VMS** means a vessel monitoring system or mobile transceiver unit as described in §404.3 and approved by Office for Law Enforcement for use on vessels permitted to access the Monument, as required by this Part.


§ 404.4 Access to Monument.

(a) Entering the Monument is prohibited and thus unlawful except:

(1) As provided in §§404.8 and 404.9;

(2) Pursuant to a permit issued under §§404.10 or 404.11; or

(3) When conducting passage without interruption in accordance with paragraphs (b) through (f) of this section.

(b) Any person passing through the Monument without interruption is subject to the prohibitions in §§404.5, 404.6, and 404.7.

(c) The following vessels, except vessels entitled to sovereign immunity under international law, passing through the Monument without interruption must participate in the ship reporting system as provided in paragraphs (d) and (e) of this section:

(1) Vessels of the United States, except as provided in paragraph (f) of this section;

(2) All other ships 300 gross tonnage or greater, entering or departing a United States port or place; and

(3) All other ships in the event of an emergency, entering or departing a United States port or place.

(d) Immediately upon entering the reporting area, the vessels described in paragraph (c) of this section must provide the following information by e-mail sent to nwhi.notifications@noaa.gov in the IMO standard reporting format and data syntax shown in Appendix E:

(1) Vessel name, call sign or ship station identity, flag, and IMO identification number if applicable, and either Federal documentation or State registration number if applicable.

(2) Date, time (UTC) and month of entry.

(3) Position.

(4) True course.

(5) Speed in knots and tenths.

(6) Destination and estimated time of arrival.

(7) Intended route through the Monument and the reporting area.

(8) Vessel draft (in meters).

(9) Categories of hazardous cargoes on board.

(10) Any vessel defects or deficiencies that restrict maneuverability or impair normal navigation.

(11) Any pollution incident or goods lost overboard within the Monument, the reporting area, or the U.S. EEZ.

(12) Contact information for the vessel’s agent or owner.

(13) Vessel size (length overall, gross tonnage) and type.

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§ 404.5 Requirements for a vessel monitoring system.

(a) **Requirement for use.** Effective August 28, 2006, an owner or operator of a vessel that has been issued a permit for accessing the Monument must ensure that such vessel has an OLE-approved, operating VMS on board when voyaging within the Monument. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and OLE as provided by an OLE-approved communication service provider. Appendix B to this part 404 provides information regarding OLE-approved transmitting units.

(b) **Installing and activating the VMS.** Only a VMS that has been approved by OLE may be used. When installing and activating the OLE-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must:

(1) Follow procedures indicated on an installation and activation checklist, which is available from OLE; and

(2) Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

(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 OLE, and follow instructions from that office. If notified by OLE 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 OLE the vessel’s positions or returning to port until the VMS is operable.

(e) **Access to position data.** As a condition of authorized access to the Monument, a vessel owner or operator subject to the requirements for a VMS in this section must allow OLE, the USCG, and their authorized officers and designees access to the vessel’s position data obtained from the VMS. Consistent with other applicable laws, including the limitations on access to, and use of, VMS data collected under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretaries may have access to, and use of, collected data for scientific, statistical, and management purposes.
(f) Authority for installation and operation. OLE has authority over the installation and operation of the VMS unit. OLE may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by OLE.

(g) Activities Regarding Vessel Monitoring Systems. Effective August 28, 2006, the following activities regarding vessel monitoring systems are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Operating any vessel within the Monument without an OLE-type-approved mobile transceiver unit described in this section;

(2) Failing to install, activate, repair, or replace a mobile transceiver unit prior to leaving port;

(3) Failing to operate and maintain a mobile transceiver unit on board the vessel at all times as specified in this section;

(4) Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified in this section;

(5) Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted as specified in this section;

(6) Registering a VMS or mobile transceiver unit to more than one vessel at the same time;

(7) Connecting or leaving connected additional equipment to a VMS unit or mobile transceiver unit without the prior approval of OLE; and

(8) Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or mobile transceiver unit or communication service provider.

§ 404.6 Prohibited activities.

The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(a) Exploring for, developing, or producing oil, gas, or minerals within the Monument;

(b) Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a Monument resource;

(c) Introducing or otherwise releasing an introduced species from within or into the Monument; and

(d) Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope.

§ 404.7 Regulated activities.

Except as provided in §§ 404.8, 404.9 and 404.10, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the Monument without a valid permit as provided for in § 404.11:

(a) Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving Monument resource;

(b) Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;

(c) Anchoring a vessel;

(d) Deserting a vessel aground, at anchor, or adrift;

(e) Discharging or depositing any material or other matter into Special Preservation Areas or the Midway Atoll Special Management Area except vessel engine cooling water, weather deck runoff, and vessel engine exhaust;

(f) Discharging or depositing any material or other matter into the Monument, or discharging or depositing any material or other matter outside the Monument that subsequently enters the Monument and injures any resources of the Monument, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust;

(g) Touching coral, living or dead;

(h) Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument;
§ 404.8 Emergencies and law enforcement activities.

The prohibitions in this part do not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

§ 404.9 Armed Forces actions.

(a) The prohibitions in this part do not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard) that are consistent with applicable laws.

(b) These regulations shall not limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

(c) All activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on Monument resources and qualities.

(d) In the event of threatened or actual destruction of, loss of, or injury to a Monument resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the United States Coast Guard, the cognizant component shall promptly coordinate with the Secretaries for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Monument resource or quality.

§ 404.10 Commercial fishing.

(a) Lobster fishing. Any commercial lobster fishing permit is subject to a zero annual harvest limit condition.

(b) Fishing and bottomfish and pelagic species. (1) Notwithstanding the prohibitions in §404.7(a) and (h), commercial fishing for bottomfish and associated pelagic species may continue within the Monument subject to paragraph (c) of this section, until June 15, 2011, provided that:

(i) The fishing is conducted in accordance with a valid commercial bottomfish permit issued by NOAA; and

(ii) Such permit was in effect on June 15, 2006, and is subsequently renewed pursuant to NOAA regulations at 50 CFR part 665, subpart E as necessary.

(2) Total landings for each fishing year from fishing allowed under paragraph (b)(1) of this section may not exceed the following amounts:

(i) 350,000 pounds for bottomfish species; and

(ii) 180,000 pounds for pelagic species.

(3) Commercial fishing for bottomfish and associated pelagic species is prohibited in the Monument after June 15, 2011.

(c) General requirements. Any commercial fishing within the Monument shall be conducted in accordance with the following restrictions and conditions:

(1) A valid permit or facsimile of a valid permit shall be on board the fishing vessel and available for inspection by an authorized officer;

(2) No attempt is made to falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other required record or report.

(3) Only gear specifically authorized by the relevant permit issued under the Magnuson-Stevens Fishery Conservation and Management Act is allowed to be in the possession of a person conducting commercial fishing under this section;

(4) Any person conducting commercial fishing notifies the Secretaries by telephone, facsimile, or electronic mail at least 72 hours before entering the Monument and within 12 hours after leaving the Monument in accordance with §404.4(b) and (c);

(5) All fishing vessels must carry an activated and functioning VMS unit on board at all times whenever the vessel is in the Monument;

(6) All fishing vessels must carry an observer when requested to do so by the Secretaries;

(7) The activity does not take place within any Ecological Reserve, any
§ 404.11 Permitting procedures and criteria.

(a) Issuance. Subject to such terms and conditions as the Secretaries deem appropriate, a person may conduct an activity prohibited by § 404.7 if such activity is specifically authorized by a permit issued under this section.

(b) Application requirements. Applicants for permits under this section shall submit applications to: Northwestern Hawaiian Islands National Monument, 6600 Kalanianaole Highway, Suite 300, Honolulu, HI 96825.

(c) Permit Types. A permit under this subpart may be issued if the Secretaries find that the activity:

(1) Is research designed to further understanding of Monument resources and qualities;
(2) Will further the educational value of the Monument;
(3) Will assist in the conservation and management of the Monument;
(4) Will allow Native Hawaiian practices subject to paragraph (e) of this section;
(5) Will allow a special ocean use subject to paragraph (f) of this section; or
(6) Will allow recreational activities subject to paragraph (g) of this section.

(d) Findings. A permit may not be issued under this section unless the Secretaries find:

(1) The activity can be conducted with adequate safeguards for the resources and ecological integrity of the Monument;
(2) The activity will be conducted in a manner compatible with the purposes of the Proclamation, considering the extent to which the conduct of the activity may diminish or enhance Monument resources, qualities, and ecological integrity, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;
(3) There is no practicable alternative to conducting the activity within the Monument;
(4) The end value of the activity outweighs its adverse impacts on Monument resources, qualities, and ecological integrity;
(5) The duration of the activity is no longer than necessary to achieve its stated purpose;
(6) The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;
(7) The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;
(8) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity’s goals in relation to their impacts to Monument resources, qualities, and ecological integrity;
(9) The applicant’s vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of § 404.5; and
(10) There are no other factors that would make the issuance of a permit for the activity inappropriate.

(e) Additional findings for Native Hawaiian practice permits. In addition to the findings listed in paragraph (d) of this section, a permit to allow Native Hawaiian practices under paragraph (c)(4) of this section, may not be issued unless:

(1) The activity is non-commercial and will not involve the sale of any organism or material collected;
(2) The purpose and intent of the activity are appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (pono), and demonstrate an understanding of, and background in, the traditional practice, and its associated values and protocols;
(3) The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;
(4) The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and
(5) Any Monument resource harvested from the Monument will be consumed in the Monument.

(1) In addition to the findings listed in

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§ 404.11

paragraph (d) of this section, the following requirements apply to the issuance of a permit for a special ocean use under paragraph (c)(5) of this section:

(i) Any permit for a special ocean use issued under this section:
   (A) Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the Monument is designated and with protection of Monument resources;
   (B) Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed;
   (C) Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure Monument resources; and
   (D) Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims;

(ii) Each person issued a permit for a special ocean use under this section shall submit an annual report to the Secretaries not later than December 31 of each year which describes activities conducted under the permit and to agree to hold the United States harmless against such claims;

(2) In addition to the findings listed in paragraph (d) of this section, a permit may not be issued for a special ocean use unless the activity has been determined to be consistent with the findings made pursuant to paragraph (f) of this section.

(3) Categories of special ocean use being permitted for the first time under this section will be restricted in duration and permitted as a special ocean use pilot project. Subsequent permits for any category of special ocean use may only be issued if a special ocean use pilot project for that category meets the requirements of this section, and any terms and conditions placed on the permit for the pilot project.

(4) Public notice shall be provided prior to requiring a special ocean use permit for any category of activity not previously identified as a special ocean use.

(5) The following requirements apply to permits for a special ocean use for an activity within the Midway Atoll Special Management Area.

(i) A permit for a special ocean use for activities within the Midway Atoll Special Management Area may be issued provided:
   (A) The activity furthers the conservation and management of the Monument; and
   (B) The Director of the United States Fish and Wildlife Service or his or her designee has determined that the activity is compatible with the purposes for which the Midway Atoll National Wildlife Refuge was designated.

(ii) As part of a permit issued pursuant to this paragraph (f)(5), vessels may be allowed to transit the Monument as necessary to enter the Midway Atoll Special Management Area.

(6) A permit for a special ocean use for activities outside the Midway Atoll Special Management Area may be issued provided:

(i) The activity will directly benefit the conservation and management of the Monument;

(ii) The purpose of the activity is for research or education related to the resources or qualities of the Monument;

(iii) Public notice of the application and an opportunity to provide comments is given at least 30 days prior to issuing the permit; and

(iv) The activity does not involve the use of a commercial passenger vessel.

(g) Additional findings for recreation permits. A permit for recreational activities under paragraph (c)(6) of this section may be issued for activities to be conducted within the Midway Atoll Special Management Area if, in addition to the findings listed in paragraph (d) of this section:

(1) The activity is for the purpose of recreation as defined in section 404.3;

(2) The activity is not associated with any for-hire operation; and

(3) The activity does not involve any extractive use.

(h) Sustenance fishing. Sustenance fishing, as defined in 404.3, may be allowed outside of any Special Preservation Area as a term or condition of any
permit issued under this part. Sustenance fishing in the Midway Atoll Special Management Area shall not be allowed unless the activity has been determined by the Director of the U.S. Fish and Wildlife Service or his or her designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing must be conducted in a manner compatible with the Proclamation and this part, including considering the extent to which the conduct of the activity may diminish Monument resources, qualities, and ecological integrity, as well as any indirect, secondary, or cumulative effects of the activity and the duration of such effects. Sustenance fishing is subject to systematic reporting requirements when developed by the Secretaries.

\[71 \text{ FR } 51135, \text{ Aug. } 29, \text{ 2006, as amended at } 72 \text{ FR } 5643, \text{ Feb. } 7, \text{ 2007}\]

\$ 404.12 International law.

These regulations shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

APPENDIX A TO PART 404–MAP OF THE MONUMENT OUTER BOUNDARY AND ECOLOGICAL RESERVES, SPECIAL PRESERVATION AREAS, AND MIDWAY ATOLL SPECIAL MANAGEMENT AREA
APPENDIX B TO PART 404—APPROVED VMS

I. VMS MOBILE TRANSMITTER UNIT

Thrane & Thrane Sailor 3026D Gold VMS

The Thrane & Thrane Sailor 3026D Gold VMS (TT–3026D) has been found to meet the minimum technical requirements for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument. The address for the Thrane & Thrane distributor contact is provided in this notice under the heading VMS Provider Address.

The TT–3026D Gold VMS features an integrated GPS/Inmarsat-C unit and a marine grade monitor with keyboard and integrated mouse. The unit is factory pre-configured for NMFS VMS operations (non-Global Maritime Distress & Safety System (non-GMDSS)). Satellite commissioning services are provided by Thrane & Thrane personnel. Automatic GPS position reporting starts after transceiver installation and power activation onboard the vessel. The unit is an integrated transceiver/antenna/GPS design using a floating 10 to 32 VDC power supply. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). It allows for port stays without power drain or power shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

The TT–3026D provides operation down to ±15 degree angles. The unit has the capability of two-way communications to send formatted forms and to receive e-mail and other messages. A configuration option is available to automatically send position reports to a private address, such as a fleet management company.

A vessel owner may purchase this system by contacting the entity identified in this notice under the heading "VMS Provider Address." The owner should identify himself or herself as a vessel owner issued a permit to operate in the Northwestern Hawaiian Islands Marine National Monument, so the transceiver set can be properly configured. To use the TT–3026D the vessel owner will need to establish an Inmarsat-C system use contract with an approved Inmarsat-C communications service provider. The owner will be required to complete the Inmarsat-C “Registration for Service Activation for Maritime Mobile Earth Station.” The owner should consult with Thrane & Thrane when completing this form.

Thrane & Thrane personnel will perform the following services before shipment: (1) configure the transceiver according to OLE specifications for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument; (2) download the predetermined NMFS position reporting and broadcast command identification numbers into the unit; (3) test the unit to ensure operation when installation has been completed on the vessel; and (4) forward the Inmarsat service provider and the transceiver identifying information to OLE.

II. INMARSAT-C COMMUNICATIONS PROVIDERS

It is recommended, for vendor warranty and customer service purposes, that the vessel owner keep for his or her records and that Telenor and Xantic have on record the following identifying information: (1) Signed and dated receipts and contracts; (2) transceiver serial number; (3) Telenor or Xantic customer number, user name and password; (4) e-mail address of transceiver; (5) Inmarsat identification number; (6) owner name; (7) vessel name; (8) vessel documentation or registration number; and (9) mobile earth station license (FCC license).

The OLE will provide an installation and activation checklist that the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to OLE. Installation can be performed by an experienced crew or by an electronics specialist, and the installation cost is paid by the owner.

The owner may confirm the TT–3026D operation and communications service to ensure that position reports are automatically sent to and received by OLE before leaving on a trip under VMS. The OLE does not regard the vessel as meeting requirements until position reports are automatically received. For confirmation purposes, contact the NOAA Fisheries Office for Law Enforcement, 844 Georgia Ave., Suite 415, Silver Spring, MD 20910, phone 888–219–9228, fax 301–427–0049.

Telenor Satellite Services

Inmarsat-C is a store-and-forward data messaging service. Inmarsat-C allows users to send and receive information virtually anywhere in the world, on land, at sea, and in the air. Inmarsat-C supports a wide variety of applications including Internet, e-mail, position and weather reporting, a free daily news service, and remote equipment monitoring and control. Mariners can use Inmarsat-C free of charge to send critical safety at sea messages as part of the U.S. Coast Guard’s Automated Mutual-Assistance Vessel Rescue system and of the NOAA Shipboard Environmental Acquisition System programs. Telenor Vessel Monitoring System Services is being sold through Thrane & Thrane, Inc. For the Thrane & Thrane and Telenor addresses, look inside this notice under the heading “VMS Provider Address.”
Xantic is a provider of Vessel Monitoring Services to the maritime industry. By installing an approved OLE Inmarsat-C transceiver on the vessel, vessels can send and receive e-mail, to and from land, while the transceiver automatically sends vessel position reports to OLE, and is fully compliant with the International Coast Guard Search and Rescue Centers. Xantic Vessel Monitoring System Services are being sold through Thrane & Thrane, Inc. for the Thrane & Thrane and Xantic addresses, look in this notice under the heading “VMS Provider Address.”

For Telenor and Xantic, Thrane & Thrane customer service supports the security and privacy of vessel accounts and messages with the following: (a) Password authentication for vessel owners or agents and for OLE to prevent unauthorized changes or inquiries; and (b) separation of private messages from OLE messages. OLE requires VMS-related position reports, only.

Billing is separated between accounts for the vessel owner and the OLE. VMS position reports and vessel-initiated messaging are paid for by the vessel owner. Messaging initiated from OLE operations center is paid for by NOAA.

Thrane & Thrane provides customer service for Telenor and Xantic users to support and establish two-way transmission of transceiver unit configuration commands between the transceiver and land-based control centers. This supports OLE’s message needs and, optionally, the crew’s private message needs.

The vessel owner can configure automatic position reports to be sent to a private address, such as to a fleet management company.

Vessel owners wishing to use Telenor or Xantic services will need to purchase an Inmarsat-C transceiver approved for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument. The owner will need to complete an Inmarsat-C system contract with Telenor or Xantic, including a mobile earth station license (FCC requirement). The transceiver will need to be commissioned with Inmarsat according to Telenor or Xantic’s instructions. The owner should refer to and follow the configuration, installation, and service activation procedures for the specific transceiver purchased.

III. VMS PROVIDER ADDRESS

For T&TT-DK, Telenor, or Xantic information, contact Ronald Lockerby, Marine Products, Thrane & Thrane, Inc., 599 Viking Drive, Suite K, L & M, Virginia Beach, VA 23452; voice: 757-463-9557; fax: 757-463-9581, e-mail: rd@tt.dk.com; Web site: http://www.landsseasystems.com.
### Table C-1—Kure Atoll, Midway Atoll, and Pearl and Hermes Atoll—Continued

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### TABLE C-4—NIHOA ISLAND

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TABLE C–4—NIHOA ISLAND—Continued
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Latitude (N)

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22°41′.93
22°46′.63
22°51′.48
22°56′.46
23°01′.50
23°06′.58
23°11′.61
23°16′.57
23°21′.36
23°26′.02
23°30′.40
23°34′.51
23°38′.26
23°41′.69
23°44′.72
23°47′.36
23°49′.55
23°51′.24
23°52′.44
23°53′.14
23°53′.36
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23°52′.82
23°52′.39

TABLE D–1—OUTER BOUNDARY—Continued

Longitude (W)
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162°45′.98
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162°37′.83
162°34′.18
162°30′.18
162°25′.79
162°21′.11
162°16′.16
162°10′.99
162°05′.63
162°00′.25
161°54′.75
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161°47′.09
161°44′.67

[73 FR 73599, Dec. 3, 2008]

APPENDIX D TO PART 404—BOUNDARY
COORDINATES
FOR
PAPAHĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT SHIP REPORTING
AREA
APPENDIX D—GEOGRAPHICAL COORDINATES
Ship Reporting Area
Papahānaumokuākea Marine National
Monument
Reference chart: United States 540, 2008
These charts are based on World Geodetic
System 1984 Datum (WGS–84) and astronomic
datum.

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16 ..................................

Latitude (N)
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24°05′.52
24°05′.29
24°04′.37
24°03′.44
24°02′.41
24°01′.31
23°59′.68
23°57′.85
23°55′.54

Longitude (W)
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171°28′.07
170°20′.59
167°32′.10
165°58′.69
161°56′.86
161°56′.62
161°51′.53
161°46′.45
161°41′.39
161°36′.35
161°31′.55
161°26′.85
161°22′.31

Point
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22°20′.24
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22°03′.94
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162°16′.85
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**Table D-2—Inner Boundary Around Kure Atoll, Midway Atoll, and Pearl and Hermes Atoll—Continued**

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**Table D-3—Inner Boundary Around Lisianski Island, Laysan Island, Maro Reef, and Raita Bank**

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**Pt. 404, App. D**
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[73 FR 73891, Dec. 3, 2008]

APPENDIX E TO PART 404—CONTENT AND SYNTAX FOR PAPAHĀNAUMOKUĀKEA SHIP REPORTING SYSTEM

Immediately upon crossing the reporting area boundary, notification should be sent as a direct e-mail to nhki.notifications@noaa.gov in the prescribed format and data syntax shown. Use of batch message routing services which may delay receipt of a report should not be used. Failure to follow the exact format (e.g., extra information, extraneous characters, or double spacing) may cause the automated computer system to reject your report. Note: Report transmission costs via INMARSAT-C will be assumed by NOAA.

**E.1 ENTRY NOTIFICATION FORMAT**

Immediately upon entering the Reporting Area, vessels required to participate must provide the following information.

---

VerDate Mar<15>2010 11:01 Jan 05, 2011 Jkt 220227 PO 00000 Frm 01128 Fmt 8010 Sfmt 8002 Q:\50\220227.XXX ofr150 PsN: PC150
<table>
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<th>Function</th>
<th>Information required</th>
<th>Example field text</th>
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</thead>
<tbody>
<tr>
<td>A .................</td>
<td>Ship .................</td>
<td>Vessel name/call sign/flag/IMO number/Federal documentation or State registration number if applicable //</td>
</tr>
<tr>
<td>B .................</td>
<td>Date, time (UTC), and month of entry.</td>
<td>A 6-digit group giving day of month (first two digits), hours and minutes (last four digits) in coordinated universal time, suffixed by the letter Z (indicating time in UTC), and three letters indicating month //</td>
</tr>
<tr>
<td>C .................</td>
<td>Position .............</td>
<td>A 4-digit group giving latitude in degrees and minutes, suffixed with the letter N (indicating north), followed by a single //, and a five-digit group giving longitude in degrees and minutes, suffixed with the letter W (indicating west) // Report in the World Geodetic System 1984 Datum (WGS–84) //</td>
</tr>
<tr>
<td>E .................</td>
<td>True course ..........</td>
<td>3-digit number indicating true course //</td>
</tr>
<tr>
<td>F .................</td>
<td>Speed in knots ........</td>
<td>3-digit group indicating knots decimal tenths //</td>
</tr>
<tr>
<td>I .................</td>
<td>Destination and estimated time of arrival.</td>
<td>Name of port city/country/estimated arrival date and time group expressed as in (B) //</td>
</tr>
<tr>
<td>L .................</td>
<td>Intended route through the reporting area.</td>
<td>Route information should be reported as a direct rhumbline (RL) course through the reporting area and intended speed (expressed as in E and F) or a series of waypoints (WP). Each waypoint entry should be reported as latitude and longitude, expressed as in (C), and intended speed between waypoints (as in F) // (Note: As many “L” lines as needed may be used to describe the vessel’s intended route.)</td>
</tr>
<tr>
<td>O .................</td>
<td>Vessel draft in meters</td>
<td>Maximum present static draft reported in meters decimal centimeters //</td>
</tr>
<tr>
<td>P .................</td>
<td>Categories of Hazardous Cargoes*</td>
<td>Classification Code (e.g. IMDG, IBC, IGC, INF) // and all corresponding Categories of Hazardous Cargoes (delimited by commas) // Note: If necessary, use a separate “P” line for each type of Classification Code.</td>
</tr>
<tr>
<td>Q .................</td>
<td>Defects or deficiencies**</td>
<td>Brief details of defects, damage, deficiencies or limitations that restrict maneuverability or impair normal navigation // (If none, enter the number zero).</td>
</tr>
<tr>
<td>R .................</td>
<td>Pollution incident or goods lost overboard**</td>
<td>Description of pollution incident or goods lost overboard within the Monument, the Reporting Area, or the U.S. Exclusive Economic Zone // (If none, enter the number zero).</td>
</tr>
<tr>
<td>T .................</td>
<td>Contact information of ship’s agent or owner.</td>
<td>Name/address/and phone number of ship’s agent or owner //</td>
</tr>
<tr>
<td>U .................</td>
<td>Ship size ..............</td>
<td>Length overall reported in meters decimal centimeters/number of gross tons/type of ship (e.g. bulk carrier, chemical tanker, oil tanker, gas tanker, container, general cargo, fishing vessel, research, passenger, OBO, RORO) //</td>
</tr>
<tr>
<td>W .................</td>
<td>Persons ..............</td>
<td>Total number of persons on board //</td>
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**Categories of hazardous cargoes means goods classified in the International Maritime Dangerous Goods (IMDG) Code; substances classified in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code); oils as defined in MARPOL Annex I; noxious liquid substances as defined in MARPOL Annex II; harmful substances as defined in MARPOL Annex III; and radioactive materials specified in the Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on Board Ships (INF Code).**

**In accordance with the provisions of the MARPOL Convention, ships must report information relating to defects, damage, deficiencies or other limitations as well as, if necessary, information relating to pollution incidents or loss of cargo. Safety related reports must be provided to CORAL SHIPREP without delay should a ship suffer damage, failure or breakdown affecting the safety of the ship (item Q), or if a ship makes a marked deviation from a route, course or speed previously advised (item L). Pollution or cargo lost overboard must be reported without delay (item R).**

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**NOTES**


- In accordance with the provisions of the MARPOL Convention, ships must report information relating to defects, damage, deficiencies or other limitations as well as, if necessary, information relating to pollution incidents or loss of cargo. Safety related reports must be provided to CORAL SHIPREP without delay should a ship suffer damage, failure or breakdown affecting the safety of the ship (item Q), or if a ship makes a marked deviation from a route, course or speed previously advised (item L). Pollution or cargo lost overboard must be reported without delay (item R).
E.2 PRIOR Notification of Entry Format

Vessels of the United States less than 300 gross tonnage that are not equipped with onboard e-mail capability must provide the following notification of entry at least 72 hrs, but no longer than 1 month, prior to entry date, utilizing the data syntax described above. Notification may be made via the following communication methods, listed in order of preference: E-mail [nwhi.notifications@noaa.gov]; fax [1–808–397–2662]; telephone [1–866–478–NWHI (6944), 1–808–395–NWHI (6944)].

Table E.2—Information Required for Prior Notification

<table>
<thead>
<tr>
<th>System identifier. Items</th>
<th>PRIOR NOTICE //</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A, B, C (as applicable), I, L, O, P (as applicable), Q, T, U, W.</td>
</tr>
</tbody>
</table>

E.3 Exit Notification Format

Immediately upon leaving the Reporting Area, vessels required to participate must provide the following information. Vessels of the United States less than 300 gross tonnage that are not equipped with onboard e-mail capability must provide the following Exit Notification information within 12 hrs of leaving the Reporting Area. Notification may be made via the following communication methods, listed in order of preference: E-mail [nwhi.notifications@noaa.gov]; fax [1–808–397–2662]; telephone [1–866–478–NWHI (6944), 1–808–395–NWHI (6944)].

Table E.3—Information Required for Exit Notification

<table>
<thead>
<tr>
<th>Telegraph</th>
<th>Function</th>
<th>Information required</th>
<th>Example field text</th>
</tr>
</thead>
<tbody>
<tr>
<td>System identifier</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A ..........</td>
<td>Ship ..........</td>
<td>Vessel name / call sign / flag / IMO number / Federal documentation or State registration number if applicable //</td>
<td>A/OCLEAN VOYAGER/CSFU/BAHAMAS/IMO9359165//</td>
</tr>
<tr>
<td>B ..........</td>
<td>Date, time (UTC), and month of exit</td>
<td>A 6-digit group giving day of month (first two digits), hours and minutes (last four digits), suffixed by the letter Z indicating time in UTC, and three letters indicating month //</td>
<td>B/010915Z DEC//</td>
</tr>
<tr>
<td>C ..........</td>
<td>Position ..........</td>
<td>A 4-digit group giving latitude in degrees and minutes, suffixed with the letter N (indicating north), followed by a single //, and a five digit group giving longitude in degrees and minutes, suffixed with the letter W (indicating west) // [Report in the World Geodetic System 1984 Datum (WGS–84)]</td>
<td>C/2605N/17530W//</td>
</tr>
<tr>
<td>R ..........</td>
<td>Pollution incident or goods lost overboard</td>
<td>Description of pollution incident or goods lost overboard within the Monument, the Reporting Area, or the U.S. Exclusive Economic Zone // (If none, enter the number zero)</td>
<td>R/0//</td>
</tr>
</tbody>
</table>

E.4 Example Entry Report

CORAL SHIPREP//
A/SEA ROVER/WFSU/USA/IMO 8674208/DOC 602011//
B/010915Z JUN//
C/2636N/17530W//
E/050//
F/20.0//
L/1999.9/27227/CONTAINER SHIP//
T/1999.9/27227/CONTAINER SHIP//
W/15//

E.5 Example Exit Report

CORAL SHIPREP//
A/SEA ROVER/WFSU/USA/IMO 8674208/DOC 602011//
B/011515Z JUN//
C/2747N/17416W//
R/0//

[73 FR 73603, Dec. 3, 2008]
PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

Subpart A—General Provisions

§ 424.01 Scope and purpose.

(a) Part 424 provides rules for revising the Lists of Endangered and Threatened Wildlife and Plants and, where appropriate, designating or revising their critical habitats. Criteria are provided for determining species to be endangered or threatened and for designating critical habitats. Procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of listed species also are established.

(b) The purpose of these rules is to interpret and implement those portions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), that pertain to the listing of species and the determination of critical habitats.

§ 424.02 Definitions.

(a) The definitions of terms in 50 CFR 402.02 shall apply to this part 424, except as otherwise stated.

(b) Candidate means any species being considered by the Secretary for listing as an endangered or a threatened species, but not yet the subject of a proposed rule.

(c) Conservation, conserve, and conserving mean to use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(d) Critical habitat means (1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

(e) Endangered species means a species that is in danger of extinction throughout all or a significant portion of its range.

(f) List or lists means the Lists of Endangered and Threatened Wildlife and Plants found at 50 CFR 17.11(h) or 17.12(h).

(g) Plant means any member of the plant kingdom, including, without limitation, seeds, roots, and other parts thereof.

(h) Public hearing means an informal hearing to provide the public with the opportunity to give comments and to permit an exchange of information and opinion on a proposed rule.

(i) Secretary means the Secretary of the Interior or the Secretary of Commerce, as appropriate, or their authorized representatives.
§ 424.10 Special management considerations or protection means any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.

(k) Species includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. Excluded is any species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man.

(l) State agency means any State agency, department, board, commission, or other governmental entity that is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(m) Threatened species means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(n) Wildlife or fish and wildlife means any member of the animal kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Subpart B—Revision of the Lists

§ 424.11 Factors for listing, delisting, or reclassifying species.

(a) Any species or taxonomic group of species (e.g., genus, subgenus) as defined in § 424.02(k) is eligible for listing under the Act. A taxon of higher rank than species may be listed only if all included species are individually found to be endangered or threatened. In determining whether a particular taxon or population is a species for the purposes of the Act, the Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group.

(b) The Secretary shall make any determination required by paragraphs (c) and (d) of this section solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.

(c) A species shall be listed or reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is endangered or threatened because of any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Over utilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms;

(5) Other natural or manmade factors affecting its continued existence.

(d) The factors considered in delisting a species are those in paragraph (c) of this section as they relate to the definitions of endangered or threatened species. Such removal must be supported by the best scientific and commercial data available to the Secretary after conducting a review of the status of the species. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) Extinction. Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) Recovery. The principal goal of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is to
return listed species to a point at which protection under the Act is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) Original data for classification in error. Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

(f) The Secretary shall take into account, in making determinations under paragraph (c) or (d) of this section, those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

§ 424.12 Criteria for designating critical habitat.

(a) Critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing. If designation of critical habitat is not prudent or if critical habitat is not determinable, the reasons for not designating critical habitat will be stated in the publication of proposed and final rules listing a species. A final designation of critical habitat shall be made on the basis of the best scientific data available, after taking into consideration the probable economic and other impacts of making such a designation in accordance with § 424.19.

(1) A designation of critical habitat is not prudent when one or both of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(ii) Such designation of critical habitat would not be beneficial to the species.

(2) Critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

(b) In determining what areas are critical habitat, the Secretary shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include, but are not limited to the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally;

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering the designation of critical habitat, the Secretary shall
§ 424.13 Sources of information and relevant data.

When considering any revision of the lists, the Secretary shall consult as appropriate with affected States, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed by the Secretary may include, but are not limited to scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties.

§ 424.14 Petitions.

(a) General. Any interested person may submit a written petition to the Secretary requesting that one of the actions described in § 424.10 be taken. Such a document must clearly identify itself as a petition and be dated. It must contain the name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner. The Secretary shall acknowledge in writing receipt of such a petition within 30 days.

(b) Petitions to list, delist, or reclassify species. (1) To the maximum extent practicable, within 90 days of receiving a petition to list, delist, or reclassify a species, the Secretary shall make a finding as to whether the petitioned action may be warranted. For the purposes of this section, “substantial information” is that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. The Secretary shall promptly publish such finding in the Federal Register and so notify the petitioner.
(2) In making a finding under paragraph (b)(1) of this section, the Secretary shall consider whether such petition—

(i) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved;

(ii) Contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;

(iii) Provides information regarding the status of the species over all or a significant portion of its range; and

(iv) Is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

The petitioner may provide information that describes any recommended critical habitat as to boundaries and physical features, and indicates any benefits and/or adverse effects on the species that would result from such designation. Such information, however, will not be a basis for the determination of the substantiality of a petition.

(3) Upon making a positive finding under paragraph (b)(1) of this section, the Secretary shall commence a review of the status of the species concerned and shall make, within 12 months of receipt of such petition, one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the FEDERAL REGISTER a proposed regulation to implement the action pursuant to §424.16 of this part, or

(iii) The petitioned action is warranted, but that—

(A) The immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or reclassify species, and

(B) Expeditious progress is being made to list, delist, or reclassify qualified species, in which case, such finding shall be promptly published in the FEDERAL REGISTER together with a description and evaluation of the reasons and data on which the finding is based.

(4) If a finding is made under paragraph (b)(3)(iii) of this section with regard to any petition, the Secretary shall, within 12 months of such finding, again make one of the findings described in paragraph (b)(3) with regard to such petition, but no further finding of substantial information will be required.

(c) Petitions to revise critical habitat.

(i) To the maximum extent practicable, within 90 days of receiving a petition to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(ii) In making the finding required by paragraph (c)(1) of this section, the Secretary shall consider whether a petition contains—

(i) Information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved; or

(ii) Information indicating that areas designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

(3) Within 12 months after receiving a petition found under paragraph (c)(1) of this section to present substantial information indicating that revision of a critical habitat may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the FEDERAL REGISTER.

(d) Petitions to designate critical habitat or adopt special rules. Upon receiving a petition to designate critical habitat
§ 424.15 Notices of review.

(a) If the Secretary finds that one of the actions described in § 424.10 may be warranted, but that the available evidence is not sufficiently definitive to justify proposing the action at that time, a notice of review may be published in the Federal Register. The notice will describe the measure under consideration, briefly explain the reasons for considering the action, and solicit comments and additional information on the action under consideration.

(b) The Secretary from time to time also may publish notices of review containing the names of species that are considered to be candidates for listing under the Act and indicating whether sufficient scientific or commercial information is then available to warrant proposing to list such species, the names of species no longer being considered for listing, or the names of listed species being considered for delisting or reclassification. However, none of the substantive or procedural provisions of the Act apply to a species that is designated as a candidate for listing.

(c) Notices of review will invite comment from all interested parties regarding the status of the species named. At the time of publication of such a notice, notification in writing will be sent to State agencies in any affected States, known affected Federal agencies, and, to the greatest extent practicable, through the Secretary of State, to the governments of any foreign countries in which the subject species normally occur.

§ 424.16 Proposed rules.

(a) General. Based on the information received through §§ 424.13, 424.14, 424.15, and 424.21, or through other available avenues, the Secretary may propose revising the lists as described in § 424.10.

(b) Contents. A notice of a proposed rule to carry out one of the actions described in § 424.10 shall contain the complete text of the proposed rule, a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources), and shall show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary shall, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation. Any proposed rule to designate or revise critical habitat shall contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat shall also include a summary of factors affecting the species and/or critical habitat.

(c) Procedures—(1) Notifications. In the case of any proposed rule to list, delist, or reclassify a species, or to designate or revise critical habitat, the Secretary shall—

(i) Publish notice of the proposal in the Federal Register;

(ii) Give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

(iii) Give notice of the proposed regulation to any Federal agencies, local authorities, or private individuals or organizations known to be affected by the rule;

(iv) Insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to any Federal agencies, known affected Federal agencies, and, to the greatest extent practicable, through the Secretary of State, to the governments of any foreign countries in which the subject species normally occur.

(v) Give notice of the proposed regulation to such professional scientific organizations as the Secretary deems appropriate; and
(vi) Publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur.

(2) Period of public comments. At least 60 days shall be allowed for public comment following publication in the Federal Register of a rule proposing the listing, delisting, or reclassification of a species, or the designation or revision of critical habitat. All other proposed rules shall be subject to a comment period of at least 30 days following publication in the Federal Register. The Secretary may extend or reopen the period for public comment on a proposed rule upon a finding that there is good cause to do so. A notice of any such extension or reopening shall be published in the Federal Register, and shall specify the basis for so doing.

(3) Public hearings. The Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list, delist, or reclassify a species, or to designate or revise critical habitat. Notice of the location and time of any such hearing shall be published in the Federal Register not less than 15 days before the hearing is held.

§ 424.17 Time limits and required actions.

(a) General. (1) Within 1 year of the publication of a rule proposing to determine whether a species is an endangered or threatened species, or to designate or revise critical habitat, the Secretary shall publish one of the following in the Federal Register:

(i) A final rule to implement such determination or revision,

(ii) A finding that such revision should not be made,

(iii) A notice withdrawing the proposed rule upon a finding that available evidence does not justify the action proposed by the rule, or

(iv) A notice extending such 1-year period by an additional period of not more than 6 months because there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.

(2) If an extension is made under paragraph (a)(1)(iv) of this section, the Secretary shall, within the extended period, take one of the actions described in paragraphs (a)(1) (i), (ii), or (iii) of this section.

(3) If a proposed rule is withdrawn under paragraph (a)(1)(iii) of this section, the notice of withdrawal shall set forth the basis upon which the proposed rule has been found not to be supported by available evidence. The Secretary shall not again propose a rule withdrawn under such provision except on the basis of sufficient new information that warrants a reproposal.

(b) Critical habitat designations. A final rule designating critical habitat of an endangered or a threatened species shall to the extent permissible under § 424.12 be published concurrently with the final rule listing such species, unless the Secretary deems that—

(1) It is essential to the conservation of such species that it be listed promptly; or

(2) Critical habitat of such species is not then determinable, in which case, the Secretary, with respect to the proposed regulation to designate such habitat, may extend the 1-year period specified in paragraph (a) of this section by not more than one additional year. Not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

§ 424.18 Final rules—general.

(a) Contents. A final rule promulgated to carry out the purposes of the Act will be published in the Federal Register. This publication will contain the complete text of the rule, a summary of the comments and recommendations received in response to the proposal (including applicable public hearing), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat shall also provide a summary.
§ 424.19 Final rules—impact analysis of critical habitat.

The Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities. The Secretary may exclude any portion of such an area from the critical habitat if the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. The Secretary shall not exclude any such area if, based on the best scientific and commercial data available, he determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned.

§ 424.20 Emergency rules.

(a) Sections 424.16, 424.17, 424.18, and 424.19 notwithstanding, the Secretary may at any time issue a regulation implementing any action described in §424.10 in regard to any emergency posing a significant risk to the well-being of a species of fish, wildlife, or plant. Such rules shall, at the discretion of the Secretary, take effect immediately on publication in the Federal Register. In the case of any such action that applies to a resident species, the Secretary shall give actual notice of such regulation to the State agency in each State in which such species is believed to occur. Publication in the Federal Register of such an emergency rule shall provide detailed reasons why the rule is necessary. An emergency rule shall cease to have force and effect after 240 days unless the procedures described in §§424.16, 424.17, 424.18, and 424.19 (as appropriate) have been complied with during that period.

(b) If at any time after issuing an emergency rule, the Secretary determines, on the basis of the best scientific and commercial data available, that substantial evidence does not then exist to warrant such rule, it shall be withdrawn.

§ 424.21 Periodic review.

At least once every 5 years, the Secretary shall conduct a review of each listed species to determine whether it should be delisted or reclassified. Each such determination shall be made in accordance with §§424.11, 424.16, and 424.17 of this part, as appropriate. A notice announcing those species under active review will be published in the Federal Register. Notwithstanding this section’s provisions, the Secretary may review the status of any species at any time based upon a petition (see §424.14) or upon other data available to the Service.
FWS, DOI, and NOAA, Commerce § 424.21

SUBCHAPTER B [RESERVED]
PART 450—GENERAL PROVISIONS


§ 450.01 Definitions

The following definitions apply to terms used in this subchapter.


Agency action means all actions of any kind authorized, funded or carried out, in whole or in part by Federal agencies, including, in the instance of an application for a permit or license, the underlying activity for which the permit or license is sought.

Alternative courses of action means all reasonable and prudent alternatives, including both no action and alternatives extending beyond original project objectives and acting agency jurisdiction.

Benefits means all benefits of an agency action, both tangible and intangible, including but not limited to economic, environmental and cultural benefits.

Biological assessment means the report prepared pursuant to section 7(c) of the Act, 16 U.S.C. 1536(c).

Biological opinion means the written statement prepared pursuant to section 7(b) of the Act, 16 U.S.C. 1536(b).

Chairman means the Chairman of the Endangered Species Committee, who is the Secretary of the Interior.

Committee means the Endangered Species Committee established pursuant to section 7(e) of the Act, 16 U.S.C. 1536(e).

Critical habitat refers to those areas listed as Critical Habitat in 50 CFR parts 17 and 226.

Destruction or adverse modification is defined at 50 CFR 402.02.

Federal agency means any department, agency or instrumentality of the United States.

Irreversible or irretrievable commitment of resources means any commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable or prudent alternatives which would not violate section 7(a)(2) of the Act.

Jeopardize the continued existence of is defined at 50 CFR 402.02.

Mitigation and enhancement measures means measures, including live propagation, transplantation, and habitat acquisition and improvement, necessary and appropriate (a) to minimize the adverse effects of a proposed action on listed species or their critical habitats and/or (b) to improve the conservation status of the species beyond that which would occur without the action. The measures must be likely to protect the listed species or the critical habitat, and be reasonable in their cost, the availability of the technology required to make them effective, and other considerations deemed relevant by the Committee.

Permit or license applicant means any person whose application to an agency for a permit or license has been denied primarily because of the application of section 7(a)(2) of the Act, 16 U.S.C. 1536(a)(2).

Person means an individual, corporation, partnership, trust, association, or any other private entity, or any public body or officer, employee, agent, department, or instrumentality of the Federal government, of any State or political subdivision thereof, or of any foreign government.

Proposed action means the action proposed by the Federal agency or by a permit or license applicant, for which exemption is sought.

Secretary means the Secretary of the Interior or the Secretary of Commerce, or his or her delegate, depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

Service means the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

To the extent that such information is available to the applicant means all pertinent information the applicant has on the subject matter at the time the application is submitted, and all other pertinent information obtainable from...
PART 451—APPLICATION PROCEDURE

SEC. 451.01 Definitions.
451.02 Applications for exemptions.
451.03 Endangered Species Committee.


SOURCE: 50 FR 8127, Feb. 28, 1985, unless otherwise noted.

§ 451.01 Definitions.

All definitions contained in 50 CFR 450.01 are applicable to this part.

§ 451.02 Applications for exemptions.

(a) Scope. This section prescribes the application procedures for applying for an exemption from the requirements of section 7(a)(2) of the Endangered Species Act, as amended.

(b) Where to apply. Applications should be made to the appropriate Secretary(ies) by writing:

(1) The Secretary, Attention: Endangered Species Committee, Department of the Interior, 18th and C Street, NW., Washington, DC 20240.

(2) The Secretary, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

(c) Who may apply. (1) A Federal agency, (2) the Governor of the State in which an agency action will occur, if any, or (3) a permit or license applicant may apply to the Secretary for an exemption for an agency action if, after consultation under section 7(a)(2) of the Act, the Secretary’s opinion indicates that the agency action would violate section 7(a)(2) of the Act.

(d) When to apply. (1) Except in the case of agency action involving a permit or license application, an application for an exemption may be submitted after the Federal agency concerned formally denies the permit or license. An applicant denied a permit or license may not simultaneously seek administrative review within the permitting or licensing agency and apply for an exemption. If administrative review is sought, an application for an exemption may be submitted if that review results in a formal denial of the permit or license. For an exemption application to be considered, it must be submitted within 90 days after the date of a formal denial of a permit or license.

(e) Contents of the application when submitted. Exemption applicants must provide the following information at the time the application is submitted.

(1) Name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

(2) If the applicant is a Federal agency:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant’s proposed action.

(ii) In the case of a denial of a license or permit, a description of the permit or license sought, including a statement of who in the Federal agency denied the permit or license, the grounds for the denial, and a copy of the permit or license denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before the proposed action can proceed.

(iv) A description of the consultation process carried out pursuant to section 7(a) of the Act.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of each alternative to the proposed action considered by the Federal agency, by the licensing or permitting agency, and by the permit or license applicant, to the extent known.
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(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed by the Federal agency, or the permit or license applicant, if any, to the proposed action subsequent to the initiation of consultation.

(3) If the applicant is a permit or license applicant other than a Federal agency:

(i) A comprehensive description of the applicant’s proposed action.

(ii) A description of the permit or license sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained before it can proceed with the proposed action.

(iv) A copy of the permit or license denial.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the applicant.

(viii) A description of each alternative to the proposed action considered by the applicant, and to the extent that such information is available to the applicant, a description of each alternative to the proposed action considered by the Federal agency.

(ix) A statement describing why the applicant’s proposed action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(x) A description of resources committed to the proposed action by the permit or license applicant subsequent to the initiation of consultation.

(4) If the applicant is the Governor of a State in which the proposed agency action may occur:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant’s proposed action.

(ii) A description of the permit or license, if any, sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial, to the extent that such information is available to the Governor.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained before the agency can proceed with the proposed action, to the extent that such information is available to the Governor.

(iv) A copy of the biological assessment, if one was prepared.

(v) A copy of the biological opinion.

(vi) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the Governor.

(vii) A description of all alternatives considered by the Federal agency, by the licensing or permitting agency, and by the permit or license applicant, to the extent that such information is available to the Governor.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed to the proposed action subsequent to the initiation of consultation, to the extent that such information is available to the Governor.

(5) Each applicant, whether a Federal agency, a permit or license applicant, or a Governor, must also submit the following:

(i) A complete statement of the nature and the extent of the benefits of the proposed action.

(ii) A complete discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

(iii) A complete discussion of why none of the considered alternatives are reasonable and prudent.

(iv) A complete statement explaining why the proposed action is in the public interest.

(v) A complete explanation of why the action is of regional or national significance.
(vi) A complete discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted.

(6) When the exemption applicant is a license or permit applicant or a Governor, a copy of the application shall be provided by the exemption applicant at the time the application is filed, to the Federal agency which denied the license or permit.

(f) Review of the application by the Secretary.

(1) Upon receiving the application, the Secretary shall review the contents thereof and consider whether the application complies with the requirements set forth in paragraphs (c), (d) and (e) of this section.

(2) The Secretary shall reject an application within 10 days of receiving it if he determines that it does not comply with paragraphs (c), (d), and (e) of this section. If the Secretary rejects an application because it does not contain the information required by paragraph (e) of this section, the applicant may resubmit a revised application so long as the applicant does so during the 90 day period specified in paragraph (d) of this section.

(3) If the Secretary finds that the application meets the requirements of paragraphs (c), (d), and (e) of this section, he will consider the application in accordance with part 452.

(g) Notification of the Secretary of State. The Secretary will promptly transmit to the Secretary of State a copy of all applications submitted in accordance with §451.02.

(h) Public notification. Upon receipt of an application for exemption, the Secretary shall promptly publish a notice in the Federal Register (1) announcing that an application has been filed, (2) stating the applicant’s name, (3) briefly describing the proposed agency action and the result of the consultation process, (4) summarizing the information contained in the application, (5) designating the place where copies of the application can be obtained and (6) specifying the name of the person to contact for further information. The Secretary will promptly notify each member of the Committee upon receipt of an application for exemption.

(i) The information collection requirements contained in part 451 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq., because it is anticipated there will be fewer than ten respondents annually.

§451.03 Endangered Species Committee.

(a) Scope. This section contains provisions governing the relationship between the Secretary and the Endangered Species Committee.

(b) Appointment of State member. (1) Upon receipt of an application for exemption, the Secretary shall promptly notify the Governors of each affected State, if any, as determined by the Secretary, and request the Governors to recommend individuals to be appointed to the Endangered Species Committee for consideration of the application. Written recommendations of these Governors must be received by the Secretary within 10 days of receipt of notification. The Secretary will transmit the Governors’ recommendations to the President and will request that the President appoint a State resident to the Endangered Species Committee from each affected State within 30 days after the application for exemption was submitted.

(2) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application and will request the President to appoint, within 30 days after the application for exemption was submitted, an individual to the Endangered Species Committee.

PART 452—CONSIDERATION OF APPLICATION BY THE SECRETARY

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452.01 Purpose and scope.
452.02 Definitions.
452.03 Threshold review and determinations.
452.04 Secretary’s report.
452.05 Hearings.
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452.07 Separation of functions and ex parte communications.
452.08 Submission of Secretary’s report.
452.09 Consolidated and joint proceedings.


SOURCE: 50 FR 8129, Feb. 28, 1985, unless otherwise noted.
§ 452.01 Purpose and scope.

This part prescribes the procedures to be used by the Secretary when examining applications for exemption from section 7(a)(2) of the Endangered Species Act.

§ 452.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 452.03 Threshold review and determinations.

(a) Threshold determinations. Within 20 days after receiving an exemption application, or a longer time agreed upon between the exemption applicant and the Secretary, the Secretary shall conclude his review and determine:

(1) Whether any required biological assessment was conducted;

(2) To the extent determinable within the time period provided, whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources; and

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would not violate section 7(a)(2) of the Act.

(b) Burden of proof. The exemption applicant has the burden of proving that the requirements of § 452.03(a) have been met.

(c) Negative finding. If the Secretary makes a negative finding on any threshold determination, the Secretary shall deny the application and notify the exemption applicant in writing of his finding and grounds therefor. The exemption process shall terminate when the applicant receives such written notice. The Secretary’s denial shall constitute final agency action for purposes of judicial review under chapter 7 of title 5 of the United States Code.

(d) Positive finding. If the Secretary makes a positive finding on each of the threshold determinations, he shall notify the exemption applicant in writing that the application qualifies for consideration by the Endangered Species Committee.

§ 452.04 Secretary’s report.

(a) Contents of the report. If the Secretary has made a positive finding on each of the threshold determinations, he shall proceed to gather information and prepare a report for the Endangered Species Committee:

(1) Discussing the availability of reasonable and prudent alternatives to the proposed action;

(2) Discussing the nature and extent of the benefits of the proposed action;

(3) Discussing the nature and extent of the benefits of alternative courses of action consistent with conserving the species or the critical habitat;

(4) Summarizing the evidence concerning whether the proposed action is of national or regional significance;

(5) Summarizing the evidence concerning whether the proposed action is in the public interest;

(6) Discussing appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption; and

(7) Discussing whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources.

(b) Preparation of the report. The report shall be prepared in accordance with procedures set out in § 452.05 and § 452.09.

§ 452.05 Hearings.

(a) Hearings. (1) To develop the record for the report under § 452.04, the Secretary, in consultation with the members of the Committee, shall hold a hearing in accordance with 5 U.S.C. 554, 555, and 556.

(2) The Secretary shall designate an Administrative Law Judge to conduct the hearing. The Secretary shall assign
technical staff to assist the Administrative Law Judge.

(3) When the Secretary designates the Administrative Law Judge, the Secretary may establish time periods for conducting the hearing and closing the record.

(4) The Secretary may require the applicant to submit further discussions of the information required by §451.02(e)(5). This information will be made part of the record.

(b) Prehearing conferences. (1) The Administrative Law Judge may, on his own motion or the motion of a party or intervenor, hold a prehearing conference to consider:

(i) The possibility of obtaining stipulations, admissions of fact or law and agreement to the introduction of documents;

(ii) The limitation of the number of witnesses;

(iii) Questions of law which may bear upon the course of the hearings;

(iv) Prehearing motions, including motions for discovery; and

(v) Any other matter which may aid in the disposition of the proceedings.

(2) If time permits and if necessary to materially clarify the issues raised at the prehearing conference, the Administrative Law Judge shall issue a statement of the actions taken at the conference and the agreements made. Such statement shall control the subsequent course of the hearing unless modified for good cause by a subsequent statement.

(c) Notice of hearings. Hearings and prehearing conferences will be announced by a notice in the FEDERAL REGISTER stating: (1) The time, place and nature of the hearing or prehearing conference; and (2) the matters of fact and law to be considered. Such notices will ordinarily be published at least 15 days before the scheduled hearings.

(d) Conduct of hearings—(1) Admissibility of evidence. Relevant, material, and reliable evidence shall be admitted. Immaterial, irrelevant, unreliable, or unduly repetitious parts of an admissible document may be segregated and excluded so far as practicable.

(2) Motions, objections, rebuttal and cross-examination. Motions and objections may be filed with the Administrative Law Judge, rebuttal evidence may be submitted, and cross-examination may be conducted, as required for a full and true disclosure of the facts, by parties, witnesses under subpoena, and their respective counsel.

(i) Objections. Objections to evidence shall be timely, and the party making them may be required to state briefly the grounds relied upon.

(ii) Offers of proof. When an objection is sustained, the examining party may make a specific offer of proof and the Administrative Law Judge may receive the evidence in full. Such evidence, adequately marked for identification, shall be retained in the record for consideration by any reviewing authority.

(iii) Motions. Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon.

If made before or after the hearing itself, these matters shall be in writing and shall be filed and served on all parties. If made at the hearing, they may be stated and responded to orally, but the Administrative Law Judge may require that they be reduced to writing. Oral argument on motions and deadlines by which to file responses to written motions will be at the discretion of the Administrative Law Judge.

(e) Applicant responsibility. In proceedings conducted pursuant to this section, the exemption applicant has the burden of going forward with evidence concerning the criteria for exemption.

(f) Open meetings and record. All hearings and all hearing records shall be open to the public.

(g) Requests for information, subpoenas. (1) The Administrative Law Judge is authorized to exercise the authority of the Committee to request, subject to the Privacy Act of 1974, that any person provide information necessary to enable the Committee to carry out its duties. Any Federal agency or the exemption applicant shall furnish such information to the Administrative Law Judge. (2) The Administrative Law Judge may exercise the authority of the Committee to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.
(h) Information collection. The information collection requirements contained in §452.05 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq., because it is anticipated there will be fewer than ten respondents annually.

§ 452.06 Parties and intervenors.

(a) Parties. The parties shall consist of the exemption applicant, the Federal agency responsible for the agency action in question, the Service, and intervenors whose motions to intervene have been granted.

(b) Intervenors. (1) The Administrative Law Judge shall provide an opportunity for intervention in the hearing. A motion to intervene must state the petitioner’s name and address, identify its representative, if any, set forth the interest of the petitioner in the proceeding and show that the petitioner’s participation would assist in the determination of the issues in question.

(2) The Administrative Law Judge shall grant leave to intervene if he determines that an intervenor’s participation would contribute to the fair determination of issues. In making this determination, the Administrative Law Judge may consider whether an intervenor represents a point of view not adequately represented by a party or another intervenor.

§ 452.07 Separation of functions and ex parte communications.

(a) Separation of functions. (1) The Administrative Law Judge and the technical staff shall not be responsible for or subject to the supervision or direction of any person who participated in the endangered species consultation at issue;

(2) The Secretary shall not allow an agency employee or agent who participated in the endangered species consultation at issue or a factually related matter to participate or advise in a determination under this part except as a witness or counsel in public proceedings.

(b) Ex parte communications. The provisions of 5 U.S.C. 557(d) apply to the hearing and the preparation of the report.

§ 452.08 Submission of Secretary’s report.

(a) Upon closing of the record, the Administrative Law Judge shall certify the record and transmit it to the Secretary for preparation of the Secretary’s report which shall be based on the record. The Secretary may direct the Administrative Law Judge to reopen the record and obtain additional information if he determines that such action is necessary.

(b) The Secretary shall submit his report and the record of the hearing to the Committee within 140 days after making his threshold determinations under §452.03(a) or within such other period of time as is mutually agreeable to the applicant and the Secretary.

§ 452.09 Consolidated and joint proceedings.

(a) When the Secretary is considering two or more related exemption applications, the Secretary may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

(b) When the Secretaries of the Interior and Commerce are considering two or more related exemption applications, they may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

PART 453—ENDANGERED SPECIES COMMITTEE

Sec.
453.01 Purpose.
453.02 Definitions.
453.03 Committee review and final determinations.
453.04 Committee information gathering.
453.05 Committee meetings.
453.06 Additional Committee powers.


SOURCE: 50 FR 8130, Feb. 28, 1985, unless otherwise noted.

§ 453.01 Purpose.

This part prescribes the procedures to be used by the Endangered Species Committee when examining applications for exemption from section 7(a)(2) of the Endangered Species Act of 1973, as amended.
§ 453.02 Definitions.
Definitions applicable to this part are contained in 50 CFR 450.01.

§ 453.03 Committee review and final determinations.
(a) Final determinations. Within 30 days of receiving the Secretary’s report and record, the Committee shall grant an exemption from the requirements of section 7(a)(2) of the Act for an agency action if, by a vote in which at least five of its members concur:
(1) It determines that based on the report to the Secretary, the record of the hearing held under § 452.05, and on such other testimony or evidence as it may receive:
   (i) There are no reasonable and prudent alternatives to the proposed action;
   (ii) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;
   (iii) The action is of regional or national significance; and
   (iv) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by section 7(d) of the Act; and,
(2) It establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the proposed action upon the endangered species, threatened species, or critical habitat concerned. Any required mitigation and enhancement measures shall be carried out and paid for by the exemption applicant.

(b) Decision and order. The Committee’s final determinations shall be documented in a written decision. If the Committee determines that an exemption should be granted, the Committee shall issue an order granting the exemption and specifying required mitigation and enhancement measures. The Committee shall publish its decision and order in the Federal Register as soon as practicable.

(c) Permanent exemptions. Under section 7(h)(2) of the Act, an exemption granted by the Committee shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—
(1) Regardless of whether the species was identified in the biological assessment, and
(2) Only if a biological assessment has been conducted under section 7(c) of the Act with respect to such agency action. Notwithstanding the foregoing, an exemption shall not be permanent if—
   (i) The Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under section 7(a)(2) of the Act or was not identified in any biological assessment conducted under section 7(c) of the Act, and
   (ii) The Committee determines within 60 days after the date of the Secretary’s finding that the exemption should not be permanent.
If the Secretary makes a finding that the exemption would result in the extinction of a species, as specified above, the Committee shall meet with respect to the matter within 30 days after the date of the finding. During the 60 day period following the Secretary’s determination, the holder of the exemption shall refrain from any action which would result in extinction of the species.

(d) Finding by the Secretary of Defense. If the Secretary of Defense finds in writing that an exemption for the agency action is necessary for reasons of national security, the Committee shall grant the exemption notwithstanding any other provision in this part.

§ 453.04 Committee information gathering.
(a) Written submissions. When the Chairman or four Committee members decide that written submissions are necessary to enable the Committee to make its final determinations, the Chairman shall publish a notice in the Federal Register inviting written submissions from interested persons.
§ 453.05 Committee meetings.

(a) The committee shall meet at the call of the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee’s final determinations.

(c) Only members of the Committee may cast votes. In no case shall any representative cast a vote on behalf of a member.

(d) Committee members appointed from the affected States shall collectively have one vote. They shall determine among themselves how it will be cast.

(e) All meetings and records of the Committee shall be open to the public.

(f) The Chairman shall publish a notice of all Committee meetings in the FEDERAL REGISTER. The notice will ordinarily be published at least 15 days prior to the meeting.

§ 453.06 Additional Committee powers.

(a) Secure information. Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(b) Subpoenas. For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(c) Rules and orders. The Committee may issue and amend such rules and orders as are necessary to carry out its duties.

(d) Delegate authority. The Committee may delegate its authority under paragraphs (a) and (b) of this section to any member.
# CHAPTER V—MARINE MAMMAL COMMISSION

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PART 501—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

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501.9 Fees.

AUTHORITY: Sec. 3, Privacy Act of 1974 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 49276, Oct. 21, 1975, unless otherwise noted.

§ 501.1 Purpose and scope.

(a) Purpose. The purpose of these rules is to fulfill the responsibilities of the Marine Mammal Commission (the “Commission”) under section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(f) (the “Act”) by establishing procedures whereby an individual will be notified if any system of records maintained by the Commission contains a record pertaining to him or her; by defining the times and places at which records will be made available and the identification requirements which must be met by any individual requesting access to them; by establishing procedures for disclosure to an individual, on request, of any record pertaining to him or her; and by establishing procedures for processing, reviewing, and making a final determination on requests of individuals to correct or amend a record pertaining to him or her, including a provision for administrative appeal of initial adverse determinations on such requests. These rules are promulgated with particular attention to the purposes and goals of the Act, and in accordance therewith provide for relative ease of access to records pertaining to an individual, and for maintenance by the Commission of only those records which are current, accurate, necessary, relevant and complete with respect to the purposes for which they were collected.

(b) Scope. These rules apply only to “record” contained in “systems of records,” defined by the Act as follows:

The term “record” means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

The term “system of records” means a group of any record under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Notices with respect to the systems maintained by the Commission have been published in the Federal Register, as required by the Act. These rules pertain only to the systems of records disclosed in such notices, and to any systems that may become the subject of a notice at any time in the future.

(c) Nothing in these rules shall be construed as pertaining to requests made under the Freedom of Information Act, 5 U.S.C. 552.

§ 501.2 Definitions.

(a) As used in this part:


(2) The term Commission means the Marine Mammal Commission.

(3) The term Director means the Executive Director of the Marine Mammal Commission.

(4) The term Privacy Officer means an individual designated by the Director to receive all requests regarding the existence of records, requests for access and requests for correction or amendment; to review and make initial determinations regarding all such requests; and to provide assistance to any individual wishing to exercise his or her rights under the Act.

(b) Other terms shall be used in this part in accordance with the definitions contained in section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(a).
§ 501.3 Procedure for responding to requests regarding the existence of records pertaining to an individual.

Any individual may submit a request to be notified whether a system of records, with respect to which the Commission has published a notice in the Federal Register, contains a record pertaining to him or her. Requests may be made in writing to the Privacy Officer or by appearing in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006 between the hours of 9:00 a.m. and 5:00 p.m. on any working day. Systems of records that are the subject of a request should be identified by reference to the system name designated in the Notice of Systems of Records published in the Federal Register. In the event a system name is not known to the individual, a general request will suffice if it indicates reasons for the belief that a record pertaining to the named individual is maintained by the Commission. Receipt of inquiries submitted by mail will be acknowledged within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) unless a response can also be prepared and forwarded to the individual within that time.

§ 501.4 Requests for access—times, places and requirements for identification of individuals.

Requests for access to a system of records pertaining to any individual may be made by that individual by mail addressed to the Privacy Officer, or by submitting a written request in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006, between the hours of 9 a.m. and 5 p.m. on any working day. Assistance in gaining access under this section, securing an amendment or correction under § 501.6, or preparing an appeal under §§ 501.5(d) and 501.8 shall be provided by the Privacy Officer on request directed to the Commission office. An individual appearing in person at the Commission offices will be granted immediate access to any records to which that individual is entitled under the Act upon satisfactory proof of identity by means of a document bearing the individual’s photograph or signature. For requests made by mail, identification of the individual shall be adequate if established by means of submitting a certificate of a notary public, or equivalent officer empowered to administer oaths, substantially in accord with the following:

City of: ______________________ 
County of: ____________________

(Name of individual) who affixed (his) (her) signature below in my presence, came before me, a (Title), in the aforesaid County and State, this _______________ day of __________________, 19____, and established (his/her) identity to my satisfaction.

My Commission expires ____________________.

The certificate shall not be required, however, for written requests pertaining to non-sensitive information or to information which would be required to be made available under the Freedom of Information Act. The Privacy Officer shall determine the adequacy of any proof of identity offered by an individual.

[41 FR 5, Jan. 2, 1976]

§ 501.5 Disclosure of requested information.

(a) Upon request and satisfactory proof of identity, an individual appearing at the Commission offices shall be given immediate access to and permission to review any record, contained in a system of records, pertaining to him or her, shall be allowed to have a person of his/her choosing accompany him/her, and shall be given a copy of all or any portion of the record. The individual to which access is granted shall be required to sign a written statement authorizing the presence of the person who accompanies him or her, and authorizing discussion of his or her record in the presence of the accompanying person.

(b) Requests made by mail to the Privacy Officer at the Commission offices will be acknowledged within 10 days from date of receipt (excluding Saturdays, Sundays, and legal public holidays). This acknowledgement shall advise the individual whether access to the record will be granted and, if access is granted, copies of such records shall be enclosed.

(c) If the Privacy Officer initially determines to deny access to all or any
portion of a record, notice of denial shall be given to the individual in writing, within 30 days (excluding Saturdays, Sundays and holidays) after acknowledgement is given, and shall include the following:

(1) The precise record to which access is being denied;
(2) The reason for denial, including a citation to the appropriate provisions of the Act and of these Rules;
(3) A statement that the denial may be appealed to the Director;
(4) A statement of what steps must be taken to perfect an appeal to the Director; and,
(5) A statement that the individual has a right to judicial review under 5 U.S.C. 552a(g)(1) of any final denial issued by the Director.

(d) Administrative appeal of an initial denial, in whole or in part, of any request for access to a record, shall be available. An individual may appeal by submitting to the Director a written request for reconsideration stating therein specific reasons for reversal which address directly the reasons for denial stated in the initial notice of denial. If access is denied on appeal, a final notice of denial shall be sent to the individual within 30 days (excluding Saturdays, Sundays and holidays), and shall state with particularity the grounds for rejecting all reasons for reversal submitted by the individual. The denial shall then be deemed final for purposes of obtaining judicial review.

§ 501.6 Requests for correction or amendment of a record.

(a) Any individual may request the correction or amendment of a record pertaining to him or her in writing addressed to the Privacy Officer at the Commission offices. Verification of identity required for such requests shall be the same as that specified in §501.4 of this part with respect to requests for access. Records sought to be amended must be identified with as much specificity as is practicable under the circumstances of the request, and at a minimum, should refer to the system name designated in the Notice of System Records published in the Federal Register, the type of record in which the information thought to be improperly maintained or incorrect is contained, and the precise information that is the subject of the request (for example, system name, description of record, paragraph, sentence, line, words). Assistance in identifying a record, and in otherwise preparing a request, may be obtained by contacting the Privacy Officer at the Commission offices.

(b) A request should, in addition to identifying the individual and the record sought to be amended or corrected, include:

(1) The specific wording or other information to be deleted, if any;
(2) The specific wording or other information to be inserted, if any, and the exact place in the record at which it is to be inserted, and,
(3) A statement of the basis for the requested amendment or correction (e.g. that the record is inaccurate, unnecessary, irrelevant, untimely, or incomplete), together with supporting documents, if any, which substantiate the statement.

§ 501.7 Agency review of requests for amendment or correction of a record.

(a) Where possible, each request for amendment or correction shall be reviewed, and a determination on the request made, by the Privacy Officer within 10 days of receipt (excluding Saturdays, Sundays and holidays). Requests shall be acknowledged within that period where insufficient information has been provided to enable action to be taken. An acknowledgement shall inform the individual making the request of the estimated time within which a disposition of the request is expected to be made, and shall prescribe such further information as may be necessary to process the request. The request shall be granted, or an initial decision to deny shall be made, within ten days of receipt of all information specified in the acknowledgement (excluding Saturdays, Sundays and holidays).

(b) Within 30 days (excluding Saturdays, Sundays and holidays) after arriving at a decision on a request, the Privacy Officer shall either:

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§ 501.8 Appeal of initial denial of a request for amendment or correction.

(a) The initial denial of a request for amendment or correction may be appealed by submitting to the Director the following appeal papers:

(1) A copy of the original request for amendment or correction;

(2) A copy of the initial denial; and

(3) A precise statement of the reasons for the individual’s belief that the denial is in error, referring specifically to the criteria contained in §501.7(c)(1) through (8).

The appeal must be signed by the individual. While these papers normally will constitute the entire Record on Appeal, the Director may add additional information, from sources other than the individual, where necessary to facilitate a final determination. Any such additional information added to the record shall promptly be disclosed to the individual to the greatest extent possible, and an opportunity for comment thereon shall be afforded prior to the final determination. Appeals should be submitted to the Director within 90 days after the date of the initial denial.

(b) The Director shall issue a final determination on appeal within thirty days (excluding Saturdays, Sundays, and legal public holidays) from the date on which a completed Record on Appeal (including any additional information deemed necessary) is received. Review, and final determination by the Director, shall be based upon the criteria specified in §501.7(c)(1) through (8).

(c) If the appeal is resolved favorably to the individual, the final determination shall specify the amendments or corrections to be made. Copies of the final determination shall be transmitted promptly to the individual and to the Privacy Officer. The Privacy Officer shall make the requested amendment or correction and advise the individual in writing of such action.

(d) If the appeal is denied, the final determination shall state, with particularity, the reasons for denial, including a citation to an appropriate section of the Act and of these Rules. The final determination shall be forwarded promptly to the individual, together with a notice which shall inform...
§ 510.4 Calling of meetings.

The regulations prescribed in this part set forth the administrative guidelines and management controls for advisory committees reporting to the Marine Mammal Commission. These regulations are authorized by section 8(a) of the Federal Advisory Committee Act, 5 U.S.C. appendix I. Guidelines and controls are prescribed for calling of meetings, notice of meetings, public participation, closing of meetings, keeping of minutes, and compensation of committee members, their staff and consultants.

§ 510.5 Scope.

These regulations shall apply to the operation of advisory committees reporting to the agency.

§ 510.6 Definitions.

For the purposes of this part,

(a) The term Act means the Federal Advisory Committee Act, 5 U.S.C. appendix I;

(b) The term Chairperson means each person selected to chair an advisory committee established by the Commission;

(c) The term Commission means the Marine Mammal Commission, established by 16 U.S.C. 1401(a);

(d) The term committee means any advisory committee reporting to the Commission; and

(e) The term Designee means the agency official designated by the Chairman of the Commission (1) to perform those functions specified by sections 10(e) and (f) of the Act, and (2) to perform such other responsibilities as are required by the Act and applicable regulations to be performed by the ‘‘agency head.’’

§ 510.7 Calling of meetings.

(a) No committee shall hold any meeting except with the advance approval of the Designee. Requests for approval may be made, and approval to hold meetings may be given orally or in writing, but if approval is given orally, the fact that approval has been given shall be stated in the public notice published pursuant to § 510.5 of these regulations.

(b) An agenda shall be submitted to, and must be approved by, the Designee in advance of each committee meeting, and that meeting shall be conducted in accordance with the approved agenda. The agenda shall list all matters to be considered at the meeting, and shall indicate when any part of the meeting will be closed to the public on the authority of exemptions contained in the
§ 510.5 Notice of meetings.

(a) Notice of each committee meeting shall be timely published in the FEDERAL REGISTER. Publication shall be considered timely if made at least 15 days before the date of the meeting, except that shorter notice may be provided in emergency situations.

(b) The notice shall state the time, place, schedule and purposes of the committee meeting, and shall include, whenever it is available, a summary of the agenda. The notice shall indicate the approximate times at which any portion of the meeting will be closed to the public and shall include an explanation for the closing of any portion of the meeting pursuant to §510.7.

§ 510.6 Public participation.

(a) All committee meetings, or portions of meetings, that are open to the public shall be held at a reasonable time and at a place that is reasonably accessible to the public. A meeting room shall be selected which, within the bounds of the resources and facilities available, affords space to accommodate all members of the public who reasonably could be expected to attend.

(b) Any member of the public shall be permitted to file a written statement with the committee, either by personally delivering a copy to the Chairperson, or by submitting the statement by mail to the Marine Mammal Commission Offices at the address indicated in the notice of meeting. Such statements should be received at least one week in advance of the scheduled meeting at which they are expected to be considered by the committee.

(c) Opportunities will ordinarily be afforded to interested persons to speak to agenda items during that portion of the open meeting during which that item is to be considered by the committee, subject to such reasonable time limits as the committee may establish, and consideration of the extent to which the committee has received the benefit of comments by interested persons, the complexity and the importance of the subject, the time constraints under which the meeting is to be conducted, the number of persons who wish to speak during the meeting, and the extent to which the statement provides the committee with information which has not previously been available and is relevant to its decision or other action on that subject. Interested persons may be required to serve reasonable notice of their intentions to speak so that the committee may assess whether procedures and scheduling for the meeting can be adjusted to accommodate large numbers of participants.

§ 510.7 Closed meetings.

(a) Whenever the committee seeks to have all or a portion of a meeting closed to the public on the basis of an exemption provided in 5 U.S.C. 552(b), the Chairperson shall notify the Designee at least 30 days before the scheduled date of the meeting. The notification shall be in writing and shall specify all the reasons for closing any part of the meeting.

(b) If, after consultation with the General Counsel of the Commission, the Designee finds the request to be warranted and in accordance with the policy of the Act, the request shall be granted. The determination of the Designee to grant any such request shall be in writing and shall state the specific reasons for closing all or a part of the meeting. Copies of the determination shall be made available to the public upon request.

§ 510.8 Minutes.

Detailed minutes shall be kept of each portion of each committee meeting. The minutes shall include: the time and place of the meeting; a list of the committee members and staff in attendance; a complete summary of matters discussed and conclusions reached; copies of all reports received, issued, or approved by the committee; a description of the extent to which the meeting was open to the public; and a description of public participation, including a list of members of the public who presented oral or written statements and an estimate of the number of members of the public who attended the open sessions. The Chairperson...
shall certify to the accuracy of the minutes.

§ 510.9 Uniform pay guidelines.

(a) Compensation of members and staff of, and consultants to the Committee of Scientific Advisors on Marine Mammals is fixed in accordance with 16 U.S.C. 1401(e), 1403(b), and 1406.

(b) Compensation for members and staff of, and consultants to all advisory committees reporting to the Commission except the Committee of Scientific Advisors on Marine Mammals shall be fixed in accordance with guidelines established by the Director of the Office of Management and Budget pursuant to section 7(d) of the Act, 5 U.S.C. appendix I.

PART 520—PUBLIC AVAILABILITY OF AGENCY MATERIALS

§ 520.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of nonexempt material maintained by the Commission, provide for administrative appeal of initial determinations to deny requests for material, and prescribe uniform fees to be charged by the Commission to recover direct search and duplication costs.

§ 520.2 Scope.

(a) These regulations shall apply to all final opinions, including concurring and dissenting opinions, as well as orders, made by the Commission in the adjudication of cases; to all statements of policy and interpretations which have been adopted by the Commission and are not published in the Federal Register; to the Commission’s administrative staff manuals and instructions to staff that affect a member of the public; and to any other Commission records reasonably described and requested by a person in accordance with these regulations—except to the extent that such material is exempt in accordance with paragraph (b) of this section.

(b) Requests for inspection and copies shall not be granted with respect to materials that are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;
§ 520.3 Definitions.

As used in these regulations:

(a) The term Commission means the Marine Mammal Commission;

(b) The term Director means the Executive Director of the Marine Mammal Commission;

(c) The term exempt materials means those materials described in § 520.2(b);

(d) The term non-exempt materials refers to all materials described in § 520.2(a), but not included in § 520.2(b); and

(e) The term General Counsel means the General Counsel of the Marine Mammal Commission.

§ 520.4 Availability of materials.

(a) All non-exempt materials shall be available for inspection during normal business hours at the Commission offices, 1625 I Street, NW., Room 307, Washington, DC. Space shall be made available at that location for the use of any person who is granted permission to inspect such materials.

(b) Requests to inspect, and obtain copies of, any material maintained by the Commission may be made in person at the Commission offices, or submitted in writing to the Executive Director, Marine Mammal Commission, 1625 I St., NW., Room 307, Washington, DC 20006. Each request should include a reasonable description of the material being sought, and should contain sufficient detail to facilitate retrieval of the material without undue delay. The Commission staff shall assist to the extent practicable in identifying material that is imprecisely described by the person requesting such material.

(c) An initial determination whether, and to what extent, to grant each request shall be made by the General Counsel or his delegate within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of that request. The person making the request shall be notified immediately of the determination made. In making such determinations, it shall first be considered whether the material requested is of a type described in § 520.2(a); if it is, the request shall be granted unless the material is exempted by § 520.2(b). If the material requested is not of a type described in § 520.2(a), or is the subject of one or more exemptions, the request shall be denied.

(d) If a determination is made to grant a request, the relevant material shall promptly be made available for inspection at the Commission offices. Copies of the material disclosed shall be furnished within a reasonable time after payment of the fee specified in § 520.7. Copies of less than 10 pages of material requested in person ordinarily will be furnished immediately following the determination to grant the request and payment of the fee. Larger numbers of copies may be furnished at the earliest convenience of the Commission staff, but must be furnished within a reasonable time following payment of the fee.

(e) Whenever required to prevent a clearly unwarranted invasion of personal privacy, the General Counsel or his delegate shall determine that identifying details shall be deleted from an opinion, statement of policy, interpretation, or staff manual or instruction to which access is granted or of which copies are furnished. Where portions of the requested material are exempt under § 520.2(b), and are reasonably segregable from the remainder of the material, those portions shall be excised from the material disclosed. Whenever details are deleted or portions are excised and not disclosed, the notification shall include the information specified in § 520.4(f).

(f) If a determination is made to deny a request, the notification shall include a statement of the reasons for such action, shall set forth the name and position of the person responsible for the denial, and shall advise the requester of the right, and the procedures required under § 520.5, to appeal the denial to the Director.
§ 520.5 Administrative appeal.

(a) An appeal to the Director of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests must state specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests should be addressed to the Director at the Commission offices.

(b) The Director shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Director, any material with which the reversal is concerned shall be made available for inspection, and copies shall be furnished, in accordance with §520.4(d).

(d) If the denial is upheld, in whole or in part, the Director shall include in the notification a statement of the requester’s right of judicial review under 5 U.S.C. 552(a)(4), and the names and positions of the persons responsible for the denial.

§ 520.6 Extensions of time.

(a) Whenever unusual circumstances exist, as set forth in §520.6(b), the times within which determinations must be made by the General Counsel on requests for access (10 working days), and by the Director on requests for reconsideration (20 working days), may be extended by written notice to the requester. The notice shall set forth the reasons for such extension, and the date on which a determination is expected to be made. The maximum extension of time allowed under this section shall be 10 working days, but shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, “unusual circumstances” shall mean:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission offices;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 520.7 Fees.

(a) The following standard charges for document search and duplication, based on the direct costs of such services, must be paid before access to, or copies of material will be granted under these regulations:

(1) Search: $4.00 per person-hour for clerical time; $8.00 per person-hour for professional or supervisory time;

(2) Duplication: $0.10 per page of photocopied material.

(b) The Commission shall furnish without charge, or at a reduced charge, copies of any material disclosed pursuant to these regulations, whenever the General Counsel or the Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.


PART 530—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.
530.1 Purpose.
530.2 Ensuring that environmental documents are actually considered in agency decision-making.
530.3 Typical classes of action.
530.4 Environmental information.


SOURCE: 44 FR 52837, Sept. 11, 1979, unless otherwise noted.

§ 530.1 Purpose.

The purpose of this part is to establish procedures which supplement the National Environmental Policy Act (NEPA) regulations and provide for the implementation of those provisions.
§ 530.2 Ensuring that environmental documents are actually considered in agency decision-making.

Section 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, Commission officials shall:

(a) Consider all relevant environmental documents in evaluating proposals for agency actions;

(b) Ensure that all relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes;

(c) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating any proposal for action by the Commission which is likely to significantly affect the quality of the human environment; and

(d) Where an environmental impact statement (EIS) has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS. All Commission officials directly involved in developing, evaluating, and/or reaching decisions on proposed actions shall consider relevant environmental documents and comply with the applicable provisions of the NEPA process.

§ 530.3 Typical classes of action.

Section 1507.3(b) of the regulations contains requirements to identify typical classes of action that warrant similar treatment under NEPA with respect to the preparation of EIS’s or environmental assessments. As a general matter, the Commission’s activities do not include actions for which EIS’s or environmental assessments are required. Its activities involve:

(a) Consultation with and recommendations to other Federal agencies for actions relating to marine mammal protection and conservation for which an EIS or environmental assessment is either not required by the NEPA regulations or for which an EIS or environmental assessment is prepared by another Federal agency; and

(b) Research contracts relating to policy issues, biological-ecological data needed to make sound management decisions, and better methods for collecting and analyzing data. These activities are not, by themselves, major Federal actions significantly affecting the quality of the human environment and the Commission’s activities are therefore categorically excluded from the requirement to prepare an EIS or environmental assessment except for proposals for legislation which are initiated by the Commission, for which the Commission shall develop environmental assessments or EIS’s, as appropriate, in accordance with the NEPA regulations. The Commission shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 530.4 Environmental information.

Interested persons may contact the Office of the General Counsel for information regarding the Commission’s compliance with NEPA.

PART 540—INFORMATION SECURITY

Sec. 540.1 Policy.

540.2 Program.

540.3 Procedures.

AUTHORITY: Executive Order 12356.

§ 540.1 Policy.

It is the policy of the Marine Mammal Commission to act in accordance with Executive Order 12356 in matters relating to national security information.

(44 FR 55381, Sept. 26, 1979)
§ 540.2 Program.

The Executive Director is designated as the Commission’s official responsible for implementation and oversight of information security programs and procedures. He acts as the recipient of questions, suggestions, and complaints regarding all elements of this program, and is solely responsible for changes to it and for insuring that it is at all times consistent with Executive Order 12356. The Executive Director also serves as the Commission’s official contact for requests for declassification of materials submitted under the provisions of Executive Order 12356, regardless of the point of origin of such requests. He is responsible for assuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and that declassification requests submitted under the provisions of Executive Order 12356 are acted upon within 60 days of receipt.

[44 FR 55381, Sept. 26, 1979]

§ 540.3 Procedures.

(a) Mandatory declassification review. All requests for mandatory review shall be handled by the Executive Director or his designee. Under no circumstances shall the Executive Director refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the mandatory review provisions of Executive Order 12356, unless the fact of its existence or non-existence would itself be classified under Executive Order 12356. Requests for declassification shall be acted upon promptly providing that the request reasonably describes the information which is the subject of the request for declassification. In light of the fact that the Commission does not have original classification authority and national security information in its custody has been classified by another Federal agency, the Executive Director will refer all requests for national security information in its custody to the Federal agency that classified it or, if the agency that classified it has either ceased to exist or transferred the information in conjunction with a transfer of functions, to the appropriate federal agency exercising original classification authority with respect to the same subject, for review and disposition in accordance with Executive Order 12356 and that agency’s regulations and guidelines.

(b) Exceptional cases. When an employee or contractor of the Commission originates information that is believed to require classification, the Executive Director shall ensure that it is protected in accordance with Executive Order 12356 and shall promptly transmit it under appropriate safeguards to the agency with appropriate subject matter jurisdiction and classification authority for review and action in accordance with the Order and that agency’s regulations and guidelines.

(c) Derivative classification. Derivative classification markings shall be applied to information that is in substance the same as information that is already classified, in accordance with Executive Order 12356, Section 2–1, unless it is determined through inquiries made to the originators of the classified information or other appropriate persons that the paraphrasing, restating, or summarizing of the classified information obviates the need for its classification, in which case the information shall be issued as unclassified or shall be marked appropriately. After verifying the current level of classification so far as practicable, paper copies of such derivatively classified information shall be marked so as to indicate:

(1) The source of the original classification;
(2) The identity of the Commission employee originating the derivatively classified document;
(3) The dates or events for declassification or review for declassification indicated on the classified source material; and
(4) Any additional authorized markings appearing on the source material.

(d) Handling. All classified documents shall be delivered to the Executive Director or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Executive Director or his designee is not available to receive
such documents, they shall be turned over to the Administrative Officer and secured, unopened, in the combination safe located in the Commission offices until the Executive Director or his designee is available. Under no circumstances shall classified materials that cannot be delivered to the Executive Director or his designee be stored other than in the designated safe.

(e) Reproduction. Reproduction of classified material shall take place only in accordance with Executive Order 12356, its implementing directives, and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number and distribution of copies shall be maintained, where required by the Executive Order, by the Administrative Officer and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

(f) Storage. All classified documents shall be stored in the combination safe located in the Commission’s offices. The combination shall be changed as required by ISOO Directive No. 1, dated June 23, 1982. The combination shall be known only to the Executive Director and his designees with the appropriate security clearance.

(g) Employee education. All employees who have been granted a security clearance and who have occasion to handle classified materials shall be advised of handling, reproduction, and storage procedures and shall be required to review Executive Order 12356 and appropriate ISOO directives. This shall be effected by a memorandum to all affected employees at the time these procedures are implemented. New employees will be instructed in procedures as they enter employment with the Commission.

(h) Agency terminology. The use of the terms Top Secret, Secret, and Confidential shall be limited to materials classified for national security purposes.

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skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons, (TDD’s), interpreters, notetakers, written materials, and other similar services and devices.

**Complete complaint** means a written statement that contains the complainant’s name and address and describes the agency’s alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

**Facility** means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

**Handicapped person** means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) **Physical or mental impairment** includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) **Major life activities includes** functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) **Has a record of such an impairment** means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) **Is regarded as having an impairment** means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

**Qualified handicapped person** means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(3) **Qualified handicapped person** is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 550.140.


§§ 550.110–550.109 [Reserved]

§ 550.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 550.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 550.112–550.129 [Reserved]

§ 550.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons that is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of
administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 550.131–550.139 [Reserved]

§ 550.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 550.141–550.148 [Reserved]

§ 550.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §550.150, no qualified handicapped person shall, because the agency’s facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 550.150 Program accessibility: Existing facilities.

(a) General. The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §550.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) Methods. The agency may comply with the requirements of this section
through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) Time period for compliance. The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) Transition plan. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency’s facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]
with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §550.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or burdens, the agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §550.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant,
he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.


§§ 550.171–550.999 [Reserved]

PART 560—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT

Sec.
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560.2 Definitions.
560.3 Open meetings.
560.4 Notice of meetings.
560.5 Closed meetings.
560.6 Procedures for closing meetings.
560.7 Recordkeeping requirements.
560.8 Public availability of records.

AUTHORITY: 5 U.S.C. 552b(g).

SOURCE: 50 FR 2571, Jan. 17, 1985, unless otherwise noted.

§ 560.1 Purpose and scope.

This part contains the regulations of the Marine Mammal Commission implementing the Government in the Sunshine Act (5 U.S.C. 552b). Consistent with the Act, it is the policy of the Marine Mammal Commission that the public is entitled to the fullest practicable information regarding its decision making processes. The provisions of this part set forth the basic responsibilities of the Commission with regard to this policy and offer guidance to members of the public who wish to exercise the rights established by the Act. These regulations also fulfill the requirement of 5 U.S.C. 552b(g) that each agency subject to the Act promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of section 552b.

§ 560.2 Definitions.

For purposes of this part, the term—
Administrative Officer means the Administrative Officer of the Marine Mammal Commission.
Commission means the Marine Mammal Commission, a collegial body established under 16 U.S.C. 1401 that functions as a unit and is composed of three individual members, each of whom is appointed by the President, by and with the advice and consent of the Senate.
Commissioner means an individual who is a member of the Marine Mammal Commission.
Executive Director means the Executive Director of the Marine Mammal Commission.
General Counsel means the General Counsel of the Marine Mammal Commission.
Meeting means the deliberations of at least a majority of the members of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include an individual Commissioner’s consideration of official Commission business circulated in writing for disposition either by notation or by separate, sequential consideration, and deliberations on whether to:
(1) Hold a meeting with less than 7 days notice, as provided in § 560.4(d) of this part;
(2) Change the subject matter of a publicly announced meeting or the determination of the Commission to open or close a meeting or portions thereof to public observation, as provided in § 560.4(e) of this part;
(3) Change the time or place of an announced meeting, as provided in § 560.4(f) of this part;
(4) Close a meeting or portions of a meeting, as provided in § 560.5 of this part; or
(5) Withhold from disclosure information pertaining to a meeting or portions of a meeting, as provided in § 560.5 of this part.
Public observation means attendance by one or more members of the public at a meeting of the Commission, but does not include participation in the meeting.
Public participation means the presentation or discussion of information, raising of questions, or other manner of involvement in a meeting of the Commission by one or more members of the public in a manner that contributes to the disposition of Commission business.

§ 560.3 Open meetings.

(a) Except as otherwise provided in this part, every portion of every meeting of the Commission shall be open to public observation.

(b) Meetings of the Commission, or portions thereof, shall be open to public participation only when an announcement to that effect is issued under §560.4(b)(4) of this part. Public participation shall be conducted in an orderly, nondisruptive manner and in accordance with such procedures as the chairperson of the meeting may establish. Public participation may be terminated at any time for any reason.

(c) When holding open meetings, the Commission shall make a diligent effort to provide ample space, sufficient visibility, and adequate acoustics to accommodate the public attendance anticipated for the meeting.

(d) Members of the public may record open meetings of the Commission by means of any mechanical or electronic device, unless the chairperson of the meeting determines that such recording would disrupt the orderly conduct of the meeting.

§ 560.4 Notice of meetings.

(a) Except as otherwise provided in this section, the Commission shall make a public announcement at least 7 days prior to a meeting.

(b) The public announcement shall include:

(1) The time and place of the meeting;

(2) The subject matter of the meeting;

(3) Whether the meeting is to be open, closed, or portions thereof closed;

(4) Whether public participation will be allowed; and

(5) The name and telephone number of the person who will respond to requests for information about the meeting.

(c) The public announcement requirement shall be implemented by:

(1) Submitting the announcement for publication in the Federal Register;

(2) Distributing the announcement to affected governmental entities;

(3) Mailing the announcement to persons and organizations known to have an interest in the subject matter of the meeting; and

(4) Other means that the Executive Director deems appropriate to inform interested parties.

(d) A meeting may be held with less than 7 days notice if a majority of the members of the Commission determine by recorded vote that the business of the Commission so requires. The Commission shall make a public announcement to this effect at the earliest practicable time. The announcement shall include the information required by paragraph (b) of this section and shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

(e) The subject matter of an announced meeting, or the determination of the Commission to open or close a meeting or portions thereof to public observation, may be changed if a majority of the members of the Commission determine by recorded vote that Commission business so requires and that no earlier announcement of the change was possible. The Commission shall make a public announcement of the changes made and the vote of each member on each change at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

(f) The time or place of an announced meeting may be changed only if a public announcement of the change is made at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

§ 560.5 Closed meetings.

(a) A meeting or portions thereof may be closed, and information pertaining to such meeting or portions
§ 560.6 Procedures for closing meetings.

(a) A meeting or portions thereof may be closed and information pertaining to such meeting or portions thereof may be withheld under §560.5 of this part only when a majority of the members of the Commission vote to take such action.
(b) A separate vote of the members of the Commission shall be taken with respect to each meeting or portion thereof proposed to be closed and with respect to information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed, so long as each meeting or portion thereof in such series involves the same particular matter and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each participating Commission member shall be recorded, and no proxies shall be allowed.

(c) A person whose interests may be directly affected by a portion of a meeting may request in writing that the Commission close that portion of the meeting for any of the reasons referred to in §560.5(a) (5), (6) or (7) of this part. Upon the request of a Commissioner, a recorded vote shall be taken whether to close such meeting or a portion thereof.

(d) Before the Commission may hold a meeting that is closed, in whole or part, a certification shall be obtained from the General Counsel that, in his or her opinion, the meeting may properly be closed. The certification shall be in writing and shall state each applicable exemptive provision from §560.5(a) of this part.

(e) Within one day of a vote taken pursuant to this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each Commissioner.

(f) In the case of the closure of a meeting or portions thereof, the Commission shall make publicly available a written explanation of the reasons for the closing together with a list of all persons expected to attend the meeting and their affiliation.

§ 560.7 Recordkeeping requirements.

(a) Except as otherwise provided in this section, the Commission shall maintain either a complete transcript or electronic recording of the proceedings of each meeting, whether opened or closed.

(b) In the case of either a meeting or portions of a meeting closed to the public pursuant to §560.5(a) (8) or (10) of this part, the Commission shall maintain a complete transcript, an electronic recording, or a set of minutes of the proceedings. If minutes are maintained, they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken and the reasons for which such actions were taken, including a description of the views expressed on any item and a record reflecting the vote of each Commissioner. All documents considered in connection with any action shall be identified in the minutes.

(c) The transcript, electronic recording, or copy of the minutes shall disclose the identity of each speaker.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete copy of the minutes of the proceedings of each meeting for at least two years, or for one year after the conclusion of any Commission proceeding with respect to which the meeting was held, whichever occurs later.

§ 560.8 Public availability of records.

(a) The Commission shall make available to the public the transcript, electronic recording, or minutes of a meeting, except for items of discussion or testimony that relate to matters the Commission has determined to contain information which may be withheld under §560.5 of this part.

(b) The transcript, electronic recordings or minutes of a meeting shall be made available for public review as soon as practicable after each meeting at the Marine Mammal Commission, 1625 I Street NW., Washington, DC 20006.

(c) Copies of the transcript, a transcription of the electronic recording, or the minutes of a meeting shall be furnished at cost to any person upon written request. Written requests should be addressed to the Administrative Officer, Marine Mammal Commission, 1625 I Street NW., Washington, DC 20006.
FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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