AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Title 50—Wildlife and Fisheries

(This book contains parts 600 to 659)

Part

CHAPTER VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce 600

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

EDITORIAL NOTE: Nomenclature changes to Chapter VI appear at 69 FR 53361, 53362, Sept. 1, 2004.

Part		*Page*
600	Magnuson-Stevens Act provisions	5
622	Fisheries of the Caribbean, Gulf, and South Atlantic	212
635	Atlantic highly migratory species	358
640	Spiny lobster fishery of the Gulf of Mexico and South Atlantic	439
644	[Reserved]	
648	Fisheries of the Northeastern United States	455
655–659	[Reserved]	

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

Subpart A—General

Sec.
600.5 Purpose and scope.
600.10 Definitions.
600.15 Other acronyms.

Subpart B—Regional Fishery Management Councils

600.105 Intercouncil boundaries.
600.110 Intercouncil fisheries.
600.115 Statement of organization, practices, and procedures (SOPP).
600.117 Council coordination committee (CCC).
600.120 Employment practices.
600.125 Budgeting, funding, and accounting.
600.130 Protection of confidentiality of statistics.
600.133 Scientific and Statistical Committee (SSC).
600.134 Stipends.
600.135 Meeting procedures.
600.140 Procedure for proposed regulations.
600.150 Disposition of records.
600.155 Freedom of Information Act (FOIA) requests.

Subpart C—Council Membership

600.205 Principal state officials and their designees.
600.207 Pacific Fishery Management Council Tribal Indian representative and alternate.
600.210 Terms of Council members.
600.215 Council nomination and appointment procedures.
600.220 Oath of office.
600.225 Rules of conduct.
600.227 Lobbying.
600.230 Removal.
600.235 Financial disclosure.
600.240 Security assurances.
600.245 Council member compensation.
600.250 Council member training.

Subpart D—National Standards

600.305 General.
600.310 National Standard 1—Optimum Yield.
600.315 National Standard 2—Scientific Information.
600.320 National Standard 3—Management Units.
600.325 National Standard 4—Allocations.
600.330 National Standard 5—Efficiency.
600.335 National Standard 6—Variations and Contingencies.
600.340 National Standard 7—Costs and Benefits.
600.345 National Standard 8—Communities.
600.350 National Standard 9—Bycatch.
600.355 National Standard 10—Safety of Life at Sea.

Subpart E—Confidentiality of Statistics

600.405 Types of statistics covered.
600.410 Collection and maintenance of statistics.
600.415 Access to statistics.
600.420 Control system.
600.425 Release of statistics.

Subpart F—Foreign Fishing

600.501 Vessel permits.
600.502 Vessel reports.
600.503 Vessel and gear identification.
600.504 Facilitation of enforcement.
600.505 Prohibitions.
600.506 Observers.
600.507 Recordkeeping.
600.508 Fishing operations.
600.509 Prohibited species.
600.510 Gear avoidance and disposal.
600.511 Fishery closure procedures.
600.512 Scientific research.
600.513 Recreational fishing.
600.514 Relation to other laws.
600.515 Interpretation of 16 U.S.C. 1857(4).
600.516 Total allowable level of foreign fishing (TALFF).
600.517 Allocations.
600.518 Fee schedule for foreign fishing.
600.520 Northwest Atlantic Ocean fishery.
600.525 Applicability of Subpart F to Canadian Albacore Fishing Vessels off the West Coast.
600.530 Pacific albacore fishery.

Subpart G—Preemption of State Authority Under Section 306(b)

600.605 General policy.
600.610 Factual findings for Federal preemption.
600.615 Commencement of proceedings.
600.620 Rules pertaining to the hearing.
600.625 Secretary's decision.
600.630 Application for reinstatement of state authority.

Subpart H—General Provisions for Domestic Fisheries

600.705 Relation to other laws.
600.710 Permits.
600.715 Recordkeeping and reporting.
600.720 Vessel and gear identification.
600.725 General prohibitions.
600.730 Facilitation of enforcement.
600.735 Penalties.
600.740 Enforcement policy.
600.745 Scientific research activity, exempted fishing, and exempted educational activity.
600.746 Observers.

600.747 Guidelines and procedures for determining new fisheries and gear.

Subpart I—Fishery Negotiation Panels

600.750 Definitions.
600.751 Determination of need for a fishery negotiation panel.
600.752 Use of conveners and facilitators.
600.753 Notice of intent to establish a fishery negotiation panel.
600.754 Decision to establish a fishery negotiation panel.
600.755 Establishment of a fishery negotiation panel.
600.756 Conduct and operation of a fishery negotiation panel.
600.757 Operational protocols.
600.758 Preparation of report.
600.759 Use of report.
600.760 Fishery Negotiation Panel lifetime.

Subpart J—Essential Fish Habitat (EFH)

600.805 Purpose and scope.
600.810 Definitions and word usage.
600.815 Contents of Fishery Management Plans.

Subpart K—EFH Coordination, Consultation, and Recommendations

600.905 Purpose, scope, and NMFS/Council cooperation.
600.910 Definitions and word usage.
600.915 Coordination for the conservation and enhancement of EFH.
600.920 Federal agency consultation with the Secretary.
600.925 NMFS EFH Conservation Recommendations to Federal and state agencies.
600.930 Council comments and recommendations to Federal and state agencies.

Subpart L—Fishing Capacity Reduction Framework

600.1000 Definitions.
600.1001 Requests.
600.1002 General requirements.
600.1003 Content of a request for a financed program.
600.1004 Accepting a request for, and determinations about initiating, a financed program.
600.1005 Content of a request for a subsidized program.
600.1006 Accepting a request for, and determinations about conducting, a subsidized program.
600.1007 Reduction amendments.
600.1008 Implementation plan and implementation regulations.
600.1009 Bids.
600.1010 Referenda.
600.1011 Reduction methods and other conditions.
600.1012 Reduction loan.
600.1013 Fee payment and collection.
600.1014 Fee collection deposits, disbursements, records, and reports.
600.1015 Late charges.
600.1016 Enforcement.
600.1017 Prohibitions and penalties.

Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations

600.1100 General. [Reserved]
600.1101 Inshore fee system for repayment of the loan to harvesters of Pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.
600.1102 Pacific Coast groundfish fee.
600.1103 Bering Sea and Aleutian Islands (BSAI) Crab species program.
600.1104 Bering Sea and Aleutian Islands (BSAI) crab species fee payment and collection system.
600.1105 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.
600.1106 Longline catcher processor subsector Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish species fee payment and collection system.
600.1107 Southeast Alaska Purse Seine Salmon Fishery capacity reduction program, including fee payment and collection system.
600.1108 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.

Subpart N—Shark Finning

600.1200 Purpose and scope.
600.1201 Relation to other laws.
600.1202 Definitions.
600.1203 Prohibitions.
600.1204 Shark finning; possession at sea and landing of shark fins.

Subpart O—Limited Access Privilege Programs

600.1300–600.1309 [Reserved]
600.1310 New England and Gulf of Mexico Individual Fishing Quota Referenda.

Subpart P—Marine Recreational Fisheries of the United States

600.1400 Definitions.
600.1405 Angler registration.
600.1410 Registry process.
600.1415 Procedures for designating exempted states-general provisions.
600.1416 Requirements for exempted state designation based on submission of state license holder data.

600.1417 Requirements for exempted state designation based on submission of recreational survey data.

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

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

Subpart A—General

§ 600.5 Purpose and scope.

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

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

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

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

§ 600.10 Definitions.

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

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

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

Advisory panel (AP) means a committee formed, selected, and formally designated as a Magnuson-Stevens Act Section 302(g)(2) advisory panel by the Council's Statement of organization, practices, and procedures (SOPP), or by a formal charge to the committee made by the chair and recorded in the Council's minutes, to assist it in carrying out its functions. An AP may include individuals who are not members of the Council.

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

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

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

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

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

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

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

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

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

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

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

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

Authorized officer means:

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

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

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

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

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

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

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

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

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

Billfish means Atlantic billfish (blue marlin, white marlin, sailfish, longbill spearfish, or roundscale spearfish).

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

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

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

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

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

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

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

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

Center means one of the five NMFS Fisheries Science Centers.

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

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

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

Compensation fishing means fishing conducted for the purpose of recovering costs associated with resource surveys and scientific studies that support the management of a fishery, or to provide incentive for participation in such studies. Compensation fishing may include fishing during or subsequent to such surveys or studies.

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

Conservation engineering means the development and assessment of fishing technologies and fishing techniques designed to conserve target and non-target species, and may include the study of fish behavior and the development and testing of new gear technologies and fishing techniques to minimize bycatch and any adverse effects on essential fish habitat and promote efficient harvest of target species. Conservation engineering may include the assessment of existing fishing technologies applied in novel ways. An example

would be assessing the ability of a bycatch reduction device (BRD), designed and proven in one fishery, to reduce bycatch in another fishery. Conservation engineering meeting the definition of scientific research activity is not fishing.

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

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

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

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

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

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

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

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

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

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

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

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

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

Exempted educational activity means an activity that would otherwise be considered fishing, conducted by an educational institution accredited by a recognized national or international accreditation body, of limited scope and duration, that is otherwise prohibited by this chapter VI, but that is authorized by the appropriate Regional Administrator or Director for educational purposes, i.e., the instruction of an individual or group, and authorized capture of only the amount of fish necessary to demonstrate the lesson.

Exempted or experimental fishing means fishing from a vessel of the United States that involves activities otherwise prohibited by this chapter VI, but that are authorized under an exempted fishing permit (EFP). The regulations in § 600.745 refer exclusively to exempted fishing. References elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

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

Fish means:

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

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

Fishery means:

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

(2) Any fishing for such stocks.

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

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

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

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

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

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

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

Fishing industry advisory committee (FIAC) means an advisory group formed and selected by a regional fishery management council under the authority of the Magnuson-Stevens Act section 302(g)(3)(A) and formally designated in the Council's SOPP or by a formal charge to the FIAC made by the chair and recorded in the Council's minutes. A FIAC is not an ''advisory panel'' as defined under this section.

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

(1) Fishing; or

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

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

Foreign fishing means fishing by a foreign fishing vessel.

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

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

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

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

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

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

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

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

Handgear means handline, harpoon, or rod and reel.

Hand harvest means harvesting by hand.

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

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

Harpoon or *harpoon gear* means fishing gear consisting of a pointed dart or

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

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

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

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

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

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

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

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

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

Limited access system means a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation.

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

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

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

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

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

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

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

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

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

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

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

Owner, with respect to any vessel, means:

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

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

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

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

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

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

and supporting documents for the Council, and/or SSC and AP.

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

Pot means trap.

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

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

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

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

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

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

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

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

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

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

Regional Administrator means the Administrator of one of the six NMFS Regions described in Table 1 to § 600.502, or a designee.

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

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

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

Roundscale spearfish means the species *Tetrapturus georgii*, or a part thereof.

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

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

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

Science and Research Director (also referred to as ''Center Director'') means the Director of one of the six NMFS Fisheries Science Centers described in Table 1 to § 600.502, or a designee.

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

Scientific research activity is, for the purposes of this part, an activity in

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

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

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

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

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

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

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

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

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

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

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

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

Secretary means the Secretary of Commerce or a designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The enforcement of regulations implementing the FMP.

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

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

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

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

Trammel net means a net consisting of two or more panels of netting, suspended vertically in the water column by a common float line and a common

weight line. One panel of netting has a larger mesh size than the other(s) in order to entrap fish in a pocket.

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

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

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

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

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

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

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

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

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

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

White Marlin means the species *Kajikia albidus*, or a part thereof.

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

[61 FR 32540, June 24, 1996, as amended at 62 FR 14646, Mar. 27, 1997; 62 FR 66551, Dec. 19, 1997; 63 FR 7073, 7075, Feb. 12, 1998; 64 FR 4036, Jan. 27, 1999; 64 FR 29133, May 28, 1999; 64 FR 67516, Dec. 2, 1999; 67 FR 2375, Jan. 17, 2002; 67 FR 64312, Oct. 18, 2002; 69 FR 30240, May 27, 2004; 73 FR 67810, Nov. 17, 2008; 74 FR 42792, Aug. 25, 2009; 75 FR 59149, Sept. 27, 2010; 75 FR 57701, Sept. 22, 2010]

§ 600.15 Other acronyms.

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

(2) *ATCA*–Atlantic Tunas Convention Act

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

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

(5) CCC–Council coordination committee

(6) DAH—estimated domestic annual harvest

(7) DAP—estimated domestic annual processing

(8) EIS—environmental impact statement

(9) EY—equilibrium yield

(10) FIAC–Fishing industry advisory committee

(11) FMP—fishery management plan

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

(13) JVP—joint venture processing

(14) MSY—maximum sustainable yield

(15) PMP—preliminary FMP

(16) TAC—total allowable catch

(17) TALFF—total allowable level of foreign fishing

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

(2) CZMA—Coastal Zone Management Act

(3) ESA—Endangered Species Act

(4) FACA—Federal Advisory Committee Act

(5) FOIA—Freedom of Information Act

(6) FLSA—Fair Labor Standards Act

(7) MMPA—Marine Mammal Protection Act

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

(9) NEPA—National Environmental Policy Act

(10) PA—Privacy Act

(11) PRA—Paperwork Reduction Act

(12) RFA—Regulatory Flexibility Act

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

(2) DOC—Department of Commerce

(3) DOI—Department of the Interior

(4) DOS—Department of State

(5) EPA—Environmental Protection Agency

(6) FWS—Fish and Wildlife Service

(7) GSA—General Services Administration

(8) NMFS—National Marine Fisheries Service

(9) NOAA—National Oceanic and Atmospheric Administration

(10) OMB—Office of Management and Budget

(11) OPM—Office of Personnel Management

(12) SBA—Small Business Administration

(13) USCG—United States Coast Guard

[61 FR 32540, June 24, 1996, as amended at 63 FR 7073, Feb. 12, 1998; 64 FR 29134, May 28, 1999; 75 FR 59149, Sept. 27, 2010]

Subpart B—Regional Fishery Management Councils

§ 600.105 Intercouncil boundaries.

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

(b) *Mid-Atlantic and South Atlantic Councils*. The boundary begins at the seaward boundary between the States of Virginia and North Carolina (36°33′01.0″ N. lat), and proceeds due east to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson-Stevens Act.

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

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 75 FR 59149, Sept. 27, 2010]

§ 600.110 Intercouncil fisheries.

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

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

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

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

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

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

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

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

(b) Amendments to current SOPPs must be consistent with the guidelines in this section, subpart C of this part,

the terms and conditions of the cooperative agreement (the funding agreement between the Council and NOAA that establishes Council funding and mandates specific requirements regarding the use of those funds), the statutory requirements of the Magnuson-Stevens Act, and other applicable law. Upon approval of a Council's SOPP amendment by the Secretary, a notice of availability must be published in the FEDERAL REGISTER that includes an Internet address from which the amended SOPP may be read and downloaded and a mailing address to which the public may write to request copies.

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

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 75 FR 59149, Sept. 27, 2010]

§ 600.117 Council coordination committee (CCC).

(a) The Councils may establish a Council coordination committee (CCC) consisting of the chairs, vice chairs, and executive directors of each of the eight Councils or other Council members or staff, in order to discuss issues of relevance to all Councils.

(b) The CCC is not subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2). Procedures for announcing and conducting open and closed meetings of the CCC shall be in accordance with § 600.135.

[75 FR 59150, Sept. 27, 2010]

§ 600.120 Employment practices.

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

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

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

(2) [Reserved]

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

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

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

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

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

[66 FR 57886, Nov. 19, 2001]

§ 600.125 Budgeting, funding, and accounting.

(a) Council grant activities are governed by 15 CFR part 14 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit and Commercial Organizations), 2 CFR part 230 (Cost Principles for Non-Profit Organizations), 15 CFR part 14 (Audit Requirements for Institutions of Higher Education and Other Non-Profit Organizations), and the terms and conditions of the cooperative agreement.

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

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

[66 FR 57887, Nov. 19, 2001, as amended at 75 FR 59150, Sept. 27, 2010]

§ 600.130 Protection of confidentiality of statistics.

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

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

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

§ 600.133 Scientific and Statistical Committee (SSC).

(a) Each Council shall establish, maintain, and appoint the members of an SSC to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(b) Each SSC shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

(c) Members appointed by the Councils to the SSCs shall be Federal employees, State employees, academicians, or independent experts and shall have strong scientific or technical credentials and experience.

(d) An SSC shall hold its meetings in conjunction with the meetings of the Council, to the extent practicable.

[75 FR 59150, Sept. 27, 2010]

§ 600.134 Stipends.

Stipends are available, subject to the availability of appropriations, to members of committees formally designated as SSCs under Sec. 301(g)(1)(a) or APs under Sec. 302(g)(2) of the Magnuson-Stevens Act who are not employed by the Federal Government or a State marine fisheries agency. For the purposes of this section, a state marine fisheries agency includes any state or tribal

agency that has conservation, management, or enforcement responsibility for any marine fishery resource.

[75 FR 59150, Sept. 27, 2010]

§ 600.135 Meeting procedures.

(a) *Regular meetings*. Public notice of a regular meeting, including the meeting agenda, of each Council, CCC, SSC, AP, FIAC, or other committees established under Magnuson-Stevens Act, Sec. 302(g), must be published in the FEDERAL REGISTER at least 14 calendar days prior to the meeting date. Appropriate notice by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery) must be given. E-mail notification and website postings alone are not sufficient. The published agenda of a regular meeting may not be modified to include additional matters for Council action without public notice given at least 14 calendar days prior to the meeting date, unless such modification is necessary to address an emergency under section 305(c) of the Magnuson-Stevens Act, in which case public notice shall be given immediately. Drafts of all regular public meeting notices must be received by NMFS headquarters office at least 23 calendar days before the first day of the regular meeting. Councils must ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings.

(b) *Emergency meetings*. Drafts of emergency public notices must be transmitted to the NMFS headquarters office at least 5 working days prior to the first day of the emergency meeting. Although notices of and agendas for emergency meetings are not required to be published in the FEDERAL REGISTER, notices of emergency meetings must be promptly announced through any means that will result in wide publicity in the major fishing ports of the region. E-mail notification and website postings alone are not sufficient.

(c) *Closed meetings*. After proper notification by any means that will result in wide publicity in the major fishing ports within the region and, having included in the notification the time and place of the meeting and the reason for closing any meeting or portion thereof to the public, a Council, CCC, SSC, AP, FIAC, or other committees:

(1) Must close any meeting, or portion thereof, that concerns information bearing a national security classification.

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

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

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

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

(f) Actions that affect the public, although based on discussions in closed meetings, must be taken in public. For example, appointments to an AP must

be made in the public part of the meeting; however, a decision to take disciplinary action against a Council employee need not be announced to the public.

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

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

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

[66 FR 57887, Nov. 19, 2001, as amended at 75 FR 59150, Sept. 27, 2010]

§ 600.140 Procedure for proposed regulations.

(a) Each Council must establish a written procedure for proposed regulations consistent with section 303(c) of the Magnuson-Stevens Act. The procedure must describe how the Council deems proposed regulations necessary or appropriate for the purposes of implementing a fishery management plan or a plan amendment, or making modifications to regulations implementing a fishery management plan or plan amendment. In addition, the procedure must describe how the Council submits proposed regulations to the Secretary.

(b) The Councils must include the procedure for proposed regulations in its SOPP, see § 600.115, or other written documentation that is available to the public.

[75 FR 59150, Sept. 27, 2010]

§ 600.150 Disposition of records.

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

(b) Each Council is required to maintain documents generally available to the public on its Internet site. Documents for posting must include: fishery management plans and their amendments for the fisheries for which the Council is responsible, drafts of fishery management plans and plan amendments under consideration, analysis of actions the Council has under review, minutes or official reports of past meetings of the Council and its committees, materials provided by the Council staff to Council members in preparation for meetings, and other Council documents of interest to the public. For documents too large to maintain on the Web site, not available electronically, or seldom requested, the Council must provide copies of the documents for viewing at the Council office during regular business hours or may provide the documents through the mail.

[66 FR 57887, Nov. 19, 2001, as amended at 75 FR 59151, Sept. 27, 2010]

§ 600.155 Freedom of Information Act (FOIA) requests.

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

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

of documents to be withheld, must be cleared through the NMFS FOIA Officer. Upon completion, a copy of the signed CD–244 and cover letter transmitting the information should be provided to the NMFS FOIA Officer and the NOAA FOIA Officer.

[66 FR 57887, Nov. 19, 2001]

Subpart C—Council Membership

§ 600.205 Principal state officials and their designees.

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

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

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

[66 FR 57888, Nov. 19, 2001]

§ 600.207 Pacific Fishery Management Council Tribal Indian representative and alternate.

(a) The tribal Indian representative to the Pacific Fishery Management Council may designate an alternate during the period of the representative's term. The designee must be knowledgeable concerning tribal rights, tribal law, and the fishery resources of the geographical area concerned.

(b) New or revised designations of an alternate by the tribal Indian representative must be delivered in writing to the appropriate NMFS Regional Administrator and the Council chair at least 48 hours before the designee may vote on any issue before the Council. In that written document, the tribal Indian representative must indicate how the designee meets the knowledge requirements under paragraph (a) of this section.

[75 FR 59151, Sept. 27, 2010]

§ 600.210 Terms of Council members.

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

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

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

[61 FR 32540, June 24, 1996, as amended at 63 FR 7073, Feb. 12, 1998; 75 FR 59151, Sept. 27, 2010]

§ 600.215 Council nomination and appointment procedures.

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

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

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

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

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

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

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

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

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

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

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

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

(2) To assist in identifying qualifications, each nominee must furnish to the appropriate governor's office a current resume, or equivalent, describing

career history—with particular attention to experience related to the criteria in paragraph (b)(1) of this section. Nominees may provide such information in any format they wish.

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

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

(5) When the terms of both an obligatory member and an at-large member expire concurrently, the Governor of the state holding the expiring obligatory seat may indicate that the nominees who were not selected for appointment to the obligatory seat may be considered for appointment to an at-large seat, provided that the resulting total number of nominees submitted by that governor for the expiring at-large seat is no fewer than three different nominees.

(c) Nominees to the Gulf of Mexico Fishery Management Council. (1) The Governors of States submitting nominees to the Secretary for appointment to the Gulf of Mexico Fishery Management Council shall include:

(i) At least one nominee each from the commercial, recreational, and charter fishing sectors, except that an individual who owns or operates a fish farm outside the United States shall not be considered to be a representative of the commercial or recreational sector; and

(ii) At least one other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.

(2) Notwithstanding the requirements of paragraphs (a) and (b) of this section, if the Secretary determines that the list of names submitted by the Governor does not meet the requirements of paragraph (c)(1) of this section, the Secretary shall:

(i) Publish a notice in the FEDERAL REGISTER asking the residents of that State to submit the names and pertinent biographical data of individuals who would meet the requirements of this section that were not met for appointment to the Council; and

(ii) Add the name of any qualified individual submitted by the public who meets the requirements of this section that were not met to the list of names submitted by the Governor.

(3) The requirements of this paragraph (c) shall expire at the end of fiscal year 2012, meaning through September 30, 2012.

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

(e) *Nomination deadlines.* Nomination packages (governors' letters and completed nomination kits) must be forwarded by express mail under a single mailing to arrive at the address specified by the Assistant Administrator by March 15. For appointments outside the normal cycle, the Secretary will

provide a deadline for receipt of nominations to the affected Council and state governors.

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

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

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

(ii) Nomination packages that are not substantially complete by March 15 may be returned to the nominating Governor. At-large members will be appointed from among the nominations submitted by the governors who complied with the nomination requirements.

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

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

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

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

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

which the vacating member was chosen. The Secretary shall rotate the appointment among the tribes, taking into consideration:

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

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

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

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

[64 FR 4600, Jan. 29, 1999, as amended at 75 FR 59151, Sept. 27, 2010]

§ 600.220 Oath of office.

As trustees of the nation's fishery resources, all voting members must take an oath specified by the Secretary as follows: ''I, [name of the person taking oath], as a duly appointed member of a Regional Fishery Management Council established under the Magnuson-Stevens Fishery Conservation and Management Act, hereby promise to conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the Nation. I recognize my responsibility to serve as a knowledgeable and experienced trustee of the Nation's marine fisheries resources, being careful to balance competing private or regional interests, and always aware and protective of the public interest in those resources. I commit myself to uphold the provisions, standards, and requirements of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law, and shall conduct myself at all times according to the rules of conduct prescribed by the Secretary of Commerce. This oath is given freely and without mental reservation or purpose of evasion.''

[75 FR 59152, Sept. 27, 2010]

§ 600.225 Rules of conduct.

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

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

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

(2) Council members, employees, and contractors must comply with the Federal Cost Principles Applicable to Regional Fishery Management Council Grants and Cooperative Agreements, especially with regard to lobbying, and other restrictions with regard to lobbying as specified in § 600.227 of this part.

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

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

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

(6) No Council member, employee of a Council, or member of a Council advisory group may use or allow the use,

for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

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

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

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

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

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 63 FR 64185, Nov. 19, 1998; 75 FR 59152, Sept. 27, 2010]

§ 600.227 Lobbying.

(a) Council members, employees and contractors must comply with the requirements of 31 U.S.C. 1352 and Department of Commerce implementing regulations published at 15 CFR part 28, ''New Restrictions on Lobbying.'' These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the award. Because the Councils receive in excess of $100,000 in Federal funding, the regulations mandate that the Councils must complete Form SF-LLL, ''Disclosure of Lobbying Activities,'' regarding the use of non Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit the Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

(b) Council members, employees, and contractors must comply with the Federal Cost Principles Applicable to Regional Fishery Management Council Grants and Cooperative Agreements summarized as follows:

(1) Title 2 CFR part 230 - Cost Principles for Nonprofit Organizations (OMB CircularA–122) is applicable to the Federal assistance awards issued to the Councils.

(2) The purpose of the cost principles at 2 CFR part 230 is to define what costs can be paid on Federal awards issued to non-profit organizations. The regulation establishes both general principles and detailed items of costs.

(3) Under 2 CFR part 230, costs for certain lobbying activities are unallowable as charges to Federal awards. These activities would include any attempts to influence:

(i) The introduction of Federal or state legislation;

(ii) The enactment or modification of any pending legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public to contribute to or to participate in any demonstration, march, rally, fundraising drive, lobbying campaign, or letter writing or telephone campaign.

(4) Generally, costs associated with providing a technical and factual presentation directly related to the performance of a grant, through hearing testimony, statements, or letters to

Congress or a state legislature are allowable if made in response to a documented request.

(5) Costs associated with lobbying to influence state legislation in order to reduce the cost or to avoid material impairment of the organization's authority to perform the grant are also allowable.

[75 FR 59152, Sept. 27, 2010]

§ 600.230 Removal.

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

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

§ 600.235 Financial disclosure.

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

Affected individual means an individual who is—

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

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

(3) A member of an SSC shall be treated as an affected individual for the purposes of paragraphs (b)(1), (b)(5) through (b)(7), and (i) of this section.

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

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

Financial Interest Form means NOAA Form 88–195, ''STATEMENT OF FINANCIAL INTERESTS For Use By Voting Members of, and Nominees to, the Regional Fishery Management Councils, and Members of the Scientific and Statistical Committee (SSC)'' or such other form as the Secretary may prescribe.

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

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

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

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

(iv) Employment with an entity that has any percentage ownership in or by another entity providing consulting, legal, or representational services to

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

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

(b) *Reporting*. (1) The Magnuson-Stevens Act requires the disclosure of any financial interest in harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction. An affected individual must disclose such financial interest held by that individual; the affected individual's spouse, minor child, partner; or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on the Financial Interest Form (as defined in paragraph (a) of this section), or such other form as the Secretary may prescribe.

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

(3) The Executive Director must, in a timely manner, provide copies of and updates to the Financial Interest Forms of appointed Council members to the NMFS Regional Administrator, the Regional Attorney who advises the Council, the Department of Commerce Assistant General Counsel for Administration, and the NMFS Office of Sustainable Fisheries. These completed Financial Interest Forms shall be kept on file in the office of the NMFS Regional Administrator and at the Council offices, and shall be made available for public inspection at such offices during normal office hours. In addition, the forms shall be made available at each Council meeting or hearing and shall be posted for download from the Internet on the Council's website.

(4) Councils must retain the Financial Interest Form for a Council member for at least 5 years after the expiration of that individual's last term.

(5) An individual being considered for appointment to an SSC must file the Financial Interest Form with the Regional Administrator for the geographic area concerned within 45 days prior to appointment. A member of the SSC must file an update of his or her statement with the Regional Administrator for the geographic area concerned within 30 days of the time any such financial interest is acquired or substantially changed by the SSC member or the SSC member's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; and must update his or her form annually and file that update with the Regional Administrator by February 1 of each year.

(6) An individual who serves as an SSC member to more than one Council shall file Financial Interest Forms with each Regional Administrator for the geographic areas concerned.

(7) The Regional Administrator shall maintain on file the Financial Interest Forms of all SSC members for at least five years after the expiration of that individual's term on the SSC. Such Forms are not subject to sections 302(j)(5)(B) and (C) of the Magnuson-Stevens Act.

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

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

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

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

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

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

(4) A member of an SSC is not subject to the restrictions on voting under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The provisions of 18 U.S.C. 208 regarding conflicts of interest do not apply to an affected individual who is a voting member of a Council appointed by the Secretary, as described under section 302(j)(1)(A)(ii) of the Magnuson-Stevens Act, and who is in compliance with the requirements of this section for filing a financial disclosure report. The provisions of 18 U.S.C. 208 do not apply to a member of an SSC, unless that individual is an officer or employee of the United States or is otherwise covered by the requirements of 18 U.S.C. 208.

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

[63 FR 64185, Nov. 19, 1998, as amended at 75 FR 59152, Sept. 27, 2010]

§ 600.240 Security assurances.

(a) DOC Office of Security will issue security assurances to Council members following completion of favorable background investigations. A Council member's appointment is conditional until such time as the background investigation has been favorably adjudicated. The Secretary will revoke the member's appointment if that member receives an unfavorable background investigation. In instances in which Council members may need to discuss, at closed meetings, materials classified for national security purposes, the agency or individual (e.g., Department of State, U.S. Coast Guard) providing such classified information will be responsible for ensuring that Council members and other attendees have the appropriate security clearances.

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

not filed this form. Any nominee who currently is an agent of a foreign principal will not be eligible for appointment to a Council, and therefore should not be nominated by a Governor for appointment.

[61 FR 32540, June 24, 1996, as amended 75 FR 59153, Sept. 27, 2010]

§ 600.245 Council member compensation.

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

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

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

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

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

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

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

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

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

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

§ 600.250 Council member training.

(a) The Secretary shall provide a training course covering a variety of topics relevant to matters before the Councils and shall make the training course available to all Council members and staff and staff from NMFS regional offices and science centers. To the extent resources allow, the Secretary will make the training available to Council committee and advisory panel members.

(b) Council members appointed after January 12, 2007, shall, within one year of appointment, complete the training course developed by the Secretary. Any Council member who completed such a training course within 24 months of January 12, 2007, is considered to have met the training requirement of this section.

[75 FR 59154, Sept. 27, 2010]

Subpart D—National Standards

§ 600.305 General.

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

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

Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 600.310 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY)

from each fishery for the U.S. fishing industry.

(b) *General.* (1) The guidelines set forth in this section describe fishery management approaches to meet the objectives of National Standard 1 (NS1), and include guidance on:

(i) Specifying maximum sustainable yield (MSY) and OY;

(ii) Specifying status determination criteria (SDC) so that overfishing and overfished determinations can be made for stocks and stock complexes that are part of a fishery;

(iii) Preventing overfishing and achieving OY, incorporation of scientific and management uncertainty in control rules, and adaptive management using annual catch limits (ACL) and measures to ensure accountability (AM); and

(iv) Rebuilding stocks and stock complexes.

(2) *Overview of Magnuson-Stevens Act concepts and provisions related to NS1*—

(i) *MSY.* The Magnuson-Stevens Act establishes MSY as the basis for fishery management and requires that: The fishing mortality rate does not jeopardize the capacity of a stock or stock complex to produce MSY; the abundance of an overfished stock or stock complex be rebuilt to a level that is capable of producing MSY; and OY not exceed MSY.

(ii) *OY.* The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's conservation and management objectives, achieving a fishery management plan's (FMP) objectives, and balancing the various interests that comprise the greatest overall benefits to the Nation. OY is based on MSY as reduced under paragraphs (e)(3)(iii) and (iv) of this section. The most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing.

(iii) *ACLs and AMs.* Any FMP which is prepared by any Council shall establish a mechanism for specifying ACLs in the FMP (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability (Magnuson-Stevens Act section 303(a)(15)). Subject to certain exceptions and circumstances described in paragraph (h) of this section, this requirement takes effect in fishing year 2010, for fisheries determined subject to overfishing, and in fishing year 2011, for all other fisheries (Magnuson-Stevens Act section 303 note). ''Council'' includes the Regional Fishery Management Councils and the Secretary of Commerce, as appropriate (*see* § 600.305(c)(11)).

(iv) *Reference points.* SDC, MSY, acceptable biological catch (ABC), and ACL, which are described further in paragraphs (e) and (f) of this section, are collectively referred to as ''reference points.''

(v) *Scientific advice.* The Magnuson-Stevens Act has requirements regarding scientific and statistical committees (SSC) of the Regional Fishery Management Councils, including but not limited to, the following provisions:

(A) Each Regional Fishery Management Council shall establish an SSC as described in section 302(g)(1)(A) of the Magnuson-Stevens Act.

(B) Each SSC shall provide its Regional Fishery Management Council recommendations for ABC as well as other scientific advice, as described in Magnuson-Stevens Act section 302(g)(1)(B).

(C) The Secretary and each Regional Fishery Management Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of a fishery (see Magnuson-Stevens Act section 302(g)(1)(E)). If a peer review process is established, it should investigate the technical merits of stock assessments and other scientific information used by the SSC or agency or international scientists, as appropriate. For Regional Fishery Management Councils, the peer review process is not a substitute for the SSC and should work in conjunction with the SSC. For the Secretary, which does not have an SSC, the peer review process should provide the scientific information necessary.

(D) Each Council shall develop ACLs for each of its managed fisheries that

may not exceed the ''fishing level recommendations'' of its SSC or peer review process (Magnuson-Stevens Act section 302(h)(6)). The SSC recommendation that is the most relevant to ACLs is ABC, as both ACL and ABC are levels of annual catch.

(3) *Approach for setting limits and accountability measures, including targets, for consistency with NS1.* In general, when specifying limits and accountability measures intended to avoid overfishing and achieve sustainable fisheries, Councils must take an approach that considers uncertainty in scientific information and management control of the fishery. These guidelines describe how to address uncertainty such that there is a low risk that limits are exceeded as described in paragraphs (f)(4) and (f)(6) of this section.

(c) *Summary of items to include in FMPs related to NS1.* This section provides a summary of items that Councils must include in their FMPs and FMP amendments in order to address ACL, AM, and other aspects of the NS1 guidelines. As described in further detail in paragraph (d) of this section, Councils may review their FMPs to decide if all stocks are ''in the fishery'' or whether some fit the category of ''ecosystem component species.'' Councils must also describe fisheries data for the stocks, stock complexes, and ecosystem component species in their FMPs, or associated public documents such as Stock Assessment and Fishery Evaluation (SAFE) Reports. For all stocks and stock complexes that are ''in the fishery'' (see paragraph (d)(2) of this section), the Councils must evaluate and describe the following items in their FMPs and amend the FMPs, if necessary, to align their management objectives to end or prevent overfishing:

(1) MSY and SDC (see paragraphs (e)(1) and (2) of this section).

(2) OY at the stock, stock complex, or fishery level and provide the OY specification analysis (see paragraph (e)(3) of this section).

(3) ABC control rule (see paragraph (f)(4) of this section).

(4) Mechanisms for specifying ACLs and possible sector-specific ACLs in relationship to the ABC (see paragraphs (f)(5) and (h) of this section).

(5) AMs (see paragraphs (g) and (h)(1) of this section).

(6) Stocks and stock complexes that have statutory exceptions from ACLs (see paragraph (h)(2) of this section) or which fall under limited circumstances which require different approaches to meet the ACL requirements (see paragraph (h)(3) of this section).

(d) *Classifying stocks in an FMP*—(1) *Introduction.* Magnuson-Stevens Act section 303(a)(2) requires that an FMP contain, among other things, a description of the species of fish involved in the fishery. The relevant Council determines which specific target stocks and/or non-target stocks to include in a fishery. This section provides that a Council may, but is not required to, use an ''ecosystem component (EC)'' species classification. As a default, all stocks in an FMP are considered to be ''in the fishery,'' unless they are identified as EC species (see § 600.310(d)(5)) through an FMP amendment process.

(2) *Stocks in a fishery.* Stocks in a fishery may be grouped into stock complexes, as appropriate. Requirements for reference points and management measures for these stocks are described throughout these guidelines.

(3) ''Target stocks'' are stocks that fishers seek to catch for sale or personal use, including ''economic discards'' as defined under Magnuson-Stevens Act section 3(9).

(4) ''Non-target species'' and ''non-target stocks'' are fish caught incidentally during the pursuit of target stocks in a fishery, including ''regulatory discards'' as defined under Magnuson-Stevens Act section 3(38). They may or may not be retained for sale or personal use. Non-target species may be included in a fishery and, if so, they should be identified at the stock level. Some non-target species may be identified in an FMP as ecosystem component (EC) species or stocks.

(5) *Ecosystem component (EC) species.* (i) To be considered for possible classification as an EC species, the species should:

(A) Be a non-target species or non-target stock;

(B) Not be determined to be subject to overfishing, approaching overfished, or overfished;

(C) Not be likely to become subject to overfishing or overfished, according to the best available information, in the absence of conservation and management measures; and

(D) Not generally be retained for sale or personal use.

(ii) Occasional retention of the species would not, in and of itself, preclude consideration of the species under the EC classification. In addition to the general factors noted in paragraphs (d)(5)(i)(A)–(D) of this section, it is important to consider whether use of the EC species classification in a given instance is consistent with MSA conservation and management requirements.

(iii) EC species may be identified at the species or stock level, and may be grouped into complexes. EC species may, but are not required to, be included in an FMP or FMP amendment for any of the following reasons: For data collection purposes; for ecosystem considerations related to specification of OY for the associated fishery; as considerations in the development of conservation and management measures for the associated fishery; and/or to address other ecosystem issues. While EC species are not considered to be ''in the fishery,'' a Council should consider measures for the fishery to minimize bycatch and bycatch mortality of EC species consistent with National Standard 9, and to protect their associated role in the ecosystem. EC species do not require specification of reference points but should be monitored to the extent that any new pertinent scientific information becomes available (e.g., catch trends, vulnerability, etc.) to determine changes in their status or their vulnerability to the fishery. If necessary, they should be reclassified as ''in the fishery.''

(6) *Reclassification.* A Council should monitor the catch resulting from a fishery on a regular basis to determine if the stocks and species are appropriately classified in the FMP. If the criteria previously used to classify a stock or species is no longer valid, the Council should reclassify it through an FMP amendment, which documents rationale for the decision.

(7) *Stocks or species identified in more than one FMP.* If a stock is identified in more than one fishery, Councils should choose which FMP will be the primary FMP in which management objectives, SDC, the stock's overall ACL and other reference points for the stock are established. Conservation and management measures in other FMPs in which the stock is identified as part of a fishery should be consistent with the primary FMP's management objectives for the stock.

(8) *Stock complex.* ''Stock complex'' means a group of stocks that are sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery such that the impact of management actions on the stocks is similar. At the time a stock complex is established, the FMP should provide a full and explicit description of the proportional composition of each stock in the stock complex, to the extent possible. Stocks may be grouped into complexes for various reasons, including where stocks in a multispecies fishery cannot be targeted independent of one another and MSY can not be defined on a stock-by-stock basis (*see* paragraph (e)(1)(iii) of this section); where there is insufficient data to measure their status relative to SDC; or when it is not feasible for fishermen to distinguish individual stocks among their catch. The vulnerability of stocks to the fishery should be evaluated when determining if a particular stock complex should be established or reorganized, or if a particular stock should be included in a complex. Stock complexes may be comprised of: one or more indicator stocks, each of which has SDC and ACLs, and several other stocks; several stocks without an indicator stock, with SDC and an ACL for the complex as a whole; or one of more indicator stocks, each of which has SDC and management objectives, with an ACL for the complex as a whole (this situation might be applicable to some salmon species).

(9) *Indicator stocks.* An indicator stock is a stock with measurable SDC that can be used to help manage and evaluate more poorly known stocks

that are in a stock complex. If an indicator stock is used to evaluate the status of a complex, it should be representative of the typical status of each stock within the complex, due to similarity in vulnerability. If the stocks within a stock complex have a wide range of vulnerability, they should be reorganized into different stock complexes that have similar vulnerabilities; otherwise the indicator stock should be chosen to represent the more vulnerable stocks within the complex. In instances where an indicator stock is less vulnerable than other members of the complex, management measures need to be more conservative so that the more vulnerable members of the complex are not at risk from the fishery. More than one indicator stock can be selected to provide more information about the status of the complex. When indicator stock(s) are used, periodic re-evaluation of available quantitative or qualitative information (e.g., catch trends, changes in vulnerability, fish health indices, etc.) is needed to determine whether a stock is subject to overfishing, or is approaching (or in) an overfished condition.

(10) *Vulnerability*. A stock's vulnerability is a combination of its productivity, which depends upon its life history characteristics, and its susceptibility to the fishery. Productivity refers to the capacity of the stock to produce MSY and to recover if the population is depleted, and susceptibility is the potential for the stock to be impacted by the fishery, which includes direct captures, as well as indirect impacts to the fishery (e.g., loss of habitat quality). Councils in consultation with their SSC, should analyze the vulnerability of stocks in stock complexes where possible.

(e) *Features of MSY, SDC, and OY*—(1) *MSY*. Each FMP must include an estimate of MSY for the stocks and stock complexes in the fishery, as described in paragraph (d)(2) of this section).

(i) *Definitions*. (A) *MSY* is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (e.g., gear selectivity), and the distribution of catch among fleets.

(B) *MSY fishing mortality rate (F_{msy})* is the fishing mortality rate that, if applied over the long term, would result in MSY.

(C) *MSY stock size (B_{msy})* means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate measure of the stock's reproductive potential that would be achieved by fishing at F_{msy}.

(ii) *MSY for stocks*. MSY should be estimated for each stock based on the best scientific information available (see § 600.315).

(iii) *MSY for stock complexes*. MSY should be estimated on a stock-by-stock basis whenever possible. However, where MSY cannot be estimated for each stock in a stock complex, then MSY may be estimated for one or more indicator stocks for the complex or for the complex as a whole. When indicator stocks are used, the stock complex's MSY could be listed as ''unknown,'' while noting that the complex is managed on the basis of one or more indicator stocks that do have known stock-specific MSYs, or suitable proxies, as described in paragraph (e)(1)(iv) of this section. When indicator stocks are not used, MSY, or a suitable proxy, should be calculated for the stock complex as a whole.

(iv) *Specifying MSY*. Because MSY is a long-term average, it need not be estimated annually, but it must be based on the best scientific information available (*see* § 600.315), and should be re-estimated as required by changes in long-term environmental or ecological conditions, fishery technological characteristics, or new scientific information. When data are insufficient to estimate MSY directly, Councils should adopt other measures of reproductive potential, based on the best scientific information available, that can serve as reasonable proxies for MSY, F_{msy}, and B_{msy}, to the extent possible. The MSY for a stock is influenced by its interactions with other stocks in its ecosystem and these interactions may shift as multiple stocks in an ecosystem are fished. These ecological conditions should be taken into account, to the extent possible, when

specifying MSY. Ecological conditions not directly accounted for in the specification of MSY can be among the ecological factors considered when setting OY below MSY. As MSY values are estimates or are based on proxies, they will have some level of uncertainty associated with them. The degree of uncertainty in the estimates should be identified, when possible, through the stock assessment process and peer review (*see* § 600.335), and should be taken into account when specifying the ABC Control rule. Where this uncertainty cannot be directly calculated, such as when proxies are used, then a proxy for the uncertainty itself should be established based on the best scientific information, including comparison to other stocks.

(2) *Status determination criteria*—(i) *Definitions*. (A) *Status determination criteria (SDC)* mean the quantifiable factors, MFMT, OFL, and MSST, or their proxies, that are used to determine if overfishing has occurred, or if the stock or stock complex is overfished. Magnuson-Stevens Act (section 3(34)) defines both ''overfishing'' and ''overfished'' to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the MSY on a continuing basis. To avoid confusion, this section clarifies that ''overfished'' relates to biomass of a stock or stock complex, and ''overfishing'' pertains to a rate or level of removal of fish from a stock or stock complex.

(B) *Overfishing* (to overfish) occurs whenever a stock or stock complex is subjected to a level of fishing mortality or annual total catch that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(C) *Maximum fishing mortality threshold (MFMT)* means the level of fishing mortality (F), on an annual basis, above which overfishing is occurring. The MFMT or reasonable proxy may be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential.

(D) *Overfishing limit (OFL)* means the annual amount of catch that corresponds to the estimate of MFMT applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish. The OFL is an estimate of the catch level above which overfishing is occurring.

(E) *Overfished*. A stock or stock complex is considered ''overfished'' when its biomass has declined below a level that jeopardizes the capacity of the stock or stock complex to produce MSY on a continuing basis.

(F) *Minimum stock size threshold (MSST)* means the level of biomass below which the stock or stock complex is considered to be overfished.

(G) *Approaching an overfished condition*. A stock or stock complex is approaching an overfished condition when it is projected that there is more than a 50 percent chance that the biomass of the stock or stock complex will decline below the MSST within two years.

(ii) *Specification of SDC and overfishing and overfished determinations*. SDC must be expressed in a way that enables the Council to monitor each stock or stock complex in the FMP, and determine annually, if possible, whether overfishing is occurring and whether the stock or stock complex is overfished. In specifying SDC, a Council must provide an analysis of how the SDC were chosen and how they relate to reproductive potential. Each FMP must specify, to the extent possible, objective and measurable SDC as follows (*see* paragraphs (e)(2)(ii)(A) and (B) of this section):

(A) *SDC to determine overfishing status*. Each FMP must describe which of the following two methods will be used for each stock or stock complex to determine an overfishing status.

(1) *Fishing mortality rate exceeds MFMT*. Exceeding the MFMT for a period of 1 year or more constitutes overfishing. The MFMT or reasonable proxy may be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential.

(2) *Catch exceeds the OFL*. Should the annual catch exceed the annual OFL for 1 year or more, the stock or stock complex is considered subject to overfishing.

(B) *SDC to determine overfished status*. The MSST or reasonable proxy must be

expressed in terms of spawning biomass or other measure of reproductive potential. To the extent possible, the MSST should equal whichever of the following is greater: One-half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years, if the stock or stock complex were exploited at the MFMT specified under paragraph (e)(2)(ii)(A)(1) of this section. Should the estimated size of the stock or stock complex in a given year fall below this threshold, the stock or stock complex is considered overfished.

(iii) *Relationship of SDC to environmental change.* Some short-term environmental changes can alter the size of a stock or stock complex without affecting its long-term reproductive potential. Long-term environmental changes affect both the short-term size of the stock or stock complex and the long-term reproductive potential of the stock or stock complex.

(A) If environmental changes cause a stock or stock complex to fall below its MSST without affecting its long-term reproductive potential, fishing mortality must be constrained sufficiently to allow rebuilding within an acceptable time frame (*also see* paragraph (j)(3)(ii) of this section). SDC should not be respecified.

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

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

(iv) *Secretarial approval of SDC.* Secretarial approval or disapproval of proposed SDC will be based on consideration of whether the proposal:

(A) Has sufficient scientific merit;

(B) Contains the elements described in paragraph (e)(2)(ii) of this section;

(C) Provides a basis for objective measurement of the status of the stock or stock complex against the criteria; and

(D) Is operationally feasible.

(3) *Optimum yield*—(i) *Definitions*—(A) *Optimum yield (OY).* Magnuson-Stevens Act section (3)(33) defines ''optimum,'' with respect to the yield from a fishery, as the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be established at the stock or stock complex level, or at the fishery level.

(B) In NS1, use of the phrase ''achieving, on a continuing basis, the optimum yield from each fishery'' means producing, from each stock, stock complex, or fishery: a long-term series of catches such that the average catch is equal to the OY, overfishing is prevented, the long term average biomass is near or above B_{msy}, and overfished stocks and stock complexes are rebuilt consistent with timing and other requirements of section 304(e)(4) of the Magnuson-Stevens Act and paragraph (j) of this section.

(ii) *General.* OY is a long-term average amount of desired yield from a stock, stock complex, or fishery. An FMP must contain conservation and management measures, including ACLs and AMs, to achieve OY on a continuing basis, and provisions for information collection that are designed to determine the degree to which OY is achieved. These measures should allow for practical and effective implementation and enforcement of the management regime. The Secretary has an obligation to implement and enforce the FMP. If management measures prove

unenforceable—or too restrictive, or not rigorous enough to prevent overfishing while achieving OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification. Exceeding OY does not necessarily constitute overfishing. However, even if no overfishing resulted from exceeding OY, continual harvest at a level above OY would violate NS1, because OY was not achieved on a continuing basis. An FMP must contain an assessment and specification of OY, including a summary of information utilized in making such specification, consistent with requirements of section 303(a)(3) of the Magnuson-Stevens Act. A Council must identify those economic, social, and ecological factors relevant to management of a particular stock, stock complex, or fishery, and then evaluate them to determine the OY. The choice of a particular OY must be carefully documented to show that the OY selected will produce the greatest benefit to the Nation and prevent overfishing.

(iii) *Determining the greatest benefit to the Nation.* In determining the greatest benefit to the Nation, the values that should be weighed and receive serious attention when considering the economic, social, or ecological factors used in reducing MSY to obtain OY are:

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

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

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

(iv) *Factors to consider in OY specification.* Because fisheries have limited capacities, any attempt to maximize the measures of benefits described in paragraph (e)(3)(iii) of this section will inevitably encounter practical constraints. OY cannot exceed MSY in any circumstance, and must take into account the need to prevent overfishing and rebuild overfished stocks and stock complexes. OY is prescribed on the basis of MSY as reduced by social, economic, and ecological factors. To the extent possible, the relevant social, economic, and ecological factors used to establish OY for a stock, stock complex, or fishery should be quantified and reviewed in historical, short-term, and long-term contexts. Even where quantification of social, economic, and ecological factors is not possible, the FMP still must address them in its OY specification. The following is a nonexhaustive list of potential considerations for each factor. An FMP must address each factor but not necessarily each example.

(A) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery (e.g., involvement in fisheries and ability to adapt to change). Consideration may be given to fishery-related indicators (e.g., number of fishery permits, number of commercial fishing vessels, number of party and charter trips, landings, ex-vessel revenues etc.) and non-fishery related indicators (e.g., unemployment rates, percent of population below the poverty level, population density, etc.). Other factors that may be considered include the effects that past harvest levels have had on fishing communities, the cultural place of subsistence fishing, obligations under Indian treaties, proportions of affected minority and low-income groups, and worldwide nutritional needs.

(B) *Economic factors.* Examples are prudent consideration of the risk of overharvesting when a stock's size or reproductive potential is uncertain (*see* § 600.335(c)(2)(i)), satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S. harvested fish. Other factors that may be considered include: The value of fisheries, the level of capitalization, the decrease in cost per unit of catch afforded by an increase in stock size, the attendant increase in catch per unit of effort, alternate employment opportunities, and economic contribution to fishing communities, coastal areas, affected states, and the nation.

(C) *Ecological factors.* Examples include impacts on ecosystem component species, forage fish stocks, other fisheries, predator-prey or competitive interactions, marine mammals, threatened or endangered species, and birds. Species interactions that have not been explicitly taken into account when calculating MSY should be considered as relevant factors for setting OY below MSY. In addition, consideration should be given to managing forage stocks for higher biomass than B_{msy} to enhance and protect the marine ecosystem. Also important are ecological or environmental conditions that stress marine organisms, such as natural and manmade changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(v) *Specification of OY.* The specification of OY must be consistent with paragraphs (e)(3)(i)–(iv) of this section. If the estimates of MFMT and current biomass are known with a high level of certainty and management controls can accurately limit catch then OY could be set very close to MSY, assuming no other reductions are necessary for social, economic, or ecological factors. To the degree that such MSY estimates and management controls are lacking or unavailable, OY should be set farther from MSY. If management measures cannot adequately control fishing mortality so that the specified OY can be achieved without overfishing, the Council should reevaluate the management measures and specification of OY so that the dual requirements of NS1 (preventing overfishing while achieving, on a continuing basis, OY) are met.

(A) The amount of fish that constitutes the OY should be expressed in terms of numbers or weight of fish.

(B) Either a range or a single value may be specified for OY.

(C) All catch must be counted against OY, including that resulting from bycatch, scientific research, and all fishing activities.

(D) The OY specification should be translatable into an annual numerical estimate for the purposes of establishing any total allowable level of foreign fishing (TALFF) and analyzing impacts of the management regime.

(E) The determination of OY is based on MSY, directly or through proxy. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or where the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size diminish the meaningfulness of the MSY concept, OY must still be established based on the best scientific information available.

(F) An OY established at a fishery level may not exceed the sum of the MSY values for each of the stocks or stock complexes within the fishery.

(G) There should be a mechanism in the FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

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

(vi) *OY and foreign fishing.* Section 201(d) of the Magnuson-Stevens Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States. The FMP must include an assessment to address the following, as required by section 303(a)(4) of the Magnuson-Stevens Act:

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

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

(C) *Joint venture processing (JVP)*. When DAH exceeds DAP, the surplus is available for JVP.

(f) *Acceptable biological catch, annual catch limits, and annual catch targets*. The following features (see paragraphs (f)(1) through (f)(5) of this section) of acceptable biological catch and annual catch limits apply to stocks and stock complexes in the fishery (see paragraph (d)(2) of this section).

(1) *Introduction*. A control rule is a policy for establishing a limit or target fishing level that is based on the best available scientific information and is established by fishery managers in consultation with fisheries scientists. Control rules should be designed so that management actions become more conservative as biomass estimates, or other proxies, for a stock or stock complex decline and as science and management uncertainty increases. Examples of scientific uncertainty include uncertainty in the estimates of MFMT and biomass. Management uncertainty may include late catch reporting, misreporting, and underreporting of catches and is affected by a fishery's ability to control actual catch. For example, a fishery that has inseason catch data available and inseason closure authority has better management control and precision than a fishery that does not have these features.

(2) *Definitions*. (i) *Catch* is the total quantity of fish, measured in weight or numbers of fish, taken in commercial, recreational, subsistence, tribal, and other fisheries. Catch includes fish that are retained for any purpose, as well as mortality of fish that are discarded.

(ii) *Acceptable biological catch (ABC)* is a level of a stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty (see paragraph (f)(3) of this section), and should be specified based on the ABC control rule.

(iii) *ABC control rule* means a specified approach to setting the ABC for a stock or stock complex as a function of the scientific uncertainty in the estimate of OFL and any other scientific uncertainty (*see* paragraph (f)(4) of this section).

(iv) *Annual catch limit (ACL)* is the level of annual catch of a stock or stock complex that serves as the basis for invoking AMs. ACL cannot exceed the ABC, but may be divided into sector-ACLs (*see* paragraph (f)(5) of this section).

(v) *Annual catch target (ACT)* is an amount of annual catch of a stock or stock complex that is the management target of the fishery, and accounts for management uncertainty in controlling the actual catch at or below the ACL. ACTs are recommended in the system of accountability measures so that ACL is not exceeded.

(vi) *ACT control rule* means a specified approach to setting the ACT for a stock or stock complex such that the risk of exceeding the ACL due to management uncertainty is at an acceptably low level.

(3) *Specification of ABC*. ABC may not exceed OFL (see paragraph (e)(2)(i)(D) of this section). Councils should develop a process for receiving scientific information and advice used to establish ABC. This process should: Identify the body that will apply the ABC control rule (*i.e.* , calculates the ABC), and identify the review process that will evaluate the resulting ABC. The SSC must recommend the ABC to the Council. An SSC may recommend an ABC that differs from the result of the ABC

control rule calculation, based on factors such as data uncertainty, recruitment variability, declining trends in population variables, and other factors, but must explain why. For Secretarial FMPs or FMP amendments, agency scientists or a peer review process would provide the scientific advice to establish ABC. For internationally-assessed stocks, an ABC as defined in these guidelines is not required if they meet the international exception (*see* paragraph (h)(2)(ii)). While the ABC is allowed to equal OFL, NMFS expects that in most cases ABC will be reduced from OFL to reduce the probability that overfishing might occur in a year. Also, *see* paragraph (f)(5) of this section for cases where a Council recommends that ACL is equal to ABC, and ABC is equal to OFL.

(i) *Expression of ABC.* ABC should be expressed in terms of catch, but may be expressed in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC.

(ii) *ABC for overfished stocks.* For overfished stocks and stock complexes, a rebuilding ABC must be set to reflect the annual catch that is consistent with the schedule of fishing mortality rates in the rebuilding plan.

(4) *ABC control rule.* For stocks and stock complexes required to have an ABC, each Council must establish an ABC control rule based on scientific advice from its SSC. The determination of ABC should be based, when possible, on the probability that an actual catch equal to the stock's ABC would result in overfishing. This probability that overfishing will occur cannot exceed 50 percent and should be a lower value. The ABC control rule should consider reducing fishing mortality as stock size declines and may establish a stock abundance level below which fishing would not be allowed. The process of establishing an ABC control rule could also involve science advisors or the peer review process established under Magnuson-Stevens Act section 302(g)(1)(E). The ABC control rule must articulate how ABC will be set compared to the OFL based on the scientific knowledge about the stock or stock complex and the scientific uncertainty in the estimate of OFL and any other scientific uncertainty. The ABC control rule should consider uncertainty in factors such as stock assessment results, time lags in updating assessments, the degree of retrospective revision of assessment results, and projections. The control rule may be used in a tiered approach to address different levels of scientific uncertainty.

(5) *Setting the annual catch limit*—(i) *General.* ACL cannot exceed the ABC and may be set annually or on a multiyear plan basis. ACLs in coordination with AMs must prevent overfishing (see MSA section 303(a)(15)). If a Council recommends an ACL which equals ABC, and the ABC is equal to OFL, the Secretary may presume that the proposal would not prevent overfishing, in the absence of sufficient analysis and justification for the approach. A ''multiyear plan'' as referenced in section 303(a)(15) of the Magnuson-Stevens Act is a plan that establishes harvest specifications or harvest guidelines for each year of a time period greater than 1 year. A multiyear plan must include a mechanism for specifying ACLs for each year with appropriate AMs to prevent overfishing and maintain an appropriate rate of rebuilding if the stock or stock complex is in a rebuilding plan. A multiyear plan must provide that, if an ACL is exceeded for a year, then AMs are triggered for the next year consistent with paragraph (g)(3) of this section.

(ii) *Sector-ACLs.* A Council may, but is not required to, divide an ACL into sector-ACLs. ''Sector,'' for purposes of this section, means a distinct user group to which separate management strategies and separate catch quotas apply. Examples of sectors include the commercial sector, recreational sector, or various gear groups within a fishery. If the management measures for different sectors differ in the degree of management uncertainty, then sector ACLs may be necessary so that appropriate AMs can be developed for each sector. If a Council chooses to use sector ACLs, the sum of sector ACLs must not exceed the stock or stock complex level ACL. The system of ACLs and AMs designed must be effective in protecting the stock or stock complex as a whole. Even if sector-ACLs and AMs

are established, additional AMs at the stock or stock complex level may be necessary.

(iii) *ACLs for State-Federal Fisheries.* For stocks or stock complexes that have harvest in state or territorial waters, FMPs and FMP amendments should include an ACL for the overall stock that may be further divided. For example, the overall ACL could be divided into a Federal-ACL and state-ACL. However, NMFS recognizes that Federal management is limited to the portion of the fishery under Federal authority (*see* paragraph (g)(5) of this section). When stocks are co-managed by Federal, state, tribal, and/or territorial fishery managers, the goal should be to develop collaborative conservation and management strategies, and scientific capacity to support such strategies (including AMs for state or territorial and Federal waters), to prevent overfishing of shared stocks and ensure their sustainability.

(6) *ACT control rule.* If ACT is specified as part of the AMs for a fishery, an ACT control rule is utilized for setting the ACT. The ACT control rule should clearly articulate how management uncertainty in the amount of catch in the fishery is accounted for in setting ACT. The objective for establishing the ACT and related AMs is that the ACL not be exceeded.

(i) *Determining management uncertainty.* Two sources of management uncertainty should be accounted for in establishing the AMs for a fishery, including the ACT control rule if utilized: Uncertainty in the ability of managers to constrain catch so the ACL is not exceeded, and uncertainty in quantifying the true catch amounts (*i.e.*, estimation errors). To determine the level of management uncertainty in controlling catch, analyses need to consider past management performance in the fishery and factors such as time lags in reported catch. Such analyses must be based on the best available scientific information from an SSC, agency scientists, or peer review process as appropriate.

(ii) *Establishing tiers and corresponding ACT control rules.* Tiers can be established based on levels of management uncertainty associated with the fishery, frequency and accuracy of catch monitoring data available, and risks of exceeding the limit. An ACT control rule could be established for each tier and have, as appropriate, different formulas and standards used to establish the ACT.

(7) A Council may choose to use a single control rule that combines both scientific and management uncertainty and supports the ABC recommendation and establishment of ACL and if used ACT.

(g) *Accountability measures.* The following features (see paragraphs (g)(1) through (5) of this section) of accountability measures apply to those stocks and stock complexes in the fishery.

(1) *Introduction.* AMs are management controls to prevent ACLs, including sector-ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur. AMs should address and minimize both the frequency and magnitude of overages and correct the problems that caused the overage in as short a time as possible. NMFS identifies two categories of AMs, inseason AMs and AMs for when the ACL is exceeded.

(2) *Inseason AMs.* Whenever possible, FMPs should include inseason monitoring and management measures to prevent catch from exceeding ACLs. Inseason AMs could include, but are not limited to: ACT; closure of a fishery; closure of specific areas; changes in gear; changes in trip size or bag limits; reductions in effort; or other appropriate management controls for the fishery. If final data or data components of catch are delayed, Councils should make appropriate use of preliminary data, such as landed catch, in implementing inseason AMs. FMPs should contain inseason closure authority giving NMFS the ability to close fisheries if it determines, based on data that it deems sufficiently reliable, that an ACL has been exceeded or is projected to be reached, and that closure of the fishery is necessary to prevent overfishing. For fisheries without inseason management control to prevent the ACL from being exceeded, AMs should utilize ACTs that are set below ACLs so that catches do not exceed the ACL.

(3) *AMs for when the ACL is exceeded.* On an annual basis, the Council must

determine as soon as possible after the fishing year if an ACL was exceeded. If an ACL was exceeded, AMs must be triggered and implemented as soon as possible to correct the operational issue that caused the ACL overage, as well as any biological consequences to the stock or stock complex resulting from the overage when it is known. These AMs could include, among other things, modifications of inseason AMs or overage adjustments. For stocks and stock complexes in rebuilding plans, the AMs should include overage adjustments that reduce the ACLs in the next fishing year by the full amount of the overages, unless the best scientific information available shows that a reduced overage adjustment, or no adjustment, is needed to mitigate the effects of the overages. If catch exceeds the ACL for a given stock or stock complex more than once in the last four years, the system of ACLs and AMs should be re-evaluated, and modified if necessary, to improve its performance and effectiveness. A Council could choose a higher performance standard (e.g., a stock's catch should not exceed its ACL more often than once every five or six years) for a stock that is particularly vulnerable to the effects of overfishing, if the vulnerability of the stock has not already been accounted for in the ABC control rule.

(4) *AMs based on multi-year average data*. Some fisheries have highly variable annual catches and lack reliable inseason or annual data on which to base AMs. If there are insufficient data upon which to compare catch to ACL, either inseason or on an annual basis, AMs could be based on comparisons of average catch to average ACL over a three-year moving average period or, if supported by analysis, some other appropriate multi-year period. Councils should explain why basing AMs on a multi-year period is appropriate. Evaluation of the moving average catch to the average ACL must be conducted annually and AMs should be implemented if the average catch exceeds the average ACL. As a performance standard, if the average catch exceeds the average ACL for a stock or stock complex more than once in the last four years, then the system of ACLs and AMs should be re-evaluated and modified if necessary to improve its performance and effectiveness. The initial ACL and management measures may incorporate information from previous years so that AMs based on average ACLs can be applied from the first year. Alternatively, a Council could use a stepped approach where in year-1, catch is compared to the ACL for year-1; in year-2 the average catch for the past 2 years is compared to the average ACL; then in year 3 and beyond, the most recent 3 years of catch are compared to the corresponding ACLs for those years.

(5) *AMs for State-Federal Fisheries*. For stocks or stock complexes that have harvest in state or territorial waters, FMPs and FMP amendments must, at a minimum, have AMs for the portion of the fishery under Federal authority. Such AMs could include closing the EEZ when the Federal portion of the ACL is reached, or the overall stock's ACL is reached, or other measures.

(h) *Establishing ACL mechanisms and AMs in FMPs*. FMPs or FMP amendments must establish ACL mechanisms and AMs for all stocks and stock complexes in the fishery, unless paragraph (h)(2) of this section is applicable. These mechanisms should describe the annual or multiyear process by which specific ACLs, AMs, and other reference points such as OFL, and ABC will be established. If a complex has multiple indicator stocks, each indicator stock must have its own ACL; an additional ACL for the stock complex as a whole is optional. In cases where fisheries (e.g., Pacific salmon) harvest multiple indicator stocks of a single species that cannot be distinguished at the time of capture, separate ACLs for the indicator stocks are not required and the ACL can be established for the complex as a whole.

(1) In establishing ACL mechanisms and AMs, FMPs should describe:

(i) Timeframes for setting ACLs (e.g., annually or multi-year periods);

(ii) Sector-ACLs, if any (including set-asides for research or bycatch);

(iii) AMs and how AMs are triggered and what sources of data will be used (e.g., inseason data, annual catch compared to the ACL, or multi-year averaging approach); and

(iv) Sector-AMs, if there are sector-ACLs.

(2) *Exceptions from ACL and AM requirements*—(i) *Life cycle.* Section 303(a)(15) of the Magnuson-Stevens Act ''shall not apply to a fishery for species that has a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species'' (as described in Magnuson-Stevens Act section 303 note). This exception applies to a stock for which the average length of time it takes for an individual to produce a reproductively active offspring is approximately 1 year and that the individual has only one breeding season in its lifetime. While exempt from the ACL and AM requirements, FMPs or FMP amendments for these stocks must have SDC, MSY, OY, ABC, and an ABC control rule.

(ii) *International fishery agreements.* Section 303(a)(15) of the Magnuson-Stevens Act applies ''unless otherwise provided for under an international agreement in which the United States participates'' (Magnuson-Stevens Act section 303 note). This exception applies to stocks or stock complexes subject to management under an international agreement, which is defined as ''any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party'' (see Magnuson-Stevens Act section 3(24)). These stocks would still need to have SDC and MSY.

(3) *Flexibility in application of NS1 guidelines.* There are limited circumstances that may not fit the standard approaches to specification of reference points and management measures set forth in these guidelines. These include, among other things, conservation and management of Endangered Species Act listed species, harvests from aquaculture operations, and stocks with unusual life history characteristics (e.g., Pacific salmon, where the spawning potential for a stock is spread over a multi-year period). In these circumstances, Councils may propose alternative approaches for satisfying the NS1 requirements of the Magnuson-Stevens Act than those set forth in these guidelines. Councils must document their rationale for any alternative approaches for these limited circumstances in an FMP or FMP amendment, which will be reviewed for consistency with the Magnuson-Stevens Act.

(i) *Fisheries data.* In their FMPs, or associated public documents such as SAFE reports as appropriate, Councils must describe general data collection methods, as well as any specific data collection methods used for all stocks in the fishery, and EC species, including:

(1) Sources of fishing mortality (both landed and discarded), including commercial and recreational catch and bycatch in other fisheries;

(2) Description of the data collection and estimation methods used to quantify total catch mortality in each fishery, including information on the management tools used (i.e., logbooks, vessel monitoring systems, observer programs, landings reports, fish tickets, processor reports, dealer reports, recreational angler surveys, or other methods); the frequency with which data are collected and updated; and the scope of sampling coverage for each fishery; and

(3) Description of the methods used to compile catch data from various catch data collection methods and how those data are used to determine the relationship between total catch at a given point in time and the ACL for stocks and stock complexes that are part of a fishery.

(j) *Council actions to address overfishing and rebuilding for stocks and stock complexes in the fishery*—(1) *Notification.* The Secretary will immediately notify in writing a Regional Fishery Management Council whenever it is determined that:

(i) Overfishing is occurring;

(ii) A stock or stock complex is overfished;

(iii) A stock or stock complex is approaching an overfished condition; or

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

(2) *Timing of actions*—(i) *If a stock or stock complex is undergoing overfishing.* FMPs or FMP amendments must establish ACL and AM mechanisms in 2010,

for stocks and stock complexes determined to be subject to overfishing, and in 2011, for all other stocks and stock complexes (*see* paragraph (b)(2)(iii) of this section). To address practical implementation aspects of the FMP and FMP amendment process, paragraphs (j)(2)(i)(A) through (C) of this section clarifies the expected timing of actions.

(A) In addition to establishing ACL and AM mechanisms, the ACLs and AMs themselves must be specified in FMPs, FMP amendments, implementing regulations, or annual specifications beginning in 2010 or 2011, as appropriate.

(B) For stocks and stock complexes still determined to be subject to overfishing at the end of 2008, ACL and AM mechanisms and the ACLs and AMs themselves must be effective in fishing year 2010.

(C) For stocks and stock complexes determined to be subject to overfishing during 2009, ACL and AM mechanisms and ACLs and AMs themselves should be effective in fishing year 2010, if possible, or in fishing year 2011, at the latest.

(ii) *If a stock or stock complex is overfished or approaching an overfished condition*. (A) For notifications that a stock or stock complex is overfished or approaching an overfished condition made before July 12, 2009, a Council must prepare an FMP, FMP amendment, or proposed regulations within one year of notification. If the stock or stock complex is overfished, the purpose of the action is to specify a time period for ending overfishing and rebuilding the stock or stock complex that will be as short as possible as described under section 304(e)(4) of the Magnuson-Stevens Act. If the stock or stock complex is approaching an overfished condition, the purpose of the action is to prevent the biomass from declining below the MSST.

(B) For notifications that a stock or stock complex is overfished or approaching an overfished condition made after July 12, 2009, a Council must prepare and implement an FMP, FMP amendment, or proposed regulations within two years of notification, consistent with the requirements of section 304(e)(3) of the Magnuson-Stevens Act. Council actions should be submitted to NMFS within 15 months of notification to ensure sufficient time for the Secretary to implement the measures, if approved. If the stock or stock complex is overfished and overfishing is occurring, the rebuilding plan must end overfishing immediately and be consistent with ACL and AM requirements of the Magnuson-Stevens Act.

(3) *Overfished fishery*. (i) Where a stock or stock complex is overfished, a Council must specify a time period for rebuilding the stock or stock complex based on factors specified in Magnuson-Stevens Act section 304(e)(4). This target time for rebuilding (T_{target}) shall be as short as possible, taking into account: The status and biology of any overfished stock, the needs of fishing communities, recommendations by international organizations in which the U.S. participates, and interaction of the stock within the marine ecosystem. In addition, the time period shall not exceed 10 years, except where biology of the stock, other environmental conditions, or management measures under an international agreement to which the U.S. participates, dictate otherwise. SSCs (or agency scientists or peer review processes in the case of Secretarial actions) shall provide recommendations for achieving rebuilding targets (*see* Magnuson-Stevens Act section 302(g)(1)(B)). The above factors enter into the specification of T_{target} as follows:

(A) The ''minimum time for rebuilding a stock'' (T_{min}) means the amount of time the stock or stock complex is expected to take to rebuild to its MSY biomass level in the absence of any fishing mortality. In this context, the term ''expected'' means to have at least a 50 percent probability of attaining the B_{msy}.

(B) For scenarios under paragraph (j)(2)(ii)(A) of this section, the starting year for the T_{min} calculation is the first year that a rebuilding plan is implemented. For scenarios under paragraph (j)(2)(ii)(B) of this section, the starting year for the T_{min} calculation is 2 years after notification that a stock or stock complex is overfished or the first year that a rebuilding plan is implemented, whichever is sooner.

(C) If T_{min} for the stock or stock complex is 10 years or less, then the maximum time allowable for rebuilding (T_{max}) that stock to its B_{msy} is 10 years.

(D) If T_{min} for the stock or stock complex exceeds 10 years, then the maximum time allowable for rebuilding a stock or stock complex to its B_{msy} is T_{min} plus the length of time associated with one generation time for that stock or stock complex. ''Generation time'' is the average length of time between when an individual is born and the birth of its offspring.

(E) T_{target} shall not exceed T_{max}, and should be calculated based on the factors described in this paragraph (j)(3).

(ii) If a stock or stock complex reached the end of its rebuilding plan period and has not yet been determined to be rebuilt, then the rebuilding F should not be increased until the stock or stock complex has been demonstrated to be rebuilt. If the rebuilding plan was based on a T_{target} that was less than T_{max}, and the stock or stock complex is not rebuilt by T_{target}, rebuilding measures should be revised, if necessary, such that the stock or stock complex will be rebuilt by T_{max}. If the stock or stock complex has not rebuilt by T_{max}, then the fishing mortality rate should be maintained at $F_{rebuild}$ or 75 percent of the MFMT, whichever is less.

(iii) Council action addressing an overfished fishery must allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery.

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

(4) *Emergency actions and interim measures*. The Secretary, on his/her own initiative or in response to a Council request, may implement interim measures to reduce overfishing or promulgate regulations to address an emergency (Magnuson-Stevens Act section 304(e)(6) or 305(c)). In considering a Council request for action, the Secretary would consider, among other things, the need for and urgency of the action and public interest considerations, such as benefits to the stock or stock complex and impacts on participants in the fishery.

(i) These measures may remain in effect for not more than 180 days, but may be extended for an additional 186 days if the public has had an opportunity to comment on the measures and, in the case of Council-recommended measures, the Council is actively preparing an FMP, FMP amendment, or proposed regulations to address the emergency or overfishing on a permanent basis.

(ii) Often, these measures need to be implemented without prior notice and an opportunity for public comment, as it would be impracticable to provide for such processes given the need to act quickly and also contrary to the public interest to delay action. However, emergency regulations and interim measures that do not qualify for waivers or exceptions under the Administrative Procedure Act would need to follow proposed notice and comment rulemaking procedures.

(k) *International overfishing*. If the Secretary determines that a fishery is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures (or no effective measures) to end overfishing under an international agreement to which the United States is a party, then the Secretary and/or the appropriate Council shall take certain actions as provided under Magnuson-Stevens Act section 304(i). The Secretary, in cooperation with the Secretary of State, must immediately take appropriate action at the international level to end the overfishing. In addition, within one year after the determination, the Secretary and/or appropriate Council shall:

(1) Develop recommendations for domestic regulations to address the relative impact of the U.S. fishing vessels on the stock. Council recommendations should be submitted to the Secretary.

(2) Develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of

the United States on the relevant stock. Councils should, in consultation with the Secretary, develop recommendations that take into consideration relevant provisions of the Magnuson-Stevens Act and NS1 guidelines, including section 304(e) of the Magnuson-Stevens Act and paragraph (j)(3)(iv) of this section, and other applicable laws. For highly migratory species in the Pacific, recommendations from the Western Pacific, North Pacific, or Pacific Councils must be developed and submitted consistent with Magnuson-Stevens Reauthorization Act section 503(f), as appropriate.

(3) *Considerations for assessing ''relative impact.''* ''Relative impact'' under paragraphs (k)(1) and (2) of this section may include consideration of factors that include, but are not limited to: Domestic and international management measures already in place, management history of a given nation, estimates of a nation's landings or catch (including bycatch) in a given fishery, and estimates of a nation's mortality contributions in a given fishery. Information used to determine relative impact must be based upon the best available scientific information.

(l) *Relationship of National Standard 1 to other national standards—General.* National Standards 2 through 10 provide further requirements for conservation and management measures in FMPs, but do not alter the requirement of NS1 to prevent overfishing and rebuild overfished stocks.

(1) *National Standard 2 (see § 600.315).* Management measures and reference points to implement NS1 must be based on the best scientific information available. When data are insufficient to estimate reference points directly, Councils should develop reasonable proxies to the extent possible (*also see* paragraph (e)(1)(iv) of this section). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data. SSCs should advise their Councils regarding the best scientific information available for fishery management decisions.

(2) *National Standard 3 (see § 600.320).* Reference points should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (*also see* paragraph (e)(1)(iii) of this section). Also, scientific assessments must be based on the best information about the total range of the stock and potential biological structuring of the stock into biological sub-units, which may differ from the geographic units on which management is feasible.

(3) *National Standard 6 (see § 600.335).* Councils must build into the reference points and control rules appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors.

(4) *National Standard 8 (see § 600.345).* National Standard 8 directs the Councils to apply economic and social factors towards sustained participation of fishing communities and to the extent practicable, minimize adverse economic impacts on such communities within the context of preventing overfishing and rebuilding overfished stocks as required under National Standard 1. Therefore, calculation of OY as reduced from MSY should include economic and social factors, but the combination of management measures chosen to achieve the OY must principally be designed to prevent overfishing and rebuild overfished stocks.

(5) *National Standard 9 (see § 600.350).* Evaluation of stock status with respect to reference points must take into account mortality caused by bycatch. In addition, the estimation of catch should include the mortality of fish that are discarded.

(m) *Exceptions to requirements to prevent overfishing.* Exceptions to the requirement to prevent overfishing could apply under certain limited circumstances. Harvesting one stock at its optimum level may result in overfishing of another stock when the two stocks tend to be caught together (This can occur when the two stocks are part of the same fishery or if one is bycatch in the other's fishery). Before a Council may decide to allow this type of overfishing, an analysis must be performed and the analysis must contain a justification in terms of overall benefits, including a comparison of benefits

under alternative management measures, and an analysis of the risk of any stock or stock complex falling below its MSST. The Council may decide to allow this type of overfishing if the fishery is not overfished and the analysis demonstrates that all of the following conditions are satisfied:

(1) Such action will result in long-term net benefits to the Nation;

(2) Mitigating measures have been considered and it has been demonstrated that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur; and

(3) The resulting rate of fishing mortality will not cause any stock or stock complex to fall below its MSST more than 50 percent of the time in the long term, although it is recognized that persistent overfishing is expected to cause the affected stock to fall below its B_{msy} more than 50 percent of the time in the long term.

[74 FR 3204, Jan. 16, 2009]

§ 600.315 National Standard 2—Scientific Information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 600.320 National Standard 3—Management Units.

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

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

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

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

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

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

(ii) *Geographic*—could be an area.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) By referring to treaties or cooperative agreements.

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

§ 600.325 National Standard 4—Allocations.

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

(1) Fair and equitable to all such fishermen.

(2) Reasonably calculated to promote conservation.

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

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

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

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

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

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

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

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

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

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

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered ''conservation and management'' measures under section 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value,

market mix, price, or economic or social benefit of the product. To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery.

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

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

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

§ 600.330 National Standard 5—Efficiency.

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

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

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

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

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

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

useful ingredient of a conservation scheme, because it facilitates application and enforcement of other management measures.

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

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

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

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

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

§ 600.335 National Standard 6—Variations and Contingencies.

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

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

(c) *Variations*. (1) In fishery management terms, variations arise from biological, social, and economic occurrences, as well as from fishing practices. Biological uncertainties and lack of knowledge can hamper attempts to estimate stock size and strength, stock location in time and space, environmental/habitat changes, and ecological interactions. Economic uncertainty may involve changes in foreign or domestic market conditions, changes in operating costs, drifts toward overcapitalization, and economic perturbations caused by changed fishing patterns.

Changes in fishing practices, such as the introduction of new gear, rapid increases or decreases in harvest effort, new fishing strategies, and the effects of new management techniques, may also create uncertainties. Social changes could involve increases or decreases in recreational fishing, or the movement of people into or out of fishing activities due to such factors as age or educational opportunities.

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

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

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

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

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

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

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

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

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

§ 600.340 National Standard 7—Costs and Benefits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 600.345 National Standard 8—Communities.

(a) *Standard 8.* Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that are based upon the best scientific information available in order to:

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

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

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

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

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

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

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

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

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

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

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

[63 FR 24234, May 1, 1998, as amended at 73 FR 67810, Nov. 17, 2008]

§ 600.350 National Standard 9—Bycatch.

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

(1) Minimize bycatch; and

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

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

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

(1) *Inclusions.* Bycatch includes the discard of whole fish at sea or elsewhere, including economic discards and regulatory discards, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality).

(2) *Exclusions.* Bycatch excludes the following:

(i) Fish that legally are retained in a fishery and kept for personal, tribal, or cultural use, or that enter commerce through sale, barter, or trade.

(ii) Fish released alive under a recreational catch-and-release fishery management program. A catch-and-release fishery management program is one in which the retention of a particular species is prohibited. In such a program, those fish released alive would not be considered bycatch.

(iii) Fish harvested in a commercial fishery managed by the Secretary under Magnuson-Stevens Act sec. 304(g) or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d) or highly migratory species harvested in a commercial fishery managed by a Council under the Magnuson-Stevens Act or the Western and Central Pacific Fisheries Convention Implementation Act, that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary.

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

(1) *Promote development of a database on bycatch and bycatch mortality in the fishery to the extent practicable.* A review and, where necessary, improvement of data collection methods, data sources, and applications of data must be initiated for each fishery to determine the amount, type, disposition, and other characteristics of bycatch and bycatch

mortality in each fishery for purposes of this standard and of section 303(a)(11) and (12) of the Magnuson-Stevens Act. Bycatch should be categorized to focus on management responses necessary to minimize bycatch and bycatch mortality to the extent practicable. When appropriate, management measures, such as at-sea monitoring programs, should be developed to meet these information needs.

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

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

(A) Population effects for the bycatch species.

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

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

(D) Effects on marine mammals and birds.

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

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

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

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

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

(J) Social effects.

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

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

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

[63 FR 24235, May 1, 1998, as amended at 73 FR 67811, Nov. 17, 2008]

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

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

(b) *General*. (1) Fishing is an inherently dangerous occupation where not

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

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

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

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

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

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

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

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

(e) *Mitigation measures.* There are many ways in which an FMP may avoid or provide alternative measures

to reduce potential impacts on safety of human life at sea. The following is a list of some factors that could be considered when management measures are developed:

(1) Setting seasons to avoid hazardous weather.

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

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

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

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

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

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

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

[63 FR 24236, May 1, 1998]

Subpart E—Confidentiality of Statistics

§ 600.405 Types of statistics covered.

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

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

§ 600.410 Collection and maintenance of statistics.

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

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

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

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

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

§ 600.415 Access to statistics.

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

(1) The specific types of data required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 600.420 Control system.

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

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

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

(3) Provides for safeguarding the data.

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

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

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

§ 600.425 Release of statistics.

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

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

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

Subpart F—Foreign Fishing

§ 600.501 Vessel permits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Application*. (1) Applications for FFV permits authorizing activity codes 1 through 9 must be submitted by an official representative of a foreign nation to the DOS. Applications for permits authorizing activity codes 1 through 9 are available from, and should be submitted to, DOS, OES/

OMC, Washington, DC 20520. Applications for FFV permits authorizing activity code 10 may be submitted by any person to the Assistant Administrator. Applications for permits authorizing activity code 10 are available from NMFS, Attn: Office of International Affairs, 1315 East West Highway, Silver Spring, Maryland 20910. All applicants should allow 90 days for review and comment by the public, involved governmental agencies, and appropriate Councils and for processing before the anticipated date to begin fishing. The permit application fee must be paid at the time of application according to § 600.518.

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

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

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

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

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

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

(iii) The applicant has appointed an agent.

(iv) The applicant has identified a designated representative.

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

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

(3) An approved permit will contain—

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

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

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

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

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

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

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

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

(i) *Suspension and revocation*. NMFS may apply sanctions to an FFV's permit by revoking, suspending, or imposing additional permit restrictions on the permit under 15 CFR part 904, if the vessel is involved in the commission of any violation of the Magnuson-Stevens Act, the GIFA, or this subpart; if an

agent and a designated representative are not maintained in the United States; if a civil penalty or criminal fine imposed under the Magnuson-Stevens Act has become overdue; or as otherwise specified in the Magnuson-Stevens Act.

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

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

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

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

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

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

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

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

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 64 FR 39019, July 21, 1999; 76 FR 59305, Sept. 26, 2011]

§ 600.502 Vessel reports.

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

(b) All reports required by this section must be in English and in the formats specified in the permit additions and restrictions. Reports must be delivered via private or commercial communications facilities, facsimile, or other electronic means acceptable to NMFS and the USCG, directly to the appropriate NMFS Region or Center and USCG commander. Weekly reports must also be delivered directly to the appropriate NMFS Region or Center (see tables 1 and 2 of this section). (The required reports may be delivered to the closest USCG communication station as indicated in table 3 of this section or other USCG communication station only if adequate private or commercial communications facilities have not been successfully contacted.) Radio reports must be made via radiotelegraphy, Telex, or facsimile where

available. For the purposes of this section, a message is considered ''transmitted'' when its receipt is acknowledged by a communications facility and considered ''delivered'' upon its receipt by the offices of the appropriate USCG commander, NMFS Regional Office, or NMFS Center identified in table 2 of this section. Reports required by this section may be submitted by the vessel's designated representative; however, the operator of the FFV is responsible for the correct and timely filing of all required reports.

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

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

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

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

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

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

(6) *''TRANSFER''.* The operator of each FFV that anticipates a transshipping operation in which the FFV will receive fish or fisheries products must specify the date, time, position and area the FFV will conduct the ''TRANSFER'' and the name and IRCS of the other FFV or U.S. vessel involved (action code ''TRANSFER''). The report must include the permit activity code under which the transfer will be made. The message must be transmitted prior to the transfer and

delivered within 24 hours of its transmittal. The movement of raw fish from a permitted foreign catching vessel or, under an Activity Code 4, from a U.S. fishing vessel to the reporting processing vessel and the return of nets or codends is not considered a transfer.

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

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

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

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

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

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

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

(f) *Weekly reports*. (1) The operator of each FFV in the EEZ must submit appropriate weekly reports through the Nation's designated representative. The report must arrive at the address and time specified in paragraph (g) of this section. The reports may be sent by facsimile or Telex, but a completed copy of the report form must be mailed or hand delivered to confirm the Telex. Appropriate forms, instructions, codes, and examples are contained in the conditions and restrictions of the FFV's permit. Designated representatives may include more than one vessel report in a facsimile or Telex message, if

the information is submitted on a vessel-by-vessel basis. Requests for corrections to previous reports must be submitted through the Nation's designated representative and mailed or hand-delivered, together with a written explanation of the reasons for the errors. The appropriate Regional Administrator or Science and Research Director may accept or reject any correction and initiate any appropriate civil penalty actions.

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

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

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

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

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

TABLE 1 TO § 600.502—ADDRESSES

NMFS regional administrators	NMFS science and research directors	U.S. Coast Guard commanders
Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298.	Director, Northeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 166 Water St., Woods Hole, MA 02543–1097.	Commander, Atlantic Area, U.S. Coast Guard, 431 Crawford St., Portsmouth, VA 23704.
Administrator, Southeast Region, National Marine Fisheries Service, 263 13th Ave. South, St. Petersburg, FL 33701.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York 10004.
Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115.	Director, Northwest Fisheries Science Center, National Marine Fisheries Service, NOAA, 2725 Montlake Blvd. East, Seattle, WA 98112–2097.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501.
Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668.	Director, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115–0070.	Commander, Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK 99802.
Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.	Director, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038–0271.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96850.
Administrator, Pacific Islands Region, National Marine Fisheries Service, NOAA, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.	Director, Pacific Islands Fisheries Science Center, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, HI 96822.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96850.

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

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

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

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

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

U.S. Coast Guard communications station	Radiotelephone		
	IRCS	Channel [1]	GMT time
		E	(On request).

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

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

[61 FR 32540, June 24, 1996, as amended at 63 FR 7073, Feb. 12, 1998; 64 FR 39020, July 21, 1999; 69 FR 8341, Feb. 24, 2004; 76 FR 34902, June 15, 2011]

§ 600.503 Vessel and gear identification.

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

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

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

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

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

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

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

(iii) Has a radio buoy.

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

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

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

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

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

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

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

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

§ 600.504 Facilitation of enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Stop immediately and lay to or maneuver in such a way as to maintain the safety of the FFV and facilitate

boarding by the authorized officer and the boarding party or an observer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) *Product storage.* The operator of each permitted FFV storing fish or fish products in a storage space must ensure that all non-fish product items are neither stowed beneath nor covered by

fish products, unless required to maintain the stability and safety of the vessel. These items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-product items. These items may be in the space when necessary for safety of the vessel or crew or for storage of the product. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure safety of crew and to prevent shifting of cargo within the space.

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

§ 600.505 Prohibitions.

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

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

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

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

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

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

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

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

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

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

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

(11) Violate any provision of the applicable GIFA;

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

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

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

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

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

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

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

(19) Fail to identify, falsely identify, fail to properly maintain, or obscure

the identification of the FFV or its gear as required by this subpart;

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

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

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

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

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

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

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

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

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

(29) Attempt to do any of the foregoing.

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

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

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

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

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

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

§ 600.506 Observers.

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

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

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

(2) If an arrival date of an FFV will vary more than 5 days from the date listed in the quarterly schedule, the appropriate Regional Administrator or Science and Research Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph (b)(2)

is not given, the FFV may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional Administrator or Science and Research Director.

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

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

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

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

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

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

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

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

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

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

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

(1) At least one working radar.

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

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

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

(5) Life jackets equal or greater in number to the total number of persons aboard the vessel. Life jackets must be stowed in readily accessible and plainly marked positions throughout the vessel, and maintained in a state of good repair.

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

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

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

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

(10) All lights, shapes, whistles, foghorns, fog bells and gongs required by and maintained in accordance with

the International Regulations for Preventing Collisions at Sea.

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

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

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

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

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

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

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional Administrator or Science and Research Director.

(3) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(h) *Supplementary observer payment*—(1) *Method of payment.* The owners and operators of foreign fishing vessels must pay directly to the contractor the costs of supplementary observer coverage. Payment must be made to the contractor supplying supplementary observer coverage either by letter of credit or certified check drawn on a federally chartered bank in U.S. dollars, or other financial institution acceptable to the contractor. The letter of credit used to pay supplementary observer fees to contractors must be separate and distinct from the letter of credit required by § 600.518(b)(2). Billing schedules will be specified by the terms of the contract between NOAA and the contractors. Billings for supplementary observer coverage will be approved by the appropriate Regional Administrator or Science and Research Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. Each country will have only one designated representative to receive observer bills for all vessels of that country, except as provided for by the Assistant Administrator. All bills must be paid within 10 working days of the billing date. Failure to pay an observer bill will constitute grounds to revoke fishing permits. All fees collected under this section will be considered interim in nature and subject to reconciliation at the end of the fiscal year in accordance with paragraph (h)(4) of this section and § 600.518(d).

(2) *Contractor costs.* The costs charged for supplementary observer coverage to the owners and operators of foreign fishing vessels may not exceed the costs charged to NMFS for the same or similar services, except that contractors may charge to the owners and operators of foreign fishing vessels an additional fee to cover the administrative costs of the program not ordinarily part of contract costs charged to NMFS. The costs charged foreign fishermen for supplementary observers may include, but are not limited to the following:

(i) Salary and benefits, including overtime, for supplementary observers.

(ii) The costs of post-certification training required by paragraph (j)(2) of this section.

(iii) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels including the

cost of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from where the trip began. For the purposes of these regulations, the appropriate Regional Administrator or Science and Research Director will designate posts of duty for supplementary observers.

(iv) The costs of travel, transportation, and per diem associated with the debriefing following deployment of a supplementary observer by NMFS officials.

(v) The administrative and overhead costs incurred by the contractor and, if appropriate, a reasonable profit.

(3) *NMFS costs*. The owners and operators of foreign fishing vessels must also pay to NMFS as part of the surcharge required by section 201(i)(4) of the Magnuson-Stevens Act, the following costs:

(i) The costs of certifying applicants for the position of supplementary observer.

(ii) The costs of any equipment, including safety equipment, sampling equipment, operations manuals, or other texts necessary to perform the duties of a supplementary observer. The equipment will be specified by the appropriate Regional Administrator or Science and Research Director according to the requirements of the fishery to which the supplementary observer will be deployed.

(iii) The costs associated with communications with supplementary observers for transmission of data and routine messages.

(iv) For the purposes of monitoring the supplementary observer program, the costs for the management and analysis of data.

(v) The costs for data editing and entry.

(vi) Any costs incurred by NMFS to train, deploy or debrief a supplementary observer.

(vii) The cost for U.S. Customs inspection for supplementary observers disembarking after deployment.

(4) *Reconciliation*. Fees collected by the contractor in excess of the actual costs of supplementary observer coverage will be refunded to the owners and operators of foreign fishing vessels, or kept on deposit to defray the costs of future supplementary observer coverage. Refunds will be made within 60 days after final costs are determined and approved by NMFS.

(i) *Supplementary observer contractors*—(1) *Contractor eligibility*. Supplementary observers will be obtained by NMFS from persons or firms having established contracts to provide NMFS with observers. In the event no such contract is in place, NMFS will use established, competitive contracting procedures to select persons or firms to provide supplementary observers. The services supplied by the supplementary observer contractors will be as described within the contract and as specified below.

(2) Supplementary observer contractors must submit for the approval of the Assistant Administrator the following:

(i) A copy of any contract, including all attachments, amendments, and enclosures thereto, between the contractor and the owners and operators of foreign fishing vessels for whom the contractor will provide supplementary observer services.

(ii) All application information for persons whom the contractor desires to employ as certified supplementary observers.

(iii) Billing schedules and billings to the owners and operators of foreign fishing vessels for further transmission to the designated representative of the appropriate foreign nation.

(iv) All data on costs.

(j) *Supplementary observers—certification, training*—(1) *Certification*. The appropriate Regional Administrator or Science and Research Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

(i) The candidate is a citizen or national of the United States.

(ii) The candidate has education or experience equivalent to the education or experience required of persons used as observers by NMFS as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer is to be deployed.

Documentation of U.S. citizenship or nationality, and education or experience will be provided from personal qualification statements on file with NMFS contractors who provide supplementary observer services, and will not require the submission of additional information to NMFS.

(2) *Training*. Prior to deployment to foreign fishing vessels, certified supplementary observers must also meet the following conditions:

(i) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional Administrator or Science and Research Director as equivalent to that received by persons used as observers by NMFS as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer is to be deployed.

(ii) Each certified supplementary observer must agree in writing to abide by standards of conduct as set forth in Department of Commerce Administrative Order 202–735 (as provided by the contractor).

(k) *Supplementary observer certification suspension or revocation*. (1) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(i) A supplementary observer fails to perform the duties specified in paragraph (g)(2) of this section.

(ii) A supplementary observer fails to abide by the standards of conduct described by Department of Commerce Administrative Order 202–735.

(2) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following:

(i) Boarding inspection reports by authorized officers of the USCG or NMFS, or other credible information, that indicate a supplementary observer has failed to abide by the established standards of conduct; or

(ii) An analysis by NMFS of the data collected by a supplementary observer indicating improper or incorrect data collection or recording. The failure to properly collect or record data is sufficient to justify decertification of supplementary observers; no intent to defraud need be demonstrated.

(3) The Assistant Administrator will notify the supplementary observer, in writing, of the Assistant Administrator's intent to suspend or revoke certification, and the reasons therefor, and provide the supplementary observer a reasonable opportunity to respond. If the Assistant Administrator determines that there are disputed questions of material fact, then the Assistant Administrator may in this respect appoint an examiner to make an informal fact-finding inquiry and prepare a report and recommendations.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7074, 7075, Feb. 12, 1998; 64 FR 39020, July 21, 1999]

§ 600.507 Recordkeeping.

(a) *General*. The owner and operator of each FFV must maintain timely and accurate records required by this section as modified by the regulations for the fishery in which the FFV is engaged.

(1) The owner and operator of each FFV must maintain all required records in English, based on Greenwich mean time (GMT) unless otherwise specified in the regulation, and make them immediately available for inspection upon the request of an authorized officer or observer.

(2) The owner and operator of each FFV must retain all required records on board the FFV whenever it is in the EEZ, for 3 years after the end of the permit period.

(3) The owner and operator of each FFV must retain the required records and make them available for inspection upon the request of an authorized officer at any time during the 3 years after the end of the permit period, whether or not such records are on board the vessel.

(4) The owner and operator of each FFV must provide to the Assistant Administrator, in the form and at the times prescribed, any other information requested that the Assistant Administrator determines is necessary to fulfill the fishery conservation, management and enforcement purposes of the Magnuson-Stevens Act.

(b) *Communications log*. The owner and operator of each FFV must record

in a separate communications log, at the time of transmittal, the time and content of each notification made under § 600.504.

(c) *Transfer log*. Except for the transfer of unsorted, unprocessed fish via codend from a catching vessel to a processing vessel (Activity Code 2 or 4), the owner and operator of each FFV must record, in a separate transfer log, each transfer or receipt of any fish or fishery product, including quantities transferred or offloaded outside the EEZ. The operator must record in the log within 12 hours of the completion of the transfer:

(1) The time and date (GMT) and location (in geographic coordinates) the transfer began and was completed.

(2) The product weight, by species and product (use species and product codes), of all fish transferred, to the nearest 0.01 mt.

(3) The name, IRCS, and permit number of both the FFV offloading the fish and the FFV receiving the fish.

(d) *Daily fishing log*. (1) The owner or operator of each FFV authorized to catch fish (Activity Code 1) must maintain a daily fishing log of the effort, catch and production of the FFV, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged. The operator must maintain on a daily and cumulative basis for the permit period a separate log for each fishery (see table 2 to § 600.502) in which the FFV is engaged according to this section and in the format specified in the instructions provided with the permit or other format authorized under paragraph (i) of this section. Daily effort entries are required for each day the vessel conducts fishing operations within the EEZ. Daily entries are not required whenever the FFV is in port or engaged in a joint venture in the internal waters of a state. Each page of log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

(2) The owner or operator of each FFV authorized to catch fish (Activity Code 1) and that delivers all catches to a processing vessel, must maintain only ''SECTION ONE-EFFORT'', of the daily fishing log, provided the processing vessel maintains a daily consolidated fishing log as described in paragraphs (f) and (g) of this section.

(e) *Daily fishing log—contents*. The daily fishing log must contain the following information, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged, and be completed according to the format and instructions provided with the permit or other format authorized under paragraph (i) of this section.

(1) ''SECTION ONE-EFFORT'' must contain on a daily basis—

(i) A consecutive page number, beginning with the first day the vessel started fishing operations within the EEZ and continuing throughout the log.

(ii) The date (based on GMT).

(iii) The FFV's name.

(iv) The FFV's IRCS.

(v) The FFV's U.S. permit number.

(vi) The FFV's noon (1200 GMT) position in geographic coordinates.

(vii) The master or operator's signature or title.

(2) ''SECTION ONE-EFFORT'' must contain, for each trawl or set, as appropriate to the gear type employed—

(i) The consecutive trawl or set number, beginning with the first set of the calendar year.

(ii) The fishing area in which the trawl or set was completed.

(iii) The gear type.

(iv) The time the gear was set.

(v) The position of the set.

(vi) The course of the set.

(vii) The sea depth.

(viii) The depth of the set.

(ix) The duration of the set.

(x) The hauling time.

(xi) The position of the haul.

(xii) The number of pots or longline units (where applicable).

(xiii) The average number of hooks per longline unit (where applicable).

(xiv) The trawl speed (where applicable).

(xv) The mesh size of the trawl's codend (where applicable).

(xvi) The estimated total weight of the catch for the trawl of set, to at least the nearest metric ton round weight.

(3) ''SECTION TWO-CATCH'' must contain, for each trawl or set—

(i) The consecutive set or trawl number from ''SECTION ONE''.

(ii) The catch of each allocated species or species group to at least the nearest 0.1 mt round weight.

(iii) The prohibited species catch to at least the nearest 0.1 mt round weight or by number, as required by the regulations for the fishery in which the FFV is engaged.

(iv) The species code of each marine mammal caught and its condition when released.

(4) ''SECTION TWO-CATCH'' must contain, on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups caught.

(ii) For each allocated species—the amount, to at least the nearest 0.1 mt, and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily catch by fishing area; the daily catch for all fishing areas; and the cumulative total catch.

(iii) For the total catch of allocated species—the amount to at least the nearest 0.1 mt and the daily disposition, daily total catch by fishing area, daily total catch for all fishing areas, and cumulative total catch.

(iv) The catch by fishing area, daily total, and cumulative total of each prohibited species.

(5) ''SECTION THREE—PRODUCTION'' must contain, on a daily basis, for each allocated species caught and product produced—

(i) The product by species code and product type.

(ii) The daily product recovery rate of each species and product.

(iii) The daily total product produced by species to at least the nearest 0.01 mt.

(iv) The cumulative total of each product to at least the nearest 0.01 mt.

(v) The cumulative amount of product transferred.

(vi) The balance of product remaining aboard the FFV.

(vii) The total daily amount, cumulative amount, transferred product and balance of frozen product aboard the FFV to the nearest 0.01 mt.

(viii) Transferred amount and balance of fishmeal and fish oil aboard to at least the nearest 0.01 mt.

(f) *Daily consolidated fishing or joint venture log*. The operator of each FFV that receives unsorted, unprocessed fish from foreign catching vessels (Activity Code 2) for processing or receives U.S.-harvested fish from U.S. fishing vessels in a joint venture (Activity Code 4) must maintain a daily joint venture log of the effort, catch and production of its associated U.S. or foreign fishing vessels and the processing vessel as modified by the regulations for the fishery in which the FFV is engaged. This log is separate and in addition to the log required by paragraph (d) of this section. The operator must maintain a separate log for each fishery in which the FFV is engaged, on a daily and cumulative basis, according to this section and in the format specified in the instructions provided with the permit or other format authorized under paragraph (i) of this section. Receipts of fish caught outside the EEZ must be included. Each page of the log may contain entries pertaining to only one day's fishing operations.

(g) *Daily joint venture log—contents*. Daily joint venture logs must contain the following information, as modified by the fishery in which the vessel is engaged, and be completed according to the format and instructions provided with the permit or other format authorized under paragraph (i) of this section.

(1) ''SECTION ONE-EFFORT'' must contain, on a daily basis, that information required in paragraph (e)(1) of this section.

(2) ''SECTION ONE-EFFORT'' must contain for each receipt of a codend—

(i) The consecutive codend number, beginning with the first codend received for the calendar year.

(ii) The name of the U.S. fishing vessel or the name and IRCS of the foreign fishing vessel the codend was received from.

(iii) The fishing area where the codend was received.

(iv) The time the codend was received.

(v) The position the codend was received.

(vi) The estimated weight of the codend to at least the nearest metric ton round weight.

(3) ''SECTION TWO-CATCH'' must contain, for each codend received—

(i) The consecutive codend number from ''SECTION ONE''.

(ii) The receipts of each authorized species or species group and its disposition, either processed for human consumption, used for fishmeal, discarded, or returned to the U.S. fishing vessel, to at least the nearest 0.1 mt round weight.

(iii) The estimated receipts of each prohibited species or species group and its disposition, either discarded or returned to the U.S. fishing vessel if authorized in the fishery in which the U.S. vessel is engaged, to at least the nearest 0.1 mt round weight.

(iv) The species code of each marine mammal received and its condition when released.

(4) ''SECTION TWO-CATCH'' must contain on a daily basis—

(i) The species codes of all authorized or prohibited species or species groups received.

(ii) The daily disposition, as described in paragraph (g)(3)(ii) of this section, daily total, and cumulative total receipts of each authorized species or species groups.

(iii) The daily disposition, daily total and cumulative total receipts of all authorized species or species groups.

(iv) The daily and cumulative total receipts of prohibited species groups and their disposition as described in paragraph (g)(3)(iii) of this section.

(5) ''SECTION THREE—PRODUCTION'' must contain, on a daily basis, for each authorized species or species group received and product produced, that information required in paragraph (e)(5) of this section.

(h) *Daily log maintenance*. The logs required by paragraphs (e) through (g) of this section must be maintained separately for each fishery (see table 2 to § 600.502).

(1) The effort section (all of ''SECTION ONE'') of the daily logs must be updated within 2 hours of the hauling or receipt time. The catch or receipt by trawl or set (''SECTION TWO'') must be entered within 12 hours of the hauling or receipt time. The daily and cumulative total catch or receipts (''SECTION TWO'') and the production portion (''SECTION THREE'') of the log must be updated within 12 hours of the end of the day on which the catch was taken. The date of catch is the day and time (GMT) the gear is hauled.

(2) Entries for total daily and cumulative catch or receipt weights (disposition ''C'' or ''M'') must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for daily and cumulative weights of discarded or returned fish (disposition ''D'' or ''R'') must be based on the most accurate method available to the vessel, either actual count, scale round weight, or estimated deck weights. Entries for product weights must be based on the number of production units (pans, boxes, blocks, trays, cans, or bags) and the average weight of the production unit, with reasonable allowances for water added. Allowances for water added cannot exceed 5 percent of the unit weight. Product weights cannot be based on the commercial or arbitrary wholesale weight of the product, but must be based on the total actual weight of the product as determined by representative samples.

(3) The owner or operator must make all entries in indelible ink, with corrections to be accomplished by lining out and rewriting, rather than erasure.

(i) Alternative log formats. As an alternative to the use of the specific formats provided, a Nation may submit a proposed log format for FFV's of that Nation for a general type of fishery operation in a fishery (i.e., joint venture operations) to the appropriate Regional Administrator and the USCG commander (see tables 1 and 2 to § 600.502). With the agreement of the USCG commander, the Regional Administrator may authorize the use of that log format for vessels of the requesting Nation.

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

§ 600.508 Fishing operations.

(a) *Catching*. Each FFV authorized for activity code 1 may catch fish. An FFV may retain its catch of any species or species group for which there is an unfilled national allocation. All fish caught will be counted against the national allocation, even if the fish are discarded, unless exempted by the regulations of the fishery in which the

FFV is engaged. Catching operations may be conducted as specified by the regulations of the fishery in which the FFV is engaged and as modified by the FFV's permit.

(b) *Scouting*. Each FFV authorized for Activity Codes 1 through 6 may scout for fish. Scouting may be conducted only in the fisheries area authorized by the scouting vessel's permit and under such other circumstances as may be designated in this subpart or the permit.

(c) *Processing*. Each FFV with Activity Code 1 or 2 may process fish. Processing may only be conducted whenever and wherever catching operations for FFV's of that Nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under Activity Code 4, and under such other circumstances as may be designated in this subpart or the permit.

(d) *Support*. Each FFV with Activity Codes 1, 2, 3, 5, or 8 may support other permitted FFV's. Each FFV with Activity Codes 4 or 6 may support U.S. vessels. Support operations may be conducted only in the fisheries areas authorized by the supporting vessel's permit, and under such other circumstances as may be designated in this subpart or the permit.

(e) *Joint ventures*. Each FFV with Activity Code 4 in addition to Activity Codes 1 or 2 may also conduct operations with U.S. fishing vessels. These joint venture operations with U.S. fishing vessels may be conducted throughout the EEZ, and under such other circumstances as may be designated in these regulations or the permit. FFV's with activity code 4 may continue operations assisting U.S. fishing vessels, despite closures under § 600.511(a).

(f) *Internal waters*. For FFV's authorized under section 306(c) of the Magnuson-Stevens Act:

(1) Each FFV may engage in fish processing and support of U.S. fishing vessels within the internal waters of that state in compliance with terms and conditions set by the authorizing Governor.

(2) The owner or operator of each FFV must submit weekly reports on the amount of fish received from vessels of the United States and the location(s) where such fish were harvested.

(i) Reports must include:

(A) Vessel identification information for the FFV.

(B) Date of each receipt of fish.

(C) Amount of fish received, by species.

(D) Location(s) from which the fish received were harvested and the name and official number of the vessel of the United States that harvested the fish.

(ii) Owners or operators of FFV's processing fish in internal waters under the provisions of this paragraph (f) must request, from the Regional Administrator, the requirements regarding timing and submission of the reports, at least 15 days prior to the first receipt of fish from a vessel of the United States. The Regional Administrator shall stipulate the timing and submission requirements in writing.

(g) *Transshipping*. Each FFV with Activity Code 1, 2, 3, 4, 5, 6, 7, 8, or 10 may transship in accordance with this subpart and the vessel's permit.

[61 FR 32540, June 24, 1996, as amended at 62 FR 27183, May 19, 1997; 62 FR 34397, June 26, 1997; 64 FR 39020, July 21, 1999]

§ 600.509 Prohibited species.

(a) The owner or operator of each FFV must minimize its catch or receipt of prohibited species.

(b) After allowing for sampling by an observer (if any), the owner or operator of each FFV must sort its catch of fish received as soon as possible and return all prohibited species and species parts to the sea immediately with a minimum of injury, regardless of condition, unless a different procedure is specified by the regulations for the fishery in which the FFV is engaged. All prohibited species must be recorded in the daily fishing log and other fishing logs as specified by the regulations for the fishery in which the FFV is engaged.

(c) All species of fish that an FFV has not been specifically allocated or authorized under this subpart to retain, including fish caught or received in excess of any allocation or authorization, are prohibited species.

(d) It is a rebuttable presumption that any prohibited species or species part found on board an FFV was caught

and retained in violation of this section.

§ 600.510 Gear avoidance and disposal.

(a) *Vessel and gear avoidance.* (1) FFV's arriving on fishing grounds where fishing vessels are already fishing or have set their gear for that purpose must ascertain the position and extent of gear already placed in the sea and must not place themselves or their fishing gear so as to interfere with or obstruct fishing operations already in progress. Vessels using mobile gear must avoid fixed fishing gear.

(2) The operator of each FFV must maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing, as required by the regulations for the fishery in which the FFV is engaged.

(b) *Gear conflicts.* The operator of each FFV that is involved in a conflict or that retrieves the gear of another vessel must immediately notify the appropriate USCG commander identified in tables 1 and 2 to § 600.502 and request disposal instructions. Each report must include:

(1) The name of the reporting vessel.

(2) A description of the incident and articles retrieved, including the amount, type of gear, condition, and identification markings.

(3) The location of the incident.

(4) The date and time of the incident.

(c) *Disposal of fishing gear and other articles.* (1) The operator of an FFV in the EEZ may not dump overboard, jettison or otherwise discard any article or substance that may interfere with other fishing vessels or gear, or that may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate USCG commander or other authorized officer. These articles and substances include, but are not limited to, fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in an FFV's gear.

(2) The operator of an FFV may not abandon fishing gear in the EEZ.

(3) If these articles or substances are encountered, or in the event of accidental or emergency placement into the EEZ, the vessel operator must immediately report the incident to the appropriate USCG Commander indicated in tables 1 and 2 to § 600.502, and give the information required in paragraph (b) of this section.

§ 600.511 Fishery closure procedures.

(a) Activity Codes 1 and 2 for a fishery are automatically canceled in the following cases, unless otherwise specified by regulations specific to a fishery, when—

(1) The OY for any allocated species or species group has been reached in that fishery;

(2) The TALFF or catch allowance for any allocated species or species group has been reached in that fishery;

(3) The foreign nation's allocation for any allocated species or species group has been reached; or

(4) The letter of credit required in § 600.518(b)(2) is not established and maintained.

(b) Activity Code 4 is automatically canceled when—

(1) The OY for a species with a JVP amount is reached;

(2) The JVP amount for a species or species group is reached; or

(3) The letter of credit required in § 600.518(b)(2) is not established and maintained.

(c) *Notification.* (1) The Regional Administrator is authorized to close a fishery on behalf of NMFS. The Regional Administrator will notify each FFV's designated representative of closures.

(2) If possible, notice will be given 48 hours before the closure. However, each Nation and the owners and operators of all FFV's of that Nation are responsible for ending fishing operations when an allocation is reached.

(d) *Catch reconciliation.* Vessel activity reports, U.S. surveillance observations, observer reports, and foreign catch and effort reports will be used to make the determination listed in paragraphs (a) and (b) of this section. If NMFS estimates of catch or other values made during the season differ from

those reported by the foreign fleets, efforts may be initiated by the designated representative of each Nation to resolve such differences with NMFS. If, however, differences still persist after such efforts have been made, NMFS estimates will be the basis for decisions and will prevail.

(e) *Duration*. Any closure under this section will remain in effect until an applicable new or increased allocation or JVP becomes available or the letter of credit required by § 600.518(b)(2) is reestablished.

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

§ 600.512 Scientific research.

(a) *Scientific research activity*. Persons planning to conduct scientific research activities on board a scientific research vessel in the EEZ that may be confused with fishing are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific activity. The Regional Administrator or Director will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a Letter of Acknowledgment. This Letter of Acknowledgment is separate and distinct from any permit or consultation required under the MMPA, the ESA, or any other applicable law. The Regional Administrator or Director will include text in the Letter of Acknowledgment informing the applicant that such permits may be required and should be obtained from the agency prior to embarking on the activity. If the Regional Administrator or Director, after review of a research plan, determines that it does not constitute scientific research activity but rather fishing, the Regional Administrator or Director will inform the applicant as soon as practicable and in writing. In making this determination, the Regional Administrator, Director, or designee shall consider: the merits of the individual proposal and the institution(s) involved; whether the proposed activity meets the definition of scientific research activity; and whether the vessel meets all the requirements for a scientific research vessel. Foreign vessels that qualify as scientific research vessels and which are engaged in a scientific research activity may only engage in compensation fishing during the scientific research cruise and in accordance with the applicable scientific research plan. The Regional Administrator or Director may also make recommendations to revise the research plan to ensure the activity will be considered to be a scientific research activity. The Regional Administrator or Director may designate a Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries, to receive scientific research plans and issue Letters of Acknowledgment. In order to facilitate identification of the activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the Letter of Acknowledgment on board the scientific research vessel and to make it available for inspection upon the request of any authorized officer. It is recommended that for any scientific research activity, any fish, or parts thereof, retained pursuant to such activity be accompanied, during any ex-vessel activities, by a copy of the Letter of Acknowledgment. Activities conducted in accordance with a scientific research plan acknowledged by such a Letter of Acknowledgment are presumed to be scientific research activities. An authorized officer may overcome this presumption by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Reports*. Persons conducting scientific research are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 74 FR 42793, Aug. 25, 2009]

§ 600.513 Recreational fishing.

(a) Foreign vessels conducting recreational fishing must comply only with this section, and §§ 600.10,

600.504(a)(1), and 600.505 (as applicable). Such vessels may conduct recreational fishing within the EEZ and within the boundaries of a state. Any fish caught may not be sold, bartered, or traded.

(b) The owners or operator and any other person aboard any foreign vessel conducting recreational fishing must comply with any Federal laws or regulations applicable to the domestic fishery while in the EEZ, and any state laws or regulations applicable while in state waters.

§ 600.514 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and state statutes may apply to their activities.

(b) Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to enforcement action under the International Convention for the Protection of Submarine Cables, and to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) and other laws that implement that Convention. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than 1 nautical mile (1.85 km) from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than 0.25 nautical mile (0.46 km) from a buoy or buoys intended to mark the position of a cable when being laid, or when out of order, or broken.

§ 600.515 Interpretation of 16 U.S.C. 1857(4).

Section 307(4) of the Magnuson-Stevens Act prohibits any fishing vessel other than a vessel of the United States (foreign fishing vessel) from operating in the EEZ if all of the fishing gear on board the vessel is not stowed in compliance with that section ''unless such vessel is authorized to engage in fishing in the area in which the vessel is operating.'' If such a vessel has a permit authorization that is limited to fishing activities other than catching, taking or harvesting (such as support, scouting or processing activities), it must have all of its fishing gear stowed at all times while it is in the EEZ. If such a vessel has a permit authorization to engage in catching, taking or harvesting activities, but such authorization is limited to a specific area within the EEZ, and/or to a specific period of time, the vessel must have all of its fishing gear stowed while it is in the EEZ, except when it is in the specific area authorized, and/or during the specific period of time authorized.

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

§ 600.516 Total allowable level of foreign fishing (TALFF).

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the OY of such fishery, which cannot or will not be harvested by vessels of the United States. Allocations of TALFF are discretionary, except that the total allowable level shall be zero for fisheries determined by the Secretary to have adequate or excess domestic harvest capacity.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFF's at the beginning of the relevant fishing year will be published in the FEDERAL REGISTER. Adjustments to those numbers will be published in the FEDERAL REGISTER upon occasion or as directed by regulations implementing FMPs. For current apportionments, contact the appropriate Regional Administrator or the Director.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 73 FR 67811, Nov. 17, 2008]

§ 600.517 Allocations.

The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of fish species and species groups. The

Secretary of State officially notifies each foreign nation of its allocation. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels is upon the foreign nation and the owner or operator of the FFV.

§ 600.518 Fee schedule for foreign fishing.

(a) *Permit application fees.* Each vessel permit application submitted under § 600.501 must be accompanied by a fee. The amount of the fee will be determined in accordance with the procedures for determining administrative costs of each special product or service contained in the NOAA Finance Handbook, which is available upon request from the Office of International Affairs (see address at § 600.501(d)(1)). The fee is specified with the application form. At the time the application is submitted, a check for the fees, drawn on a U.S. bank, payable to the order of ''Department of Commerce, NOAA,'' must be sent to the Assistant Administrator. The permit fee payment must be accompanied by a list of the vessels for which the payment is made. In the case of applications for permits authorizing activity code 10, the permit application fee will be waived if the applicant provides satisfactory documentary proof to the Assistant Administrator that the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation. The documentation presented (e.g., copy of foreign fishing regulations applicable to vessels of the United States) must clearly exempt vessels of the United States from such a fee.

(b) *Poundage fees*—(1) *Rates.* If a Nation chooses to accept an allocation, poundage fees must be paid at the rate specified in the following table.

TABLE—SPECIES AND POUNDAGE FEES

[Dollars per metric ton]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	277.96
2. Herring, Atlantic	25.75
3. Herring, River	49.59
4. Mackerel, Atlantic	64.76
5. Other finfish	45.48
6. Squid, *Illex*	97.56
7. Squid, *Loligo*	321.68

(2) *Method of payment of poundage fees and observer fees.* (i) If a Nation chooses to accept an allocation, a revolving letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocation at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the observer fees required by paragraph (c) of this section. The L/C must—

(A) Be irrevocable.

(B) Be with a bank subscribing to ICC Pub. 290.

(C) Designate ''Department of Commerce, NOAA'' as beneficiary;

(D) Allow partial withdrawals.

(E) Be confirmed by a U.S. bank.

(ii) The customer must pay all commissions, transmission, and service charges. No fishing will be allowed until the L/C is established, and authorized written notice of its issuance is provided to the Assistant Administrator.

(3) *Assessment of poundage fees.* Poundage fees will be assessed quarterly for the actual catch during January through March, April through June, July through September, and October through December. The appropriate Regional Administrator will reconcile catch figures with each country following the procedures of § 600.511(d). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the Regional Administrator will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Administrator during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(c) *Observer fees.* The Assistant Administrator will notify the owners or operators of FFV's of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel must provide for repayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a L/C as prescribed in § 600.518(b)(2). During the fiscal year, payment will be withdrawn from the L/C as required to cover anticipated observer coverage for the upcoming fishery. The Assistant Administrator will reconcile any differences between the estimated cost and actual costs of observer coverage within 90 days after the end of the fiscal year.

(d) *Financial assurances.* (1) A foreign nation, or the owners and operators of certain vessels of that foreign nation, may be required by the Assistant Administrator to provide financial assurances. Such assurances may be required if—

(i) Civil and criminal penalties assessed against fishing vessels of the Nation have not effectively deterred violations;

(ii) Vessels of that Nation have engaged in fishing in the EEZ without proper authorization to conduct such activities;

(iii) The Nation's vessel owners have refused to answer administrative charges or summons to appear in court; or

(iv) Enforcement of Magnuson-Stevens Act civil or criminal judgments in the courts of a foreign nation is unattainable.

(2) The level of financial assurances will be guided by the level of penalties assessed and costs to the U.S. Government.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 64 FR 39020, July 21, 1999; 66 FR 28132, May 22, 2001; 76 FR 59305, Sept. 26, 2011]

§ 600.520 Northwest Atlantic Ocean fishery.

(a) *Purpose.* Sections 600.520 and 600.525 regulate all foreign fishing conducted under a GIFA within the EEZ in the Atlantic Ocean north of 35°00′ N. lat.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *Time and area restrictions.* (i) Fishing, including processing, scouting, and support of foreign or U.S. vessels, is prohibited south of 35°00′ N. lat., and north and east of a line beginning at the shore at 44°22′ N. lat., 67°52′ W. long. and intersecting the boundary of the EEZ at 44°11′12″ N. lat., 67°16′46″ W. long.

(ii) The Regional Administrator will consult with the Council prior to giving notice of any area or time restriction. NMFS will also consult with the USCG if the restriction is proposed to reduce gear conflicts. If NMFS determines after such consultation that the restriction appears to be appropriate, NMFS will publish the proposed restriction in the FEDERAL REGISTER, together with a summary of the information on which the restriction is based. Following a 30-day comment period, NMFS will publish a final action.

(iii) The Regional Administrator may rescind any restriction if he/she determines that the basis for the restriction no longer exists.

(iv) Any notice of restriction shall operate as a condition imposed on the permit issued to the foreign vessels involved in the fishery.

(3) *TALFF.* The TALFFs for the fisheries of the Northwest Atlantic Ocean are published in the FEDERAL REGISTER. Current TALFFs are also available from the Regional Administrator.

(4) *Species definitions.* The category ''other finfish'' used in TALFFs and in allocations includes all species except:

(i) The other allocated species, namely: Short-finned squid, long-finned squid, Atlantic herring, Atlantic mackerel, river herring (includes alewife, blueback herring, and hickory shad), and butterfish.

(ii) The prohibited species, namely: American plaice, American shad, Atlantic cod, Atlantic menhaden, Atlantic redfish, Atlantic salmon, all marlin, all spearfish, sailfish, swordfish, black sea bass, bluefish, croaker, haddock, ocean pout, pollock, red hake, scup, sea turtles, sharks (except dogfish), silver hake, spot, striped bass, summer flounder, tilefish, yellowtail

flounder, weakfish, white hake, windowpane flounder, winter flounder, witch flounder, Continental Shelf fishery resources, and other invertebrates (except nonallocated squids).

(5) *Closures*. The taking of any species for which a Nation has an allocation is permitted, provided that:

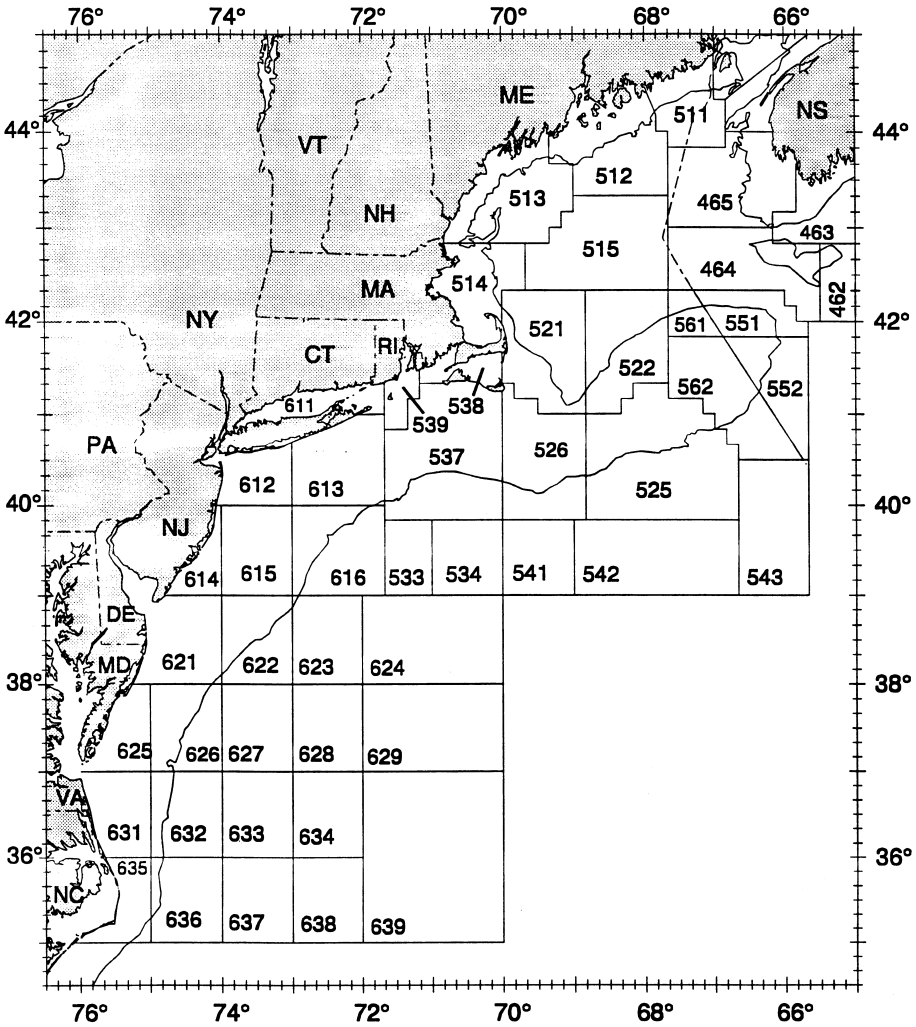
(i) The vessels of the foreign nation have not caught the allocation of that Nation for any species or species group (e.g., ''other finfish''). When vessels of a foreign nation have caught an applicable allocation of any species, all further fishing other than scouting, processing, or support by vessels of that Nation must cease, even if other allocations have not been reached. Therefore, it is essential that foreign nations plan their fishing strategy to ensure that the reaching of an allocation for one species does not result in the premature closing of a Nation's fishery for other allocated species.

(ii) The fishery has not been closed for other reasons under § 600.511.

(6) *Allocation utilization*. Foreign fishing vessels may elect to retain or discard allocated species; however, the computation of allocation utilization and fee refunds will be based on the total quantity of that species that was caught. Prohibited species must always be returned to the sea as required under § 600.509.

(c) *Fishing areas*. For the purposes of the Northwest Atlantic Ocean fishery, fishing areas are that portion of the EEZ shown inside the boundaries of the ''three digit statistical areas'' described in Figure 1 to this section.

Figure 1 to § 600.520--Fishing Areas of the Northwest Atlantic Ocean Fisheries



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

§ 600.525 Applicability of subpart F to Canadian Albacore Fishing Vessels off the West Coast.

Fishing by vessels of Canada under the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges is regulated only under this section and § 600.530 of this subpart F, and is exempt from any other requirements of this subpart F. Regulations governing fishing by U.S. vessels in waters under the fisheries jurisdiction of the Canada more than 12 nautical miles from the baseline from which the territorial sea is measured

are found at §§ 300.170–300.176 of chapter II of this title.

[69 FR 31535, June 4, 2004]

§ 600.530 Pacific albacore fishery.

(a) *Purpose and scope.* This section regulates fishing by Canadian vessels under the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002. Notwithstanding any other provision of this subpart F, fishing vessels of Canada may be authorized to fish in waters under the fisheries jurisdiction of the United States more than 12 nautical miles from the baseline from which the territorial sea is measured in accordance with the Treaty and this section, pursuant to Public Law 108–219 (118 Stat. 616; 16 U.S.C. 1821 note).

(b) *Definitions.* In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act and § 600.10, the terms used in this subpart have the following meanings:

Fishing under the Treaty as amended in 2002 means to engage in fishing for albacore tuna in waters under the fisheries jurisdiction of the United States seaward of 12 nautical miles from the baseline from which the territorial sea is measured.

Regional Administrator means the Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Reporting Office means the office designated by the Regional Administrator to take hail-in and hail-out reports from U.S. and Canadian vessel operators.

Treaty means the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002.

(c) *Vessel list.* A Canadian vessel is not eligible to fish for albacore in U.S. waters under the Treaty as amended in 2002 unless the vessel is on the list provided to NMFS by the Government of Canada of vessels authorized by Canada to fish under the Treaty as amended in 2002.

(d) *Vessel identification.* A Canadian vessel fishing under the Treaty as amended in 2002 must clearly display its Canadian vessel registration number followed by the letter C in the same height and size as the numerals, consistent with Canadian vessel marking requirements.

(e) *Hail-in reports.* The operator of a Canadian Vessel eligible to fish for albacore in U.S. waters under the Treaty as amended in 2002 must file a hail-in report with the Reporting Office at least 24 hours prior to beginning any such fishing.

(f) *Hail-out Reports.* The operator of a Canadian vessel that has been fishing in U.S. waters under the Treaty as amended in 2002 must file a hail-out report with the Reporting Office at least 24 hours prior to exiting from U.S. waters.

(g) *Prohibitions.* It is prohibited for the operator of a Canadian vessel to engage in fishing in U.S. waters if the vessel:

(1) Is not on the vessel list in paragraph (c) of this section;

(2) Has not filed a hail-in report to advise of an intent to fish under the Treaty as amended in 2002 prior to engaging in such fishing; or

(3) Is not clearly marked in accordance with paragraph (d) of this section.

[69 FR 31535, June 4, 2004]

Subpart G—Preemption of State Authority Under Section 306(b)

§ 600.605 General policy.

It is the policy of the Secretary that preemption proceedings will be conducted expeditiously. The administrative law judge and counsel or other representative for each party are encouraged to make every effort at each stage of the proceedings to avoid delay.

§ 600.610 Factual findings for Federal preemption.

(a) The two factual findings for Federal preemption of state management authority over a fishery are:

(1) The fishing in a fishery that is covered by an FMP implemented under the Magnuson-Stevens Act is engaged in predominately within the EEZ and beyond such zone.

(2) A state has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such FMP.

(b) Whether fishing is engaged in ''predominately'' within or beyond the EEZ will be determined after consideration of relevant factors, including but not limited to, the catch (based on numbers, value, or weight of fish caught, or other relevant factors) or fishing effort during the appropriate period, and in light of historical patterns of the distribution of catch or fishing effort for such stock or stocks of fish.

(c) Whether relevant effects are substantial will be determined after consideration of the magnitude of such actual or potential effects. Relevant to this determination are various factors, including but not limited to, the proportion of the fishery (stock or stocks of fish and fishing for such stocks) that is subject to the effects of a particular state's action or omission, the characteristics and status (including migratory patterns and biological condition) of the stock or stocks of fish in the fishery, and the similarity or dissimilarity between the goals, objectives, or policies of the state's action or omission and the management goals or objectives specified in the FMP for the fishery or between the state and Federal conservation and management measures of the fishery.

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

§ 600.615 Commencement of proceedings.

(a) *Notice of proposed preemption.* (1) If a proceeding under this part is deemed necessary, the Administrator must issue a notice of proposed preemption to the Attorney General of the State or States concerned. The notice will contain:

(i) A recital of the legal authority and jurisdiction for instituting the proceeding.

(ii) A concise statement of the § 600.610 factual findings for Federal preemption upon which the notice is based.

(iii) The time, place, and date of the hearing.

(2) The notice of proposed preemption will also be published in the FEDERAL REGISTER. This notification may be combined with any notice of proposed rulemaking published under paragraph (d)(1) of this section.

(b) *Response.* The state will have the opportunity to respond in writing to the notice of proposed preemption.

(c) *Amendment.* The Administrator may, at any time prior to the Secretary's decision, withdraw the notice of proposed preemption. Upon motion of either party before the record is closed, the administrative law judge may amend the notice of proposed preemption.

(d) *Proposed regulations*—(1) *In general.* If additional regulations are required to govern fishing within the boundaries of a state, the Administrator may publish proposed regulations in the FEDERAL REGISTER concurrently with issuing the notification indicated in paragraph (a) of this section.

(2) *Emergency actions.* Nothing in this section will prevent the Secretary from taking emergency action under section 305(c) of the Magnuson-Stevens Act.

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

§ 600.620 Rules pertaining to the hearing.

(a) The civil procedure rules of the NOAA currently set forth in 15 CFR part 904, subpart C (or as subsequently amended), apply to the proceeding after its commencement by service of notice (pursuant to § 600.615) and prior to the Secretary's decision (§ 600.625), except that the following sections will not apply:

(1) 15 CFR 904.201 (Definitions);

(2) 15 CFR 904.206(a)(1) (Duties and powers of Judge); and

(3) 15 CFR 904.272 (Administrative review of decision).

(b) *Additional duties and powers of judge*—(1) *Time periods.* The administrative law judge is authorized to modify all time periods pertaining to the course of the hearing (under §§ 600.615 and 600.620) to expedite the proceedings, upon application and appropriate showing of need or emergency circumstances by a party.

(2) *Intervention.* Intervention by persons not parties is not allowed.

§ 600.625 Secretary's decision.

(a) The Secretary will, on the basis of the hearing, record the administrative law judge's recommended decision:

(1) Accept or reject any of the findings or conclusions of the administrative law judge and decide whether the factual findings exist for Federal preemption of a state's authority within its boundaries (other than in its internal waters) with respect to the fishery in question;

(2) Reserve decision on the merits or withdraw the notice of proposed preemption; or

(3) Remand the case to the administrative law judge for further proceedings as may be appropriate, along with a statement of reasons for the remand.

(b) *Notification.* (1) If the factual findings for Federal preemption are determined to exist, the Secretary will notify in writing the Attorney General of that state and the appropriate Council(s) of the preemption of that state's authority. The Secretary will also direct the Administrator to promulgate appropriate regulations proposed under § 600.615(d) and otherwise to begin regulating the fishery within the state's boundaries (other than in its internal waters).

(2) If the factual findings for Federal preemption are determined not to exist, the Secretary will notify, in writing, the Attorney General of the state and the appropriate Council(s) of that determination. The Secretary will also direct the Administrator to issue a notice withdrawing any regulations proposed under § 600.615(d).

§ 600.630 Application for reinstatement of state authority.

(a) *Application or notice.* (1) At any time after the promulgation of regulations under § 600.625(b)(1) to regulate a fishery within a state's boundaries, the affected state may apply to the Secretary for reinstatement of state authority. The Secretary may also serve upon such state a notice of intent to terminate such Federal regulation. A state's application must include a clear and concise statement of:

(i) The action taken by the State to correct the action or omission found to have substantially and adversely affected the carrying out of the FMP; or

(ii) Any changed circumstances that affect the relationship of the state's action or omission to take action to the carrying out of the FMP (including any amendment to such plan); and

(iii) Any laws, regulations, or other materials that the state believes support the application.

(2) Any such application received by the Secretary or notice issued to the State will be published in the FEDERAL REGISTER.

(b) *Informal response.* The Secretary has sole discretion to accept or reject the application or response. If the Secretary accepts the application or rejects any responses and finds that the reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the FEDERAL REGISTER any regulatory amendments necessary to accomplish that end.

(c) *Hearing.* The Secretary has sole discretion to direct the Administrator to schedule hearings for the receipt of evidence by an administrative law judge. Hearings before the administrative law judge to receive such evidence will be conducted in accordance with § 600.620. Upon conclusion of such hearings, the administrative law judge will certify the record and a recommended decision to the Secretary. If the Secretary, upon consideration of the state's application or any response to the notice published under § 600.630(a)(2), the hearing record, the recommended decision, and any other relevant materials finds that the reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the FEDERAL REGISTER any regulatory amendments necessary to accomplish that end.

Subpart H—General Provisions for Domestic Fisheries

§ 600.705 Relation to other laws.

(a) *General.* Persons affected by these regulations should be aware that other Federal and state statutes and regulations may apply to their activities.

Vessel operators may wish to refer to USCG regulations found in the Code of Federal Regulations title 33—Navigation and Navigable Waters and 46—Shipping; 15 CFR part 904, subpart D—Permit Sanctions and Denials; and title 43—Public Lands (in regard to marine sanctuaries).

(b) *State responsibilities.* Certain responsibilities relating to data collection and enforcement may be performed by authorized state personnel under a state/Federal agreement for data collection and a tripartite agreement among the state, the USCG, and the Secretary for enforcement.

(c) *Submarine cables.* Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to the submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than 1 nautical mile (1.85 km) from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than 0.25 nautical mile (0.46 km) from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(d) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth in part 229 of this title.

(e) *Halibut fishing.* Fishing for halibut is governed by regulations of the International Pacific Halibut Commission set forth at part 300 of this title.

(f) *Marine sanctuaries.* All fishing activity, regardless of species sought, is prohibited under 15 CFR part 924 in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina.

§ 600.710 Permits.

Regulations pertaining to permits required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.715 Recordkeeping and reporting.

Regulations pertaining to records and reports required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.720 Vessel and gear identification.

Regulations pertaining to special vessel and gear markings required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.725 General prohibitions.

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

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, or export, any fish or parts thereof taken or retained in violation of the Magnuson-Stevens Act or any other statute administered by NOAA and/or any regulation or permit issued under the Magnuson-Stevens Act.

(b) Transfer or attempt to transfer, directly or indirectly, any U.S.-harvested fish to any foreign fishing vessel, while such vessel is in the EEZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson-Stevens Act, which authorizes the receipt by such vessel of U.S.-harvested fish.

(c) Fail to comply immediately with enforcement and boarding procedures specified in § 600.730.

(d) Refuse to allow an authorized officer to board a fishing vessel or to enter areas of custody for purposes of conducting any search, inspection, or seizure in connection with the enforcement of the Magnuson-Stevens Act or any other statute administered by NOAA.

(e) Dispose of fish or parts thereof or other matter in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel or aircraft.

(f) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of

any search, inspection, or seizure in connection with enforcement of the Magnuson-Stevens Act or any other statute administered by NOAA.

(g) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by the Magnuson-Stevens Act or any other statute administered by NOAA.

(h) Resist a lawful arrest for any act prohibited under the Magnuson-Stevens Act or any other statute administered by NOAA.

(i) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, offer of sale, possession, transport, import, export, or transfer of any fish, or attempts to do any of the above.

(j) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson-Stevens Act or any other statute administered by NOAA.

(k) Fish in violation of the terms or conditions of any permit or authorization issued under the Magnuson-Stevens Act or any other statute administered by NOAA.

(l) Fail to report catches as required while fishing pursuant to an exempted fishing permit.

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

(n) Trade, barter, or sell; or attempt to trade, barter, or sell fish possessed or retained while fishing pursuant to an authorization for an exempted educational activity.

(o) Harass or sexually harass an authorized officer or an observer.

(p) Fail to show proof of passing the USCG Commercial Fishing Vessel Safety Examination or the alternate NMFS safety equipment examination, or fail to maintain the vessel safety conditions necessary to pass the examination, when required by NMFS pursuant to § 600.746.

(q) Fail to display a Commercial Fishing Vessel Safety Examination decal or a valid certificate of compliance or inspection pursuant to § 600.746.

(r) Fail to provide to an observer, a NMFS employee, or a designated observer provider information that has been requested pursuant to § 600.746, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at § 600.746.

(s) Fish without an observer when the vessel is required to carry an observer.

(t) Assault, oppose, impede, intimidate, or interfere with a NMFS-approved observer.

(u)(1) Prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, an observer from conducting his or her duties as an observer; or

(2) Tamper with or destroy samples or equipment.

(v) The use of any gear or participation in a fishery not on the following list of authorized fisheries and gear is prohibited after December 1, 1999. A fish, regardless whether targeted, may be retained only if it is taken within a listed fishery, is taken with a gear authorized for that fishery, and is taken in conformance with all other applicable regulations. Listed gear can only be used in a manner that is consistent with existing laws and regulations. The list of fisheries and authorized gear does not, in any way, alter or supersede any definitions or regulations contained elsewhere in this chapter. A person or vessel is prohibited from engaging in fishing or employing fishing gear when such fishing gear is prohibited or restricted by regulation under an FMP or other applicable law. However, after December 1, 1999, an individual fisherman may notify the appropriate Council, or the Director, in the case of Atlantic highly migratory species, of the intent to use a gear or participate in a fishery not already on the list. Ninety days after such notification, the individual may use the gear or participate in that fishery unless regulatory action is taken to prohibit the use of the gear or participate in the fishery (*e.g.*, through emergency or interim regulations). The list of authorized fisheries and gear is as follows:

Fishery	Authorized gear types
I. New England Fishery Management Council (NEFMC)	
1. Atlantic Sea Scallop Fishery (FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Hand harvest fishery	C. Hand harvest.
D. Recreational fishery	D. Hand harvest.
2. Iceland Scallop Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
3. Atlantic Salmon Fishery (FMP)	No harvest or possession in the EEZ.
4. Striped Bass Fishery (Non-FMP)	No harvest or possession in the EEZ.
5. Northeast (NE) Multispecies Fishery (FMP):	
A. NE multispecies sink gillnet fishery	A. Gillnet.
B. North Atlantic bottom trawl fishery	B. Trawl.
C. Groundfish hook and line fishery	C. Longline, handline, rod and reel.
D. Mixed species trap and pot fishery	D. Trap, pot.
E. Dredge fishery	E. Dredge.
F. Seine fishery	F. Seine.
G. Recreational fishery	G. Rod and reel, handline, spear.
6. American Lobster Fishery (FMP):	
A. Lobster pot and trap fishery	A. Pot, trap.
B. North Atlantic bottom trawl fishery	B. Trawl.
C. Dredge fishery	C. Dredge.
D. Hand harvest fishery	D. Hand harvest.
E. Gillnet fishery	E. Gillnet.
F. Recreational fishery	F. Pot, trap, hand harvest.
7. Atlantic Herring Fishery (FMP):	
A. Trawl fishery	A. Trawl.
B. Purse seine fishery	B. Purse seine.
C. Gillnet fishery	C. Gillnet.
D. Herring pair trawl fishery	D. Pair trawl.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Hook and line, gillnet.
8. Spiny Dogfish Fishery (FMP jointly managed by MAFMC and NEFMC):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
9. Atlantic Bluefish Fishery (FMP managed by MAFMC):	
A. Pelagic longline and hook and line fishery	A. Longline, handline.
B. Seine fishery	B. Purse seine, seine.
C. Mixed species pot and trap fishery	C. Pot, trap.
D. Bluefish, croaker, flounder trawl fishery	D. Trawl.
E. Gillnet fishery	E. Gillnet.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, trap, pot, spear.
10. Atlantic Mackerel, Squid and Butterfish Fishery (FMP managed by the MAFMC):	
A. Mackerel, squid, and butterfish trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Longline and hook-and-line fishery	C. Longline, handline, rod and reel.
D. Purse seine fishery	D. Purse seine.
E. Mixed species pot and trap fishery	E. Pot, trap.
F. Dredge fishery	F. Dredge.
G. Dip net fishery	G. Dip net.
H. Bandit gear fishery	H. Bandit gear.
I. Recreational fishery	I. Rod and reel, handline, pot, spear.
11. Surf Clam and Ocean Quahog Fishery (FMP managed by the MAFMC):	
A. Commercial fishery	A. Dredge, hand harvest.
B. Recreational fishery	B. Hand harvest.
12. Atlantic Menhaden Fishery (Non-FMP):	
A. Purse seine fishery	A. Purse seine.
B. Trawl fishery	B. Trawl.
C. Gillnet fishery	C. Gillnet.
D. Commercial hook-and-line fishery	D. Hook and line.
E. Recreational fishery	E. Hook and line, snagging, cast nets.
13. Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line, spear.

Fishery	Authorized gear types
14. Atlantic Mussel and Sea Urchin Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Hand harvest fishery	B. Hand harvest.
C. Recreational fishery	C. Hand harvest.
15. Atlantic Skate Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Hook-and-line fishery	C. Longline and handline.
D. Dredge fishery	D. Dredge.
E. Recreational fishery	E. Rod and reel.
16. Crab Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Trap and pot fishery	C. Trap, pot.
17. Northern Shrimp Fishery (Non-FMP):	
A. Shrimp trawl fishery	A. Trawl.
B. Shrimp pot fishery	B. Pot.
18. Monkfish Fishery (FMP jointly managed by NEFMC and MAFMC):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Longline fishery	C. Longline.
D. Dredge fishery	D. Dredge.
E. Trap and pot fishery	E. Trap, pot.
F. Recreational fishery	F. Rod and reel, spear.
19. Summer Flounder, Scup, Black Sea Bass Fishery (FMP managed by MAFMC):	
A. Trawl fishery	A. Trawl.
B. Longline and hook and line fishery	B. Longline, handline.
C. Mixed species pot and trap fishery	C. Pot, trap.
D. Gillnet fishery	D. Gillnet.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Rod and reel, handline, pot, trap, spear.
20. Hagfish Fishery (Non-FMP)	Trap, pot.
21. Tautog Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.
B. Pot and trap fishery	B. Pot, trap.
C. Rod and reel, hook and line fishery	C. Rod and reel, handline, hook and line.
D. Trawl fishery	D. Trawl.
E. Spear fishery	E. Spear.
F. Fyke net fishery	F. Fyke net.
G. Recreational fishery	G. Rod and reel, hook and line, handline, spear.
22. Recreational Fishery (Non-FMP)	Rod and reel, handline, spear, hook and line, hand harvest, bandit gear, powerhead, gillnet, cast net, pot, trap, dip net, bully net, snare.
23. Commercial Fishery (Non-FMP)	Trawl, pot, trap, gillnet, pound net, dredge, seine, handline, longline, hook and line, rod and reel, hand harvest, purse seine, spear, bandit gear, powerhead, dip net, bully net, snare, cast net, barrier net, slurp gun, allowable chemicals.
24. Dolphin/wahoo fishery (FMP managed by SAFMC)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).
II. Mid-Atlantic Fishery Management Council (MAFMC)	
1. Summer Flounder, Scup, Black Sea Bass Fishery (FMP):	
A. Trawl fishery	A. Trawl.
B. Pelagic longline and hook and line fishery	B. Longline, handline, rod and reel.
C. Mixed species pot and trap fishery	C. Pot, trap.
D. Gillnet fishery	D. Gillnet.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Rod and reel, handline, pot, trap, spear.
2. Atlantic Bluefish Fishery (FMP):	
A. Bluefish, croaker, and flounder trawl fishery	A. Trawl.
B. Pelagic longline and hook and line fishery	B. Longline, handline, bandit gear, rod and reel.
C. Mixed species pot and trap fishery	C. Pot, trap.
D. Gillnet fishery	D. Gillnet.
E. Seine fishery	E. Purse seine, seine.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, trap, pot, spear.
3. Atlantic Mackerel, Squid, and Butterfish Fishery (FMP):	
A. Mackerel, squid, and butterfish trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Longline and hook-and-line fishery	C. Longline, handline, rod and reel.

Fishery	Authorized gear types
D. Purse seine fishery	D. Purse seine.
E. Mixed species pot and trap fishery	E. Pot, trap.
F. Dredge fishery	F. Dredge.
G. Dip net fishery	G. Dip net.
H. Bandit gear fishery	H. Bandit gear.
I. Recreational fishery	I. Rod and reel, handline, pot, spear.
4. Surf Clam and Ocean Quahog Fishery (FMP):	
A. Commercial fishery	A. Dredge, hand harvest.
B. Recreational fishery	B. Hand harvest.
5. Atlantic Sea Scallop Fishery (FMP managed by NEFMC):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Hand harvest fishery	C. Hand harvest.
D. Recreational fishery	D. Hand harvest.
6. Atlantic Menhaden Fishery (Non-FMP):	
A. Purse seine fishery	A. Purse seine.
B. Trawl fishery	B. Trawl.
C. Gillnet fishery	C. Gillnet.
D. Commercial hook-and-line fishery	D. Hook and line.
E. Recreational fishery	E. Hook and line, snagging, cast nets.
7. Striped Bass Fishery (Non-FMP)	No harvest or possession in the EEZ.
8. Northern Shrimp Trawl Fishery (Non-FMP)	Trawl.
9. American Lobster Fishery (FMP managed by NEFMC):	
A. Pot and trap fishery	A. Pot, trap.
B. Hand harvest fishery	B. Hand harvest.
C. Trawl fishery	C. Trawl.
D. Dredge fishery	D. Dredge.
E. Gillnet fishery	E. Gillnet.
F. Recreational fishery	F. Pot, trap, hand harvest.
10. Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line, rod and reel.
B. Recreational fishery	B. Hook and line, spear.
11. Whelk Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Pot and trap fishery	B. Pot, trap.
C. Dredge	C. Dredge.
D. Pound net, gillnet, seine	D. Pound net, gillnet, seine.
E. Recreational fishery	E. Hand harvest.
12. Monkfish Fishery (FMP jointly managed by NEFMC and MAFMC):	
A. Trawl fishery	A. Trawl.
B. Longline fishery	B. Longline, rod and reel.
C. Gillnet fishery	C. Gillnet.
D. Dredge fishery	D. Dredge.
E. Trap and pot fishery	E. Trap and pot.
F. Recreational fishery	F. Rod and reel, spear.
13. Tilefish Fishery (Non-FMP):	
A. Groundfish hook-and-line fishery	A. Longline, handline, rod and fishery reel.
B. Trawl fishery	B. Trawl.
C. Recreational fishery	C. Rod and reel, spear.
14. Spiny Dogfish Fishery (FMP jointly managed by MAFMC and NEFMC):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
15. Tautog Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.
B. Pot and trap fishery	B. Pot, trap.
C. Rod and reel, hook and line handline fishery	C. Rod and reel, hook and line, handline.
D. Trawl fishery	D. Trawl.
E. Spear fishery	E. Spear.
F. Fyke net fishery	F. Fyke net.
G. Recreational fishery	G. Rod and reel, handline, hook and line, spear.
16. Coastal Gillnet Fishery (Non-FMP)	Gillnet
17. Recreational Fishery (Non-FMP)	Rod and reel, handline, spear, hook and line, hand harvest, bandit gear, powerhead, gillnet, cast net.
18. NE Multispecies Fishery (FMP managed by NEFMC):	
A. NE multispecies sink gillnet fishery	A. Gillnet.
B. North Atlantic bottom trawl fishery	B. Trawl.
C. Groundfish hook and line	C. Longline, handline, rod and fishery reel.
D. Mixed species trap and pot fishery	D. Trap, pot.
E. Dredge fishery	E. Dredge.

Fishery	Authorized gear types
F. Seine fishery	F. Seine.
G. Recreational fishery	G. Rod and reel, handline, spear.
19. Atlantic Skate Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Hook-and-line fishery	C. Longline and handline.
D. Dredge fishery	D. Dredge.
E. Recreational fishery	E. Rod and reel.
20. Crab Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Trap and pot fishery	C. Trap, pot.
21. Atlantic Herring Fishery (FMP managed by the NEFMC):	
A. Trawl fishery	A. Trawl.
B. Purse seine fishery	B. Purse seine.
C. Gillnet fishery	C. Gillnet.
D. Herring pair trawl fishery	D. Pair trawl.
E. Dredge fishery	E. Dredge.
F. Recreational fishery	F. Hook and line, gillnet.
22. South Atlantic Snapper-Grouper Fishery (FMP managed by the SAFMC):	
A. Commercial fishery	A. Longline, rod and reel, bandit gear, handline, spear, powerhead.
B. Black sea bass trap and pot fishery	B. Pot, trap.
C. Wreckfish fishery	C. Rod and reel, bandit gear, handline.
D. Recreational fishery	D. Handline, rod and reel, bandit gear, spear, powerhead.
23. South Atlantic Coastal Migratory Pelagics Fishery (FMP managed by the SAFMC):	
A. Commercial Spanish mackerel fishery	A. Handline, rod and reel, bandit gear, gillnet, cast net.
B. Commercial king mackerel fishery	B. Handline, rod and reel, bandit gear.
C. Other commercial coastal migratory pelagics fishery	C. Longline, handline, rod and reel, bandit gear.
D. Recreational fishery	D. Bandit gear, rod and reel, handline, spear.
24. Calico Scallops Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Dredge fishery	B. Dredge.
C. Recreational fishery	C. Hand harvest.
25. Sargassum Fishery (Non-FMP)	Trawl.
26. South Atlantic Shrimp Fishery (FMP)	Trawl.
27. Commercial Fishery (Non-FMP)	Trawl, pot, trap, gillnet, pound net, dredge, seine, handline, longline, hook and line, rod and reel, spear.
28. Dolphin/wahoo fishery (FMP managed by SAFMC)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).
III. South Atlantic Fishery Management Council	
1. Golden Crab Fishery (FMP)	Trap.
2. Crab Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Trap and pot fishery	C. Trap, pot.
3. Atlantic Red Drum Fishery (FMP)	No harvest or possession in the EEZ.
4. Coral and Coral Reef Fishery (FMP):	
A. Octocoral commercial fishery	Hand harvest.
B. Live rock aquaculture fishery	Hand harvest.
5. South Atlantic Shrimp Fishery (FMP)	Trawl.
6. South Atlantic Snapper-Grouper Fishery (FMP):	
A. Commercial fishery	A. Longline, rod and reel, bandit gear, handline, spear, powerhead.
B. Black sea bass pot fishery	B. Pot.
C. Wreckfish fishery	C. Rod and reel, bandit gear, handline.
D. Recreational fishery	D. Handline, rod and reel, bandit gear, spear, powerhead.
7. South Atlantic Spiny Lobster Fishery (FMP):	
A. Commercial fishery	A. Trap, pot, dip net, bully net, snare, hand harvest.
B. Recreational fishery	B. Trap, pot, dip net, bully net, snare, hand harvest.
8. South Atlantic Coastal Migratory Pelagics Fishery (FMP):	
A. Commercial Spanish mackerel fishery	A. Handline, rod and reel, bandit gear, gillnet, cast net.
B. Commercial king mackerel fishery	B. Handline, rod and reel, bandit gear.
C. Other commercial coastal migratory pelagics fishery	C. Longline, handline, rod and reel, bandit gear.

Fishery	Authorized gear types
D. Recreational fishery	D. Bandit gear, rod and reel, handline, spear.
9. Spiny Dogfish Fishery (FMP jointly managed by NEFMC and SAFMC):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear, bandit gear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
10. Smooth Dogfish Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Hook and line fishery	C. Hook and line, rod and reel, spear, bandit gear.
D. Dredge fishery	D. Dredge.
E. Longline fishery	E. Longline.
F. Recreational fishery	F. Hook and line, rod and reel, spear.
11. Atlantic Menhaden Fishery (Non-FMP):	
A. Purse seine fishery	A. Purse seine.
B. Trawl fishery	B. Trawl.
C. Gillnet fishery	C. Gillnet.
D. Commercial hook-and-line	D. Hook and line fishery.
E. Recreational fishery	E. Hook and line, snagging, cast nets.
12. Atlantic Mackerel, Squid, and Butterfish Trawl Fishery (Non-FMP)	Trawl.
13. Bait Fisheries (Non-FMP)	Purse seine.
14. Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line, spear.
15. Whelk Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Pot and trap fishery	B. Pot, trap.
C. Dredge fishery	C. Dredge.
D. Recreational fishery	D. Hand harvest.
16. Marine Life Aquarium Fishery (Non-FMP)	Dip net, slurp gun, barrier net, drop net, allowable chemical, trap, pot, trawl.
17. Calico Scallop Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Recreational fishery	C. Hand harvest.
18. Summer Flounder Fishery (FMP managed by MAFMC):	
A. Commercial fishery	A. Trawl, longline, handline, rod and reel, pot, trap, gillnet, dredge.
B. Recreational fishery	B. Rod and reel, handline, pot, trap, spear.
19. Bluefish, Croaker, and Flounder Trawl and Gillnet Fishery (Bluefish FMP managed by MAFMC).	Trawl, gillnet.
20. Commercial Fishery (Non-FMP)	Trawl, gillnet, longline, handline, hook and line, rod and reel, bandit gear, cast net, pot, trap, lampara net, spear.
21. Recreational Fishery (Non-FMP)	Rod and reel, handline, spear, hook and line, hand harvest, bandit gear, powerhead, gillnet, cast net.
22. Sargassum Fishery (Non-FMP)	Trawl.
23. Octopus Fishery (Non-FMP)	Trap, pot.
24. Dolphin/wahoo fishery (FMP)	Automatic reel, bandit gear, handline, pelagic longline, rod and reel, spear (including powerheads).
IV. Gulf of Mexico Fishery Management Council	
1. Gulf of Mexico Red Drum Fishery (FMP)	No harvest or possession in the EEZ.
2. Coral Reef Fishery (FMP):	
A. Commercial fishery	A. Hand harvest.
B. Recreational fishery	B. Hand harvest.
3. Gulf of Mexico Reef Fish Fishery (FMP):	
A. Snapper-Grouper reef fish longline and hook and line fishery	A. Longline, handline, bandit gear, rod and reel, buoy gear.
B. Other commercial fishery	B. Spear, powerhead, cast net, trawl.
C. Recreational fishery	C. Spear, powerhead, bandit gear, handline, rod reel, cast net.
4. Gulf of Mexico Shrimp Fishery (FMP):	
A. Gulf of Mexico commercial fishery	A. Trawl butterfly net, skimmer, cast net.
B. Recreational fishery	B. Trawl.
5. Gulf of Mexico Coastal Migratory Pelagics Fishery (FMP):	
A. Large pelagics longline fishery	A. Longline.
B. King/Spanish mackerel gillnet fishery	B. Gillnet.
C. Pelagic hook and line fishery	C. Bandit gear, handline, rod and reel.

Fishery	Authorized gear types
D. Pelagic species purse seine fishery	D. Purse seine.
E. Recreational fishery	E. Bandit gear, handline, rod and reel, spear.
Gulf of Mexico Spiny Lobster Fishery (FMP):	
A. Commercial fishery	A. Trap, pot, dip net, bully net, hoop net, trawl, snare, hand harvest.
C. Recreational fishery	C. Dip net, bully net, pot, trap, snare, hand harvest.
6. Stone Crab Fishery (FMP):	
A. Trap and pot fishery	A. Trap, pot
B. Recreational fishery	B. Trap, pot, hand harvest.
7. Blue Crab Fishery (Non-FMP)	Trap, pot.
8. Golden Crab Fishery (Non-FMP)	Trap.
9. Mullet Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Pair trawl fishery	C. Pair trawl.
D. Cast net fishery	D. Cast net.
E. Recreational fishery	E. Bandit gear, handline, rod and reel, spear, cast net.
10. Inshore Coastal Gillnet Fishery (Non-FMP)	Gillnet.
11. Octopus Fishery (Non-FMP)	Trap, pot.
12. Marine Life Aquarium Fishery (Non-FMP)	Dip net, slurp gun, barrier net, drop net, allowable chemical, trap, pot, trawl.
13. Coastal Herring Trawl Fishery (Non-FMP)	Trawl.
14. Butterfish Trawl Fishery (Non-FMP)	Trawl.
15. Gulf of Mexico Groundfish (Non-FMP):	
A. Commercial fishery	A. Trawl, purse seine, gillnet.
B. Recreational fishery	B. Hook and line, rod and reel, spear.
16. Gulf of Mexico Menhaden Purse Seine Fishery (Non-FMP)	Purse seine.
17. Sardine Purse Seine Fishery (Non-FMP)	Purse seine.
18. Oyster Fishery (Non-FMP)	Dredge, tongs.
19. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, lampara net, spear.
20. Recreational Fishery (Non-FMP)	Bandit gear, handline, rod and reel, spear, bully net, gillnet, dip net, longline, powerhead, seine, slurp gun, trap, trawl, harpoon, cast net, hoop net, hook and line, hand harvest.
V. Caribbean Fishery Management Council	
1. Caribbean Spiny Lobster Fishery (FMP):	
A. Trap/pot fishery	A. Trap/pot.
B. Dip net fishery	B. Dip net.
C. Hand harvest fishery	C. Hand harvest, snare.
D. Recreational fishery	D. Dip net, trap, pot.
2. Caribbean Reef Fish Fishery (FMP):	
A. Longline/hook and line fishery	A. Longline, hook and line.
B. Trap/pot fishery	B. Trap, pot.
C. Recreational fishery	C. Dip net, handline, rod and reel, slurp gun, spear.
D. Other commercial fishery	D. Spear.
3. Coral and Reef Resources Fishery (FMP):	
A. Commercial fishery	A. Dip net, slurp gun.
B. Recreational fishery	B. Dip net, slurp gun, hand harvest.
4. Queen Conch Fishery (FMP):	
A. Commercial fishery	A. Hand harvest.
B. Recreational fishery	B. Hand harvest.
5. Caribbean Pelagics Fishery (Non-FMP):	
A. Pelagics drift gillnet fishery	A. Gillnet.
B. Pelagics longline/hook and line fishery	B. Longline/hook and line.
C. Recreational fishery	C. Spear, handline, longline, rod and reel.
6. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.
7. Recreational Fishery (Non-FMP)	Rod and reel, hook and line, spear, powerhead, handline, hand harvest, cast net.
VI. Pacific Fishery Management Council	
1. Washington, Oregon, and California Salmon Fisheries (FMP):	
A. Salmon set gillnet fishery	A. Gillnet.
B. Salmon hook and line fishery	B. Hook and line.
C. Trawl fishery	C. Trawl.
D. Recreational fishery	D. Rod and reel.
2. West Coast Groundfish Fisheries (FMP):	
A. Pacific groundfish trawl fishery	A. Trawl.
B. Set gillnet fishery	B. Gillnet.

Fishery	Authorized gear types
C. Groundfish longline and setline fishery	C. Longline.
D. Groundfish handline and hook and line fishery	D. Handline, hook and line.
E. Groundfish pot and trap fishery	E. Pot, trap.
F. Recreational fishery	F. Rod and reel, handline, spear, hook and line.
3. Northern Anchovy Fishery (FMP)	Purse seine, lampara net.
4. Angel Shark, White Croaker, California Halibut, White Sea Bass, Pacific Mackerel Large-Mesh Set Net Fishery (Non-FMP).	Gillnet.
5. Thresher Shark and Swordfish Drift Gillnet Fishery (Non-FMP)	Gillnet.
6. Pacific Shrimp and Prawn Fishery (Non-FMP):	
A. Pot and trap fishery	A. Pot, trap.
B. Trawl fishery	B. Trawl.
7. Lobster and Rock Crab Pot and Trap Fishery (Non-FMP)	Pot, trap.
8. Pacific Halibut Fishery (Non-FMP):	
A. Longline and setline fishery	A. Longline.
B. Hook-and-line fishery	B. Hook and line.
9. California Halibut Trawl and Trammel Net Fishery	Trawl, trammel net.
10. Shark and Bonito Longline and Setline Fishery (Non-FMP)	Longline.
11. Dungeness Crab Pot and Trap Fishery (Non-FMP)	Pot, trap.
12. Hagfish Pot and Trap Fishery (Non-FMP)	Pot, trap.
13. Pacific Albacore and Other Tuna Hook-and-line Fishery (Non-FMP)	Hook and line.
14. Pacific Swordfish Harpoon Fishery (Non-FMP)	Harpoon.
15. Pacific Scallop Dredge Fishery (Non-FMP)	Dredge.
16. Pacific Yellowfin, Skipjack Tuna, Purse Seine Fishery, (Non-FMP)	Purse seine.
17. Market Squid Fishery (Non-FMP)	Purse seine, dip net.
18. Pacific Sardine, Pacific Mackerel, Pacific Saury, Pacific Bonito, and Jack Mackerel Purse Seine Fishery (Non-FMP).	Purse seine.
19. Finfish and Shellfish Live Trap, Hook-and-line, and Handline Fishery (Non-FMP).	Trap, handline, hook and line.
20. Recreational Fishery (Non-FMP)	Spear, trap, handline, pot, hook and line, rod and reel, hand harvest.
21. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.
VII. North Pacific Fishery Management Council	
1. Alaska Scallop Fishery (FMP)	Dredge.
2. Bering Sea (BS) and Aleutian Islands (AI) King and Tanner Crab Fishery (FMP):	
Pot fishery	Pot.
3. Bering Sea (BS) and Aleutian Islands (AI) King and Tanner Crab Fishery (FMP):	
Recreational fishery	Pot.
4. BS and AI Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line, and handline fishery	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. BS and AI pot and trap fishery	D. Pot, trap.
5. BS and AI Groundfish Recreational Fishery (Non-FMP)	Handline, rod and reel, hook and line, pot, trap.
6. Gulf of Alaska (GOA) Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line and handline fishery	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. GOA pot and trap fishery	D. Pot, trap.
E. Recreational fishery	E. Handline, rod and reel, hook and line, pot, trap.
7. Pacific Halibut Fishery (Non-FMP):	
A. Commercial (IFQ and CDQ)	A. Hook and line.
B. Recreational	B. Single line with no more than 2 hooks attached or spear.
C. Subsistence	C. Setline gear and hand held gear of not more than 30 hooks, including longline, handline, rod and reel, spear, jig, and hand-troll gear.
8. Alaska High Seas Salmon Hook and Line Fishery: (FMP)	Hook and line.
9. Alaska Salmon Fishery (Non-FMP):	
A. Hook-and-line fishery	A. Hook and line.
B. Gillnet fishery	B. Gillnet.
C. Purse seine fishery.	C. Purse seine.
D. Recreational fishery	D. Handline, rod and reel, hook and line.
10. Finfish Purse Seine Fishery (Non-FMP)	Purse seine.
11. Octopus/Squid Longline Fishery (Non-FMP)	Longline.
12. Finfish Handline and Hook-and-line Fishery (Non-FMP)	Handline, hook and line.
13. Recreational Fishery (Non-FMP)	Handline, rod and reel, hook line.
14. Commercial Fishery (Non-FMP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.

Fishery	Authorized gear types
VIII. Western Pacific Fishery Management Council	
1. Western Pacific Crustacean Fishery (FMP) (Fishery Ecosystem Plan, FEP).	Trap, hand harvest, hoop net.
2. Western Pacific Crustacean Fishery (Non-FEP):	
A. Commercial fishery	A. Gillnet, hand harvest, hoop net, spear, snare, trap, trawl.
B. Recreational fishery	B. Gillnet, hand harvest, hoop net, spear, snare, trap.
C. Charter fishery	C. Hand harvest, spear.
3. Western Pacific Precious Corals Fishery (FEP):	
A. Tangle net dredge fishery	A. Tangle net dredge.
B. Submersible fishery	B. Submersible.
C. Dive fishery	C. Hand harvest.
D. Recreational fishery	D. Hand harvest.
4. Western Pacific Precious Corals Fishery (Non-FEP)	Hand harvest, submersible, tangle net dredge.
5. Western Pacific Bottomfish and Seamount Groundfish Fishery (FEP)	
A. Bottomfish hook-and-line fishery	A. Bandit gear, buoy gear, handline, hook and line, rod and reel, hand harvest.
B. Seamount groundfish fishery	B. Longline, trawl.
C. Bottom longline fishery	C. Longline, hook and line.
D. Trap fishery	D. Trap.
E. Spear fishery	E. Spear, powerhead.
6. Western Pacific Bottomfish and Seamount Groundfish Fishery (Non-FEP):	
A. Commercial fishery	A. Bandit gear, buoy gear, gillnet, handline, hook-and-line, longline, rod and reel, spear, trap.
B. Recreational fishery	B. Bandit gear, buoy gear, Gillnet, handline, hook and line, longline, rod and reel, spear, trap, slurp gun, hand harvest.
C. Charter fishery	C. Bandit gear, buoy gear, handline, hook-and-line, rod and reel, spear.
7. Western Pacific Pelagics Fishery (FEP):	
A. Longline Fishery	A. Longline.
B. Hook and line fishery	B. Bandit gear, buoy gear, handline, hook and line, rod and reel.
C. Purse seine fishery	C. Lampara net, purse seine.
D. Spear fishery	D. Spear, powerhead.
E. Squid jig fishery	E. Squid jig.
8. Western Pacific Pelagics Fishery (Non-FEP):	
A. Recreational fishery	A. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and real, spear.
B. Commercial fishery	B. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and reel, spear.
C. Charter fishery	C. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and reel, spear.
9. Western Pacific Coastal Pelagics Fishery (Non-FEP)	Bandit gear, buoy gear, dip net, gillnet, handline, hook and line, hoop net, lampara net, purse seine, rod and reel, spear.
10. Western Pacific Squid and Octopus Fishery (Non-FEP)	Bandit gear, hand harvest, hook and line, rod and reel, spear, trap.
11. Western Pacific Coral Reef Fishery (Non-FEP)	Allowable chemical, barrier net, dip net, gillnet, hand harvest, seine, slurp gun, trap, spear, rod and reel, hook and line.
12. Recreational Fishery (Non-FEP)	Rod and reel, hook and line, handline, hand harvest, spear.
13. Commercial Fishery (Non-FEP)	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.
IX. Secretary of Commerce	
1. Atlantic Highly Migratory Species Fisheries (FMP):	
A. Swordfish handgear fishery	A. Rod and reel, harpoon, handline, bandit gear, buoy gear.
B. Swordfish recreational fishery	B. Rod and reel, handline.
C. Pelagic longline fishery	C. Longline.
D. Shark gillnet fishery	D. Gillnet
E. Shark bottom longline fishery	E. Longline.
F. Shark handgear fishery	F. Rod and reel, handline, bandit gear.
G. Shark recreational fishery	G. Rod and reel, handline.
H. Tuna purse seine fishery	H. Purse seine.
I. Tuna recreational fishery	I. Speargun gear (for bigeye, albacore, yellowfin, and skipjack tunas only); Rod and reel, handline (all tunas); green-stick gear (HMS Charter/Headboat Category only).

Fishery	Authorized gear types
J. Tuna handgear fishery	J. Rod and reel, harpoon, handline, bandit gear.
K. Tuna harpoon fishery	K. Harpoon.
L. Atlantic billfish recreational fishery	L. Rod and reel.
M. Tuna green-stick fishery	M. Green-stick gear.
2. Commercial Fisheries (Non-FMP)	Rod and reel, handline, longline, gillnet, harpoon, bandit gear, purse seine, green-stick gear.

(w) Fail to maintain safe conditions for the protection of observers including compliance with all U.S. Coast Guard and other applicable rules, regulations, or statutes applicable to the vessel and which pertain to safe operation of the vessel.

[61 FR 32540, June 24, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 600.725, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 77 FR 59849, Oct. 1, 2012, § 600.725 was amended in the table in paragraph (v), under the heading ''IX. Secretary of Commerce,'' entry 1, by adding entry ''N'', effective Jan. 2, 2013. For the convenience of the user, the added text is set forth as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

* * * * *

IX. Secretary of Commerce	
1. Atlantic Highly Migratory Species Fisheries (FMP):	
* * * * *	
N. Commercial Caribbean Small Boat Fishery ..	N. Rod and reel, handline, harpoon, bandit gear, green-stick gear, buoy gear.

* * * * *

§ 600.730 Facilitation of enforcement.

(a) *General*. The operator of, or any other person aboard, any fishing vessel subject to parts 622 through 699 of this chapter must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson-Stevens Act or any other statute administered by NOAA and this chapter.

(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 aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF-FM radiotelephone is the preferred method for communicating between vessels. If the size of the vessel

and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. USCG units will normally use the flashing light signal ''L'' as the signal to stop. In the International Code of Signals, ''L'' (.–..) means ''you should stop your vessel instantly.'' (Period (.) means a short flash of light; dash (–) means a long flash of light.)

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes prima facie evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding*. The operator of a vessel directed to stop must:

(1) Guard Channel 16, VHF-FM, if so equipped.

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his/her party to come aboard.

(3) Except for fishing vessels with a freeboard of 4 feet (1.25 m) or less, provide, when requested by an authorized officer or observer personnel, a pilot ladder capable of being used for the purpose of enabling personnel to embark and disembark the vessel safely. The pilot ladder must be maintained in good condition and kept clean.

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

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

(d) *Signals*. The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal ''L'' and the necessity for the vessel to stop instantly. (Period (.) means a short flash of light; dash (-) means a long flash of light.)

(1) ''AA'' repeated (.-.-) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) ''RY-CY'' (.-. -.— -.-. -.—) means ''you should proceed at slow speed, a boat is coming to you.'' This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) ''SQ3'' (... —.- ...—) means ''you should stop or heave to; I am going to board you.''

[61 FR 32540, June 24, 1996, as amended at 61 FR 37225, July 17, 1996; 63 FR 7075, Feb. 12, 1998; 73 FR 67809, Nov. 17, 2008]

§ 600.735 Penalties.

Any person committing, or fishing vessel used in the commission of a violation of the Magnuson-Stevens Act or any other statute administered by NOAA and/or any regulation issued under the Magnuson-Stevens Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson-Stevens Act, to this section, to 15 CFR part 904 (Civil Procedures), and to other applicable law.

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

§ 600.740 Enforcement policy.

(a) The Magnuson-Stevens Act provides four basic enforcement remedies for violations, in ascending order of severity, as follows:

(1) Issuance of a citation (a type of warning), usually at the scene of the offense (see 15 CFR part 904, subpart E).

(2) Assessment by the Administrator of a civil money penalty.

(3) For certain violations, judicial forfeiture action against the vessel and its catch.

(4) Criminal prosecution of the owner or operator for some offenses. It shall be the policy of NMFS to enforce vigorously and equitably the provisions of the Magnuson-Stevens Act by utilizing that form or combination of authorized remedies best suited in a particular case to this end.

(b) Processing a case under one remedial form usually means that other remedies are inappropriate in that case. However, further investigation or later review may indicate the case to be either more or less serious than initially considered, or may otherwise reveal that the penalty first pursued is inadequate to serve the purposes of the Magnuson-Stevens Act. Under such circumstances, the Agency may pursue other remedies either in lieu of or in addition to the action originally taken. Forfeiture of the illegal catch does not fall within this general rule and is considered in most cases as only the initial step in remedying a violation by removing the ill-gotten gains of the offense.

(c) If a fishing vessel for which a permit has been issued under the Magnuson-Stevens Act is used in the commission of an offense prohibited by section 307 of the Magnuson-Stevens Act, NOAA may impose permit sanctions, whether or not civil or criminal action has been undertaken against the vessel or its owner or operator. In some cases, the Magnuson-Stevens Act requires permit sanctions following the assessment of a civil penalty or the imposition of a criminal fine. In sum, the Magnuson-Stevens Act treats sanctions against the fishing vessel permit to be the carrying out of a purpose separate from that accomplished by civil and criminal penalties against the vessel or its owner or operator.

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

§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity*. Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities on board a scientific research vessel in the EEZ are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific activity. The Regional Administrator or Director will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a Letter of Acknowledgment. This Letter of Acknowledgment is separate and distinct from any permit or consultation required by the MMPA, the ESA, or any other applicable law. The Regional Administrator or Director will include text in the Letter of Acknowledgment informing the applicant that such a permit may be required and should be obtained from the agency prior to embarking on the activity. If the Regional Administrator or Director, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Administrator or Director will inform the applicant as soon as practicable and in writing. In making this determination, the Regional Administrator, Director, or designee shall consider: the merits of the individual proposal and the institution(s) involved; whether the proposed activity meets the definition of scientific research activity; and whether the vessel meets all the requirements for a scientific research vessel. The Regional Administrator or Director may also make recommendations to revise the research plan to ensure the activity will be considered to be scientific research activity or recommend the applicant request an EFP. The Regional Administrator or Director may designate a Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries, to receive scientific research

plans and issue Letters of Acknowledgment. In order to facilitate identification of the activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the Letter of Acknowledgment on board the scientific research vessel and to make it available for inspection upon the request of any authorized officer. It is recommended that for any scientific research activity, any fish, or parts thereof, retained pursuant to such activity be accompanied, during any ex-vessel activities, by a copy of the Letter of Acknowledgment. Activity conducted in accordance with a scientific research plan acknowledged by such a Letter of Acknowledgment is presumed to be scientific research activity. An authorized officer may overcome this presumption by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing*—(1) *General*. A NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Compensation fishing must be conducted under an EFP if the activity would otherwise be prohibited by applicable regulations unless the activity is specifically authorized under an FMP or a scientific research permit. Conservation engineering that does not meet the definition of scientific research activity, but does meet the definition of fishing must be conducted under an EFP if the activity would otherwise be prohibited by applicable regulations. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display must be permitted under exempted fishing procedures. An EFP exempts a vessel only from those regulations specified in the EFP. All other applicable regulations remain in effect. The Regional Administrator or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Administrator or Director to determine the applicable fee.

(2) *Application*. An applicant for an EFP shall submit a completed application package to the appropriate Regional Administrator or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.

(iv) For each vessel to be covered by the EFP, as soon as the information is available and before operations begin under the EFP:

(A) A copy of the USCG documentation, state license, or registration of each vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated

impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

(vi) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(vii) The signature of the applicant.

(viii) The Regional Administrator or Director, as appropriate, may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application or an application for which the appropriate fee has not been paid will not be considered until corrected in writing and the fee paid. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(3) *Issuance.* (i) The Regional Administrator or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Administrator or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Administrator or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the FEDERAL REGISTER with a brief description of the proposal. Interested persons will be given a 15- to 45-day opportunity to comment on the notice of receipt of the EFP application. In addition, comments may be requested during public testimony at a Council meeting. If the Council intends to take comments on EFP applications at a Council meeting, it must include a statement to this effect in the Council meeting notice and meeting agenda. Multiple applications for EFPs may be published in the same FEDERAL REGISTER document and may be discussed under a single Council agenda item. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Administrator or Director will also forward copies of the application to the Council(s), the U.S. Coast Guard, and the appropriate fishery management agencies of affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any TAC.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

(ii) If the application is complete and warrants additional consultation, the Regional Administrator or Director may consult with the appropriate Council(s) concerning the permit application during the period in which comments have been requested. The Council(s) or the Regional Administrator or Director shall notify the applicant in advance of any public meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving a complete application, including all required analyses and consultations (e.g., NEPA, EFH, ESA and MMPA), and having received responses from the public, the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Administrator or Director shall issue the EFP or notify the applicant in writing of the decision to deny the EFP and the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of

fish, marine mammal, threatened or endangered species, or EFH; or

(C) Issuance of the EFP would have economic allocation as its sole purpose (other than compensation fishing); or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Administrator or Director to grant or deny an EFP is the final action of NMFS. If the permit, as granted, is significantly different from the original application, or is denied, NMFS may publish notification in the FEDERAL REGISTER describing the exempted fishing to be conducted under the EFP or the reasons for denial.

(v) The Regional Administrator or Director should attach, as applicable, terms and conditions to the EFP, consistent with the purpose of the exempted fishing and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) A citation of the regulations from which the vessel is exempted.

(D) The time(s) and place(s) where exempted fishing may be conducted.

(E) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(F) Whether observers, a vessel monitoring system, or other electronic equipment must be carried on board vessels operating under the EFP, and any necessary conditions, such as predeployment notification requirements.

(G) Data reporting requirements necessary to document the activities, including catches and incidental catches, and to determine compliance with the terms and conditions of the EFP and established time frames and formats for submission of the data to NMFS.

(H) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(I) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures at set out in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Acknowledging permit conditions.* Upon receipt of an EFP, the permit holder must date and sign the permit, and retain the permit on board the vessel(s). The permit is not valid until signed by the permit holder. In signing the permit, the permit holder:

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

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

(5) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is valid for no longer than 1 year. EFPs may be renewed following the application procedures in this section.

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

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer. Any fish, or parts thereof, retained pursuant to an EFP issued under this paragraph must be accompanied, during any ex-vessel activities, by a copy of the EFP.

(8) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued.

The EFP must be presented for inspection upon request of any authorized officer.

(9) *Sanctions*. Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports*. (1) NMFS requests that persons conducting scientific research activities from scientific research vessels submit a copy of any report or other publication created as a result of the activity, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director and Regional Administrator or Director.

(2) Upon completion of the activities of the EFP, or periodically as required by the terms and conditions of the EFP, persons fishing under an EFP must submit a report of their catches and any other information required, to the appropriate Regional Administrator or Director, in the manner and within the time frame specified in the EFP, but no later than 6 months after concluding the exempted fishing activity. Persons conducting EFP activities are also requested to submit a copy of any publication prepared as a result of the EFP activity.

(d) *Exempted educational activities*—(1) *General*. A NMFS Regional Administrator or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The trade, barter or sale of fish taken under this authorization is prohibited. The decision of a Regional Administrator or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) *Application*. An applicant for an exempted educational activity authorization shall submit to the appropriate Regional Administrator or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.

(iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.

(v) The scope and duration of the activity.

(vi) For each vessel to be covered by the authorization:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(vii) The species and amounts expected to be caught during the exempted educational activity, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

(viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(ix) The signature of the applicant.

(x) The Regional Administrator or Director may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application will not be considered until corrected in writing.

(3) *Issuance*. (i) The Regional Administrator or Director, as appropriate, will review each application and will

make a determination whether the application contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Administrator or Director should attach, as applicable, terms and conditions to the authorization, consistent with the purpose of the exempted educational activity and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) A citation of the regulations from which the vessel is being exempted.

(C) The time(s) and place(s) where the exempted educational activity may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(E) Data reporting requirements necessary to document the activities and to determine compliance with the terms and conditions of the exempted educational activity.

(F) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(G) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activities as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), persons, species, and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration*. Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

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

(6) *Transfer*. Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection*. Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued, or be in the possession of at least one of the persons identified in the authorization, who must be present while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of ''fishing,'' despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal. Any fish, or parts thereof, retained pursuant to an authorization issued under this paragraph must be accompanied, during any ex-vessel activities, by a copy of the authorization.

(e) *Observers*. NMFS-sanctioned observers or biological technicians conducting activities within NMFS-approved sea sampling and/or observer protocols are exempt from the requirement to obtain an EFP. For purposes of this section, NMFS-sanctioned observers or biological technicians include NMFS employees, NMFS observers, observers who are employees of NMFS-contracted observer providers, and observers who are employees of NMFS-permitted observer providers.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 74 FR 42794, Aug. 25, 2009]

§ 600.746 Observers.

(a) *Applicability*. This section applies to any fishing vessel required to carry an observer as part of a mandatory observer program or carrying an observer as part of a voluntary observer program under the Magnuson-Stevens Act, MMPA (16 U.S.C. 1361 *et seq.*), the ATCA (16 U.S.C. 971 *et seq.*), the South Pacific

Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), or any other U.S. law.

(b) *Observer safety*. An observer will not be deployed on, or stay aboard, a vessel that is inadequate for observer deployment as described in paragraph (c) of this section.

(c) *Vessel inadequate for observer deployment*. A vessel is inadequate for observer deployment if it:

(1) Does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 285, 300, 600, 622, 635, 648, 660, and 679), or

(2) Has not passed a USCG Commercial Fishing Vessel Safety Examination, or for vessels less than 26 ft (8 m) in length, has not passed an alternate safety equipment examination, as described in paragraph (g) of this section.

(d) *Display or show proof*. A vessel that has passed a USCG Commercial Fishing Vessel Safety Examination must display or show proof of a valid USCG Commercial Fishing Vessel Safety Examination decal that certifies compliance with regulations found in 33 CFR Chapter 1 and 46 CFR Chapter 1, and which was issued within the last 2 years or at a time interval consistent with current USCG regulations or policy.

(1) In situations of mitigating circumstances, which may prevent a vessel from displaying a valid safety decal (broken window, etc.), NMFS, the observer, or NMFS' designated observer provider may accept the following associated documentation as proof of the missing safety decal described in paragraph (d) of this section:

(i) A certificate of compliance issued pursuant to 46 CFR 28.710;

(ii) A certificate of inspection pursuant to 46 U.S.C. 3311; or

(iii) For vessels not required to obtain the documents identified in (d)(1)(i) and (d)(1)(ii) of this section, a dockside examination report form indicating the decal number and date and place of issue.

(e) *Visual inspection*. Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner or operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation, in a manner and according to a timeframe as directed by NMFS. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item.

(f) *Vessel safety check*. Prior to the initial deployment, the vessel owner or operator or the owner or operator's designee must accompany the observer in a walk through the vessel's major spaces to ensure that no obviously hazardous conditions exist. This action may be a part of the vessel safety orientation to be provided by the vessel to the observer as required by 46 CFR 28.270. The vessel owner or operator or the owner or operator's designee must also accompany the observer in checking the following major items as required by applicable USCG regulations:

(1) Personal flotation devices/ immersion suits;

(2) Ring buoys;

(3) Distress signals;

(4) Fire extinguishing equipment;

(5) Emergency position indicating radio beacon (EPIRB), when required, shall be registered to the vessel at its documented homeport;

(6) Survival craft, when required, with sufficient capacity to accommodate the total number of persons, including the observer(s), that will embark on the voyage; and

(7) Other fishery-area and vessel specific items required by the USCG.

(g) *Alternate safety equipment examination*. If a vessel is under 26 ft (8 m) in length, and in a remote location, and NMFS has determined that the USCG cannot provide a USCG Commercial Fishing Vessel Safety Examination due to unavailability of inspectors or to unavailability of transportation to or from an inspection station, the vessel will be adequate for observer deployment if it passes an alternate safety equipment examination conducted by a NMFS certified observer, observer provider, or a NMFS observer program employee, using a checklist of USCG safety requirements for commercial fishing vessels under 26 ft (8 m) in length. Passage of the alternative examination will only be effective for the single trip selected for observer coverage.

(h) *Duration*. The vessel owner or operator is required to comply with the

requirements of this section when the vessel owner or operator is notified orally or in writing by an observer, a NMFS employee, or a designated observer provider, that his or her vessel has been selected to carry an observer. The requirements of this section continue to apply through the time of the observer's boarding, at all times the observer is aboard, and at the time the observer disembarks from the vessel at the end of the observed trip.

(i) *Effect of inadequate status.* A vessel that would otherwise be required to carry an observer, but is inadequate for the purposes of carrying an observer, as described in paragraph (c) of this section, and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage.

[63 FR 27217, May 18, 1998, as amended at 67 FR 64312, Oct. 18, 2002; 72 FR 61818, Nov. 1, 2007]

§ 600.747 Guidelines and procedures for determining new fisheries and gear.

(a) *General.* Section 305(a) of the Magnuson-Stevens Act requires the Secretary to prepare a list of all fisheries under the authority of each Council, or the Director in the case of Atlantic highly migratory species, and all gear used in such fisheries. This section contains guidelines in paragraph (b) for determining when fishing gear or a fishery is sufficiently different from those listed in § 600.725(v) as to require notification of a Council or the Director in order to use the gear or participate in the unlisted fishery. This section also contains procedures in paragraph (c) for notification of a Council or the Director of potentially new fisheries or gear, and for amending the list of fisheries and gear.

(b) *Guidelines.* The following guidance establishes the basis for determining when fishing gear or a fishery is sufficiently different from those listed to require notification of the appropriate Council or the Director.

(1) The initial step in the determination of whether a fishing gear or fishery is sufficiently different to require notification is to compare the gear or fishery in question to the list of authorized fisheries and gear in § 600.725(v) and to the existing gear definitions in § 600.10.

(2) If the gear in question falls within the bounds of a definition in § 600.10 for an allowable gear type within that fishery, as listed under § 600.725(v), then the gear is not considered different, is considered allowable gear, and does not require notification of the Council or Secretary 90 days before it can be used in that fishery.

(3) If, for any reason, the gear is not consistent with a gear definition for a listed fishery as described in paragraph (b)(2) of this section, the gear is considered different and requires Council or Secretarial notification as described in paragraph (c) of this section 90 days before it can be used in that fishery.

(4) If a fishery falls within the bounds of the list of authorized fisheries and gear in § 600.725(v) under the Council's or Secretary's authority, then the fishery is not considered different, is considered an allowable fishery and does not require notification of the Council or Director before that fishery can occur.

(5) If a fishery is not already listed in the list of authorized fisheries and gear in § 600.725(v), then the fishery is considered different and requires notification as described in paragraph (c) of this section 90 days before it can occur.

(c) *Procedures.* If a gear or fishery does not appear on the list in § 600.725(v), or if the gear is different from that defined in § 600.10, the process for notification, and consideration by a Council or the Director, is as follows:

(1) *Notification.* After July 26, 1999, no person or vessel may employ fishing gear or engage in a fishery not included on the list of approved gear types in § 600.725(v) without notifying the appropriate Council or the Director at least 90 days before the intended use of that gear.

(2) *Notification procedures.* (i) A signed return receipt for the notice serves as adequate evidence of the date that the notification was received by the appropriate Council or the Director, in the case of Atlantic highly migratory species, and establishes the beginning of the 90-day notification period, unless required information in the notification is incomplete.

(ii) The notification must include:

(A) Name, address, and telephone number of the person submitting the notification.

(B) Description of the gear.

(C) The fishery or fisheries in which the gear is or will be used.

(D) A diagram and/or photograph of the gear, as well as any specifications and dimensions necessary to define the gear.

(E) The season(s) in which the gear will be fished.

(F) The area(s) in which the gear will be fished.

(G) The anticipated bycatch species associated with the gear, including protected species, such as marine mammals, sea turtles, sea birds, or species listed as endangered or threatened under the ESA.

(H) How the gear will be deployed and fished, including the portions of the marine environment where the gear will be deployed (surface, midwater, and bottom).

(iii) Failure to submit complete and accurate information will result in a delay in beginning the 90-day notification period. The 90-day notification period will not begin until the information received is determined to be accurate and complete.

(3) *Action upon receipt of notification*—(i) *Species other than Atlantic Highly Migratory Species*. (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear, a Council must immediately begin consideration of the notification and send a copy of the notification to the appropriate Regional Administrator.

(B) If the Council finds that the use of an unlisted gear or participation in a new fishery would not compromise the effectiveness of conservation and management efforts, it shall:

(*1*) Recommend to the RA that the list be amended;

(*2*) Provide rationale and supporting analysis, as necessary, for proper consideration of the proposed amendment; and

(*3*) Provide a draft proposed rule for notifying the public of the proposed addition, with a request for comment.

(C) If the Council finds that the proposed gear or fishery will be detrimental to conservation and management efforts, it will recommend to the RA that the authorized list of fisheries and gear not be amended, that a proposed rule not be published, give reasons for its recommendation of a disapproval, and may request NMFS to publish emergency or interim regulations, and begin preparation of an FMP or amendment to an FMP, if appropriate.

(D) After considering information in the notification and Council's recommendation, NMFS will decide whether to publish a proposed rule. If information on the new gear or fishery being considered indicates it is likely that it will compromise conservation and management efforts under the Magnuson-Stevens Act, and no additional new information is likely to be gained from a public comment period, then a proposed rule will not be published and NMFS will notify the appropriate Council. In such an instance, NMFS will publish emergency or interim regulations to prohibit or restrict use of the gear or participation in the fishery. If NMFS determines that the proposed amendment is not likely to compromise conservation and management efforts under the Magnuson-Stevens Act, NMFS will publish a proposed rule in the FEDERAL REGISTER with a request for public comment.

(ii) *Atlantic Highly Migratory Species*. (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear for Atlantic highly migratory species (HMS), NMFS will immediately begin consideration of the notification.

(B) Based on information in the notification and submitted by the Council, NMFS will make a determination whether the use of an unlisted gear or participation in an unlisted HMS fishery will compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act. If it is determined that the proposed amendment will not compromise conservation and management efforts, NMFS will publish a proposed rule.

(C) If NMFS finds that the proposed gear or fishery will be detrimental to conservation and management efforts in this initial stage of review, it will not publish a proposed rule and notify

the applicant of the negative determination with the reasons therefor.

(4) *Final determination and publication of a final rule.* Following public comment, NMFS will approve or disapprove the amendment to the list of gear and fisheries.

(i) If approved, NMFS will publish a final rule in the FEDERAL REGISTER and notify the applicant and the Council, if appropriate, of the final approval.

(ii) If disapproved, NMFS will withdraw the proposed rule, notify the applicant and the Council, if appropriate, of the disapproval; publish emergency or interim regulations, if necessary, to prohibit or restrict the use of gear or the participation in a fishery; and either notify the Council of the need to amend an FMP or prepare an amendment to an FMP in the case of Atlantic highly migratory species.

[64 FR 4043, Jan. 27, 1999]

Subpart I—Fishery Negotiation Panels

SOURCE: 62 FR 23669, May 1, 1997, unless otherwise noted.

§ 600.750 Definitions.

Consensus means unanimous concurrence among the members on a Fishery Negotiation Panel established under this rule, unless such Panel:

(1) Agrees to define such term to mean a general but not unanimous concurrence; or

(2) agrees upon another specified definition.

Fishery negotiation panel (FNP) means an advisory committee established by one or more Councils or the Secretary in accordance with these regulations to assist in the development of fishery conservation and management measures.

Interest means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

Report means a document submitted by an FNP in accordance with the Magnuson-Stevens Act.

[62 FR 23669, May 1, 1997, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.751 Determination of need for a fishery negotiation panel.

A Council or NMFS may establish an FNP to assist in the development of specific fishery conservation and management measures. In determining whether to establish an FNP, NMFS or the Council, as appropriate, shall consider whether:

(a) There is a need for specific fishery conservation and management measures.

(b) There are a limited number of identifiable interests that will be significantly affected by the conservation and management measure.

(c) There is a reasonable likelihood that an FNP can be convened with a balanced representation of persons who:

(1) Can adequately represent the interests identified under paragraph (b) of this section.

(2) Are willing to negotiate in good faith to reach a consensus on a report regarding the issues presented.

(d) There is a reasonable likelihood that an FNP will reach

a consensus on a report regarding the issues presented within 1 year from date of establishment of the FNP.

(e) The use of an FNP will not unreasonably delay Council or NMFS fishery management plan development or rulemaking procedures.

(f) The costs of establishment and operation of an FNP are reasonable when compared to fishery management plan development or rulemaking procedures that do not use FNP procedures.

(g) The Council or NMFS has adequate resources and is willing to commit such resources, including technical assistance, to an FNP.

(h) The use of an FNP is in the public interest.

§ 600.752 Use of conveners and facilitators.

(a) *Purposes of conveners.* A Council or NMFS may use the services of a trained convener to assist the Council or NMFS in: (1) Conducting discussions to identify the issues of concern, and to ascertain whether the establishment of an FNP regarding such matter is feasible and appropriate.

(2) Identifying persons who will be significantly affected by the issues presented in paragraph (a)(1) of this section.

(b) *Duties of conveners*. The convener shall report findings under paragraph (a)(2) of this section and shall make recommendations to the Council or NMFS. Upon request of the Council or NMFS, the convener shall ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the potential conservation and management measures relevant to the issues to be negotiated. The report and any recommendations of the convener shall be made available to the public upon request.

(c) *Selection of facilitator*. Notwithstanding section 10(e) of the Federal Advisory Committee Act (FACA), a Council or NMFS may nominate a person trained in facilitation either from the Federal Government or from outside the Federal Government to serve as an impartial, neutral facilitator for the negotiations of the FNP, subject to the approval of the FNP, by consensus. The facilitator may be the same person as the convener used under paragraph (a) of this section. If the FNP does not approve the nominee of the Council or NMFS for facilitator, the FNP shall submit a substitute nomination. If an FNP does not approve any nominee of the Council or NMFS for facilitator, the FNP shall select, by consensus, a person to serve as facilitator. A person designated to represent the Council or NMFS in substantive issues may not serve as facilitator or otherwise chair the FNP.

(d) *Roles and duties of facilitator*. A facilitator shall:

(1) Chair the meetings of the FNP in an impartial manner.

(2) Impartially assist the members of the FNP in conducting discussions and negotiations.

(3) Manage the keeping of minutes and records as required under section 10(b) and (c) of FACA.

§ 600.753 Notice of intent to establish a fishery negotiation panel.

(a) *Publication of notice*. If, after considering the report of a convener or conducting its own assessment, a Council or NMFS decides to establish an FNP, NMFS shall publish in the FEDERAL REGISTER and, as appropriate, in trade or other specialized publications, a document that shall include:

(1) An announcement that the Council or NMFS intends to establish an FNP to negotiate and develop a report concerning specific conservation and management measures.

(2) A description of the subject and scope of the conservation and management measure, and the issues to be considered.

(3) A list of the interests that are likely to be significantly affected by the conservation and management measure.

(4) A list of the persons proposed to represent such interests and the person or persons proposed to represent the Council or NMFS.

(5) A proposed agenda and schedule for completing the work of the FNP.

(6) A description of administrative support for the FNP to be provided by the Council or NMFS, including technical assistance.

(7) A solicitation for comments on the proposal to establish the FNP, and the proposed membership of the FNP.

(8) An explanation of how a person may apply or nominate another person for membership on the FNP, as provided under paragraph (b) of this section.

(b) *Nomination of members and public comment*. Persons who may be significantly affected by the development of conservation and management measure and who believe that their interests will not be adequately represented by any person specified in a document under paragraph (a)(4) of this section may apply for, or nominate another person for, membership on the FNP to represent such interests. Each application or nomination shall include:

(1) The name of the applicant or nominee and a description of the interests such person shall represent.

(2) Evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent.

(3) A written commitment that the applicant or nominee shall actively

participate in good faith in the development of the conservation and management measure under consideration.

(4) The reasons that the persons specified in the document under paragraph (a)(4) of this section do not adequately represent the interests of the person submitting the application or nomination.

(c) *Public comment.* The Council or NMFS shall provide at least 30 calendar days for the submission of comments and applications under this section.

§ 600.754 Decision to establish a fishery negotiation panel.

(a) *Determination to establish an FNP.* If, after considering comments and applications submitted under § 600.753, the Council or NMFS determines that an FNP can adequately represent the interests that will be significantly affected and that it is feasible and appropriate in the particular case, the Council or NMFS may establish an FNP.

(b) *Determination not to establish FNP.* If, after considering such comments and applications, the Council or NMFS decides not to establish an FNP, the Council or NMFS shall promptly publish notification of such decision and the reasons therefor in the FEDERAL REGISTER and, as appropriate, in trade or other specialized publications, a copy of which shall be sent to any person who applied for, or nominated another person for membership on the FNP to represent such interests with respect to the issues of concern.

§ 600.755 Establishment of a fishery negotiation panel.

(a) *General authority.* (1) A Council may establish an FNP to assist in the development of specific conservation and management measures for a fishery under its authority.

(2) NMFS may establish an FNP to assist in the development of specific conservation and management measures required for:

(i) A fishery for which the Secretary has authority under section 304(e)(5) of the Magnuson-Stevens Act, regarding rebuilding of overfished fisheries;

(ii) A fishery for which the Secretary has authority under 16 U.S.C. section 304(g), regarding highly migratory species; or

(iii) Any fishery with the approval of the appropriate Council.

(b) *Federal Advisory Committee Act (FACA)* In establishing and administering such an FNP, the Council or NMFS shall comply with the FACA with respect to such FNP.

(c) *Balance.* Each potentially affected organization or individual does not necessarily have to have its own representative, but each interest must be adequately represented. The intent is to have a group that as a whole reflects a proper balance and mix of interests. Representatives must agree, in writing, to negotiate in good faith.

(d) *Membership.* The Council or NMFS shall limit membership on an FNP to no more than 25 members, unless the Council or NMFS determines that a greater number of members is necessary for the functioning of the FNP or to achieve balanced membership. Each FNP shall include at least one person representing the Council in addition to at least one person representing NMFS.

§ 600.756 Conduct and operation of a fishery negotiation panel.

(a) *Roles and duties of an FNP.* Each FNP shall consider the issue proposed by the Council or NMFS for consideration and shall attempt to reach a consensus concerning a report to assist in the development of a conservation and management measure with respect to such matter and any other matter the FNP determines is relevant to the development of a conservation and management measure. An FNP may adopt procedures for the operation of the FNP.

(b) *Roles and duties of representative of the council or NMFS.* The person or persons representing the Council or NMFS on an FNP shall participate in the deliberations and activities of the FNP with the same rights and responsibilities as other members of the FNP, and shall be authorized to fully represent the Council or NMFS in the discussions and negotiations of the FNP.

§ 600.757 Operational protocols.

(a) *Services of conveners and facilitators.* A Council or NMFS may

employ or enter into contracts for the services of an individual or organization to serve as a convener or facilitator for an FNP established under § 600.755, or may use the services of a government employee to act as a convener or a facilitator for such an FNP.

(b) *Councils*. For an FNP proposed and established by one or more Councils approved expenses shall be paid out of the Council's operating budget.

(c) *Expenses of FNP members*. Members of an FNP shall be responsible for their own expenses of participation in such an FNP, except that NMFS or the Council may, in accordance with section 7(d) of FACA, pay for a member's reasonable travel and per diem expenses, and a reasonable rate of compensation, if:

(1) Such member certifies a lack of adequate financial resources to participate in the FNP.

(2) The Council or NMFS determines that such member's participation in the FNP is necessary to assure an adequate representation of the member's interest.

(d) *Administrative support*. The Council or NMFS shall provide appropriate administrative support to an FNP including technical assistance.

§ 600.758 Preparation of report.

(a) At the conclusion of the negotiations, an FNP may submit a report. Such report shall specify:

(1) All the areas where consensus was reached by the FNP, including, if appropriate, proposed conservation and management measures.

(2) Any other information submitted by members of the FNP.

(b) Upon receipt of the report, the Council or NMFS shall publish such report in the FEDERAL REGISTER for public comment.

§ 600.759 Use of report.

A Council or NMFS may, at its discretion, use all or a part of a report prepared in accordance with § 600.758 in the development of conservation and management measures. Neither a Council nor NMFS, whichever is appropriate, is required to use such report.

§ 600.760 Fishery Negotiation Panel lifetime.

(a) An FNP shall terminate upon either:

(1) Submission of a report prepared in accordance with § 600.758; or

(2) Submission of a written statement from the FNP to the Council or NMFS that no consensus can be reached.

(b) In no event shall an FNP exist for longer than 1 year from the date of establishment unless granted an extension. Upon written request by the FNP to the Council or NMFS, and written authorization from the Council or NMFS (whichever is appropriate), the Secretary may authorize an extension for a period not to exceed 6 months. No more than one extension may be granted per FNP.

Subpart J—Essential Fish Habitat (EFH)

SOURCE: 67 FR 2376, Jan. 17, 2002, unless otherwise noted.

§ 600.805 Purpose and scope.

(a) *Purpose*. This subpart provides guidelines for Councils and the Secretary to use in adding the required EFH provisions to an FMP, i.e., description and identification of EFH, adverse effects on EFH (including minimizing, to the extent practicable, adverse effects from fishing), and actions to conserve and enhance EFH.

(b) *Scope*—(1) *Species covered*. An EFH provision in an FMP must include all fish species in the fishery management unit (FMU). An FMP may describe, identify, and protect the habitat of species not in an FMU; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act.

(2) *Geographic*. EFH may be described and identified in waters of the United States, as defined in 33 CFR 328.3, and in the exclusive economic zone, as defined in § 600.10. Councils may describe, identify, and protect habitats of managed species beyond the exclusive economic zone; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act. Activities that

may adversely affect such habitat can be addressed through any process conducted in accordance with international agreements between the United States and the foreign nation(s) undertaking or authorizing the action.

§ 600.810 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

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

Ecosystem means communities of organisms interacting with one another and with the chemical and physical factors making up their environment.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(8).

Healthy ecosystem means an ecosystem where ecological productive capacity is maintained, diversity of the flora and fauna is preserved, and the ecosystem retains the ability to regulate itself. Such an ecosystem should be similar to comparable, undisturbed ecosystems with regard to standing crop, productivity, nutrient dynamics, trophic structure, species richness, stability, resilience, contamination levels, and the frequency of diseased organisms.

Overfished means any stock or stock complex, the status of which is reported as overfished by the Secretary pursuant to section 304(e)(1) of the Magnuson-Stevens Act.

(b) *Word usage.* The terms ''must'', ''shall'', ''should'', ''may'', ''may not'', ''will'', ''could'', and ''can'' are used in the same manner as in § 600.305(c).

§ 600.815 Contents of Fishery Management Plans.

(a) *Mandatory contents*—(1) *Description and identification of EFH*—(i) *Overview.* FMPs must describe and identify EFH in text that clearly states the habitats or habitat types determined to be EFH for each life stage of the managed species. FMPs should explain the physical, biological, and chemical characteristics of EFH and, if known, how these characteristics influence the use of EFH by the species/life stage. FMPs must identify the specific geographic location or extent of habitats described as EFH. FMPs must include maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found.

(ii) *Habitat information by life stage.* (A) Councils need basic information to understand the usage of various habitats by each managed species. Pertinent information includes the geographic range and habitat requirements by life stage, the distribution and characteristics of those habitats, and current and historic stock size as it affects occurrence in available habitats. FMPs should summarize the life history information necessary to understand each species' relationship to, or dependence on, its various habitats, using text, tables, and figures, as appropriate. FMPs should document patterns of temporal and spatial variation in the distribution of each major life stage (defined by developmental and functional shifts) to aid in understanding habitat needs. FMPs should summarize (e.g., in tables) all available information on environmental and habitat variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity of the managed species. The information should be supported with citations.

(B) Councils should obtain information to describe and identify EFH from the best available sources, including peer-reviewed literature, unpublished

scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information. Councils should consider different types of information according to its scientific rigor. FMPs should identify species-specific habitat data gaps and deficits in data quality (including considerations of scale and resolution; relevance; and potential biases in collection and interpretation). FMPs must demonstrate that the best scientific information available was used in the description and identification of EFH, consistent with national standard 2.

(iii) *Analysis of habitat information.* (A) The following approach should be used to organize the information necessary to describe and identify EFH.

(*1*) *Level 1: Distribution data are available for some or all portions of the geographic range of the species.* At this level, only distribution data are available to describe the geographic range of a species (or life stage). Distribution data may be derived from systematic presence/absence sampling and/or may include information on species and life stages collected opportunistically. In the event that distribution data are available only for portions of the geographic area occupied by a particular life stage of a species, habitat use can be inferred on the basis of distributions among habitats where the species has been found and on information about its habitat requirements and behavior. Habitat use may also be inferred, if appropriate, based on information on a similar species or another life stage.

(*2*) *Level 2: Habitat-related densities of the species are available.* At this level, quantitative data (i.e., density or relative abundance) are available for the habitats occupied by a species or life stage. Because the efficiency of sampling methods is often affected by habitat characteristics, strict quality assurance criteria should be used to ensure that density estimates are comparable among methods and habitats. Density data should reflect habitat utilization, and the degree that a habitat is utilized is assumed to be indicative of habitat value. When assessing habitat value on the basis of fish densities in this manner, temporal changes in habitat availability and utilization should be considered.

(*3*) *Level 3: Growth, reproduction, or survival rates within habitats are available.* At this level, data are available on habitat-related growth, reproduction, and/or survival by life stage. The habitats contributing the most to productivity should be those that support the highest growth, reproduction, and survival of the species (or life stage).

(*4*) *Level 4: Production rates by habitat are available.* At this level, data are available that directly relate the production rates of a species or life stage to habitat type, quantity, quality, and location. Essential habitats are those necessary to maintain fish production consistent with a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(B) Councils should strive to describe habitat based on the highest level of detail (i.e., Level 4). If there is no information on a given species or life stage, and habitat usage cannot be inferred from other means, such as information on a similar species or another life stage, EFH should not be designated.

(iv) *EFH determination.* (A) Councils should analyze available ecological, environmental, and fisheries information and data relevant to the managed species, the habitat requirements by life stage, and the species' distribution and habitat usage to describe and identify EFH. The information described in paragraphs (a)(1)(ii) and (iii) of this section will allow Councils to assess the relative value of habitats. Councils should interpret this information in a risk-averse fashion to ensure adequate areas are identified as EFH for managed species. Level 1 information, if available, should be used to identify the geographic range of the species at each life stage. If only Level 1 information is available, distribution data should be evaluated (e.g., using a frequency of occurrence or other appropriate analysis) to identify EFH as those habitat areas most commonly used by the species. Level 2 through 4 information, if available, should be used to identify EFH as the habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates

within the geographic range of a species. FMPs should explain the analyses conducted to distinguish EFH from all habitats potentially used by a species.

(B) FMPs must describe EFH in text, including reference to the geographic location or extent of EFH using boundaries such as longitude and latitude, isotherms, isobaths, political boundaries, and major landmarks. If there are differences between the descriptions of EFH in text, maps, and tables, the textual description is ultimately determinative of the limits of EFH. Text and tables should explain pertinent physical, chemical, and biological characteristics of EFH for the managed species and explain any variability in habitat usage patterns, but the boundaries of EFH should be static.

(C) If a species is overfished and habitat loss or degradation may be contributing to the species being identified as overfished, all habitats currently used by the species may be considered essential in addition to certain historic habitats that are necessary to support rebuilding the fishery and for which restoration is technologically and economically feasible. Once the fishery is no longer considered overfished, the EFH identification should be reviewed and amended, if appropriate.

(D) Areas described as EFH will normally be greater than or equal to aquatic areas that have been identified as ''critical habitat'' for any managed species listed as threatened or endangered under the Endangered Species Act.

(E) Ecological relationships among species and between the species and their habitat require, where possible, that an ecosystem approach be used in determining the EFH of a managed species. EFH must be designated for each managed species, but, where appropriate, may be designated for assemblages of species or life stages that have similar habitat needs and requirements. If grouping species or using species assemblages for the purpose of designating EFH, FMPs must include a justification and scientific rationale. The extent of the EFH should be based on the judgment of the Secretary and the appropriate Council(s) regarding the quantity and quality of habitat that are necessary to maintain a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(F) If degraded or inaccessible aquatic habitat has contributed to reduced yields of a species or assemblage and if, in the judgment of the Secretary and the appropriate Council(s), the degraded conditions can be reversed through such actions as improved fish passage techniques (for stream or river blockages), improved water quality measures (removal of contaminants or increasing flows), and similar measures that are technologically and economically feasible, EFH should include those habitats that would be necessary to the species to obtain increased yields.

(v) *EFH mapping requirements.* (A) FMPs must include maps that display, within the constraints of available information, the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. Maps should identify the different types of habitat designated as EFH to the extent possible. Maps should explicitly distinguish EFH from non-EFH areas. Councils should confer with NMFS regarding mapping standards to ensure that maps from different Councils can be combined and shared efficiently and effectively. Ultimately, data used for mapping should be incorporated into a geographic information system (GIS) to facilitate analysis and presentation.

(B) Where the present distribution or stock size of a species or life stage is different from the historical distribution or stock size, then maps of historical habitat boundaries should be included in the FMP, if known.

(C) FMPs should include maps of any habitat areas of particular concern identified under paragraph (a)(8) of this section.

(2) *Fishing activities that may adversely affect EFH*—(i) *Evaluation.* Each FMP must contain an evaluation of the potential adverse effects of fishing on EFH designated under the FMP, including effects of each fishing activity

regulated under the FMP or other Federal FMPs. This evaluation should consider the effects of each fishing activity on each type of habitat found within EFH. FMPs must describe each fishing activity, review and discuss all available relevant information (such as information regarding the intensity, extent, and frequency of any adverse effect on EFH; the type of habitat within EFH that may be affected adversely; and the habitat functions that may be disturbed), and provide conclusions regarding whether and how each fishing activity adversely affects EFH. The evaluation should also consider the cumulative effects of multiple fishing activities on EFH. The evaluation should list any past management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH. The evaluation should give special attention to adverse effects on habitat areas of particular concern and should identify for possible designation as habitat areas of particular concern any EFH that is particularly vulnerable to fishing activities. Additionally, the evaluation should consider the establishment of research closure areas or other measures to evaluate the impacts of fishing activities on EFH. In completing this evaluation, Councils should use the best scientific information available, as well as other appropriate information sources. Councils should consider different types of information according to its scientific rigor.

(ii) *Minimizing adverse effects.* Each FMP must minimize to the extent practicable adverse effects from fishing on EFH, including EFH designated under other Federal FMPs. Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature, based on the evaluation conducted pursuant to paragraph (a)(2)(i) of this section and/or the cumulative impacts analysis conducted pursuant to paragraph (a)(5) of this section. In such cases, FMPs should identify a range of potential new actions that could be taken to address adverse effects on EFH, include an analysis of the practicability of potential new actions, and adopt any new measures that are necessary and practicable. Amendments to the FMP or to its implementing regulations must ensure that the FMP continues to minimize to the extent practicable adverse effects on EFH caused by fishing. FMPs must explain the reasons for the Council's conclusions regarding the past and/or new actions that minimize to the extent practicable the adverse effects of fishing on EFH.

(iii) *Practicability.* In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with national standard 7. In determining whether management measures are practicable, Councils are not required to perform a formal cost/benefit analysis.

(iv) Options for managing adverse effects from fishing. Fishery management options may include, but are not limited to:

(A) *Fishing equipment restrictions.* These options may include, but are not limited to: seasonal and areal restrictions on the use of specified equipment, equipment modifications to allow escapement of particular species or particular life stages (e.g., juveniles), prohibitions on the use of explosives and chemicals, prohibitions on anchoring or setting equipment in sensitive areas, and prohibitions on fishing activities that cause significant damage to EFH.

(B) *Time/area closures.* These actions may include, but are not limited to: closing areas to all fishing or specific equipment types during spawning, migration, foraging, and nursery activities and designating zones for use as marine protected areas to limit adverse effects of fishing practices on certain vulnerable or rare areas/species/life stages, such as those areas designated as habitat areas of particular concern.

(C) *Harvest limits.* These actions may include, but are not limited to, limits on the take of species that provide

structural habitat for other species assemblages or communities and limits on the take of prey species.

(3) *Non-Magnuson-Stevens Act fishing activities that may adversely affect EFH.* FMPs must identify any fishing activities that are not managed under the Magnuson-Stevens Act that may adversely affect EFH. Such activities may include fishing managed by state agencies or other authorities.

(4) *Non-fishing related activities that may adversely affect EFH.* FMPs must identify activities other than fishing that may adversely affect EFH. Broad categories of such activities include, but are not limited to: dredging, filling, excavation, mining, impoundment, discharge, water diversions, thermal additions, actions that contribute to non-point source pollution and sedimentation, introduction of potentially hazardous materials, introduction of exotic species, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. For each activity, the FMP should describe known and potential adverse effects to EFH.

(5) *Cumulative impacts analysis.* Cumulative impacts are impacts on the environment that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of who undertakes such actions. Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time. To the extent feasible and practicable, FMPs should analyze how the cumulative impacts of fishing and non-fishing activities influence the function of EFH on an ecosystem or watershed scale. An assessment of the cumulative and synergistic effects of multiple threats, including the effects of natural stresses (such as storm damage or climate-based environmental shifts) and an assessment of the ecological risks resulting from the impact of those threats on EFH, also should be included.

(6) *Conservation and enhancement.* FMPs must identify actions to encourage the conservation and enhancement of EFH, including recommended options to avoid, minimize, or compensate for the adverse effects identified pursuant to paragraphs (a)(3) through (5) of this section, especially in habitat areas of particular concern.

(7) *Prey species.* Loss of prey may be an adverse effect on EFH and managed species because the presence of prey makes waters and substrate function as feeding habitat, and the definition of EFH includes waters and substrate necessary to fish for feeding. Therefore, actions that reduce the availability of a major prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat that are known to cause a reduction in the population of the prey species, may be considered adverse effects on EFH if such actions reduce the quality of EFH. FMPs should list the major prey species for the species in the fishery management unit and discuss the location of prey species' habitat. Adverse effects on prey species and their habitats may result from fishing and non-fishing activities.

(8) *Identification of habitat areas of particular concern.* FMPs should identify specific types or areas of habitat within EFH as habitat areas of particular concern based on one or more of the following considerations:

(i) The importance of the ecological function provided by the habitat.

(ii) The extent to which the habitat is sensitive to human-induced environmental degradation.

(iii) Whether, and to what extent, development activities are, or will be, stressing the habitat type.

(iv) The rarity of the habitat type.

(9) *Research and information needs.* Each FMP should contain recommendations, preferably in priority order, for research efforts that the Councils and NMFS view as necessary to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and other activities, and the development of conservation and enhancement measures for EFH.

(10) *Review and revision of EFH components of FMPs.* Councils and NMFS should periodically review the EFH provisions of FMPs and revise or amend EFH provisions as warranted based on available information. FMPs should outline the procedures the

Council will follow to review and update EFH information. The review of information should include, but not be limited to, evaluating published scientific literature and unpublished scientific reports; soliciting information from interested parties; and searching for previously unavailable or inaccessible data. Councils should report on their review of EFH information as part of the annual Stock Assessment and Fishery Evaluation (SAFE) report prepared pursuant to § 600.315(e). A complete review of all EFH information should be conducted as recommended by the Secretary, but at least once every 5 years.

(b) *Development of EFH recommendations for Councils.* After reviewing the best available scientific information, as well as other appropriate information, and in consultation with the Councils, participants in the fishery, interstate commissions, Federal agencies, state agencies, and other interested parties, NMFS will develop written recommendations to assist each Council in the identification of EFH, adverse impacts to EFH, and actions that should be considered to ensure the conservation and enhancement of EFH for each FMP. NMFS will provide such recommendations for the initial incorporation of EFH information into an FMP and for any subsequent modification of the EFH components of an FMP. The NMFS EFH recommendations may be provided either before the Council's development of a draft EFH document or later as a review of a draft EFH document developed by a Council, as appropriate.

(c) *Relationship to other fishery management authorities.* Councils are encouraged to coordinate with state and interstate fishery management agencies where Federal fisheries affect state and interstate managed fisheries or where state or interstate fishery regulations affect the management of Federal fisheries. Where a state or interstate fishing activity adversely affects EFH, NMFS will consider that action to be an adverse effect on EFH pursuant to paragraph (a)(3) of this section and will provide EFH Conservation Recommendations to the appropriate state or interstate fishery management agency on that activity.

Subpart K—EFH Coordination, Consultation, and Recommendations

SOURCE: 67 FR 2376, Jan. 17, 2002, unless otherwise noted.

§ 600.905 Purpose, scope, and NMFS/Council cooperation.

(a) *Purpose.* These procedures address the coordination, consultation, and recommendation requirements of sections 305(b)(1)(D) and 305(b)(2–4) of the Magnuson-Stevens Act. The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH.

(b) *Scope.* Section 305(b)(1)(D) of the Magnuson-Stevens Act requires the Secretary to coordinate with, and provide information to, other Federal agencies regarding the conservation and enhancement of EFH. Section 305(b)(2) requires all Federal agencies to consult with the Secretary on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH. Sections 305(b)(3) and (4) direct the Secretary and the Councils to provide comments and EFH Conservation Recommendations to Federal or state agencies on actions that affect EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. Section 305(b)(4)(B) requires Federal agencies to respond in writing to such comments. The following procedures for coordination, consultation, and recommendations allow all parties involved to understand and implement the requirements of the Magnuson-Stevens Act.

(c) *Cooperation between Councils and NMFS.* The Councils and NMFS should cooperate closely to identify actions that may adversely affect EFH, to develop comments and EFH Conservation Recommendations to Federal and state agencies, and to provide EFH information to Federal and state agencies. NMFS will work with each Council to share information and to coordinate

Council and NMFS comments and recommendations on actions that may adversely affect EFH. However, NMFS and the Councils also have the authority to act independently.

§ 600.910 Definitions and word usage.

(a) *Definitions*. In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Anadromous fishery resource under Council authority means an anadromous species managed under an FMP.

Federal action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a Federal agency.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(8).

State action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a state agency.

(b) *Word usage*. The terms ''must'', ''shall'', ''should'', ''may'', ''may not'', ''will'', ''could'', and ''can'' are used in the same manner as in § 600.305(c).

§ 600.915 Coordination for the conservation and enhancement of EFH.

To further the conservation and enhancement of EFH in accordance with section 305(b)(1)(D) of the Magnuson-Stevens Act, NMFS will compile and make available to other Federal and state agencies, and the general public, information on the locations of EFH, including maps and/or narrative descriptions. NMFS will also provide information on ways to improve ongoing Federal operations to promote the conservation and enhancement of EFH. Federal and state agencies empowered to authorize, fund, or undertake actions that may adversely affect EFH are encouraged to contact NMFS and the Councils to become familiar with areas designated as EFH, potential threats to EFH, and opportunities to promote the conservation and enhancement of EFH.

§ 600.920 Federal agency consultation with the Secretary.

(a) *Consultation generally*—(1) *Actions requiring consultation*. Pursuant to section 305(b)(2) of the Magnuson-Stevens Act, Federal agencies must consult with NMFS regarding any of their actions authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken that may adversely affect EFH. EFH consultation is not required for actions that were completed prior to the approval of EFH designations by the Secretary, e.g., issued permits. Consultation is required for renewals, reviews, or substantial revisions of actions if the renewal, review, or revision may adversely affect EFH. Consultation on Federal programs delegated to non-Federal entities is required at the time of delegation, review, and renewal of the delegation. EFH consultation is required for any Federal funding of actions that may adversely affect EFH. NMFS and Federal agencies responsible for funding actions that may adversely affect EFH should consult on a programmatic level under paragraph (j) of this section, if appropriate, with respect to these actions. Consultation is required for emergency Federal actions that may adversely affect EFH, such as hazardous material clean-up, response to natural disasters, or actions to protect public safety. Federal agencies should contact NMFS early in emergency response planning, but may consult after-the-fact if consultation on an expedited basis is not practicable before taking the action.

(2) *Approaches for conducting consultation*. Federal agencies may use one of the five approaches described in paragraphs (f) through (j) of this section to

fulfill the EFH consultation requirements. The selection of a particular approach for handling EFH consultation depends on the nature and scope of the actions that may adversely affect EFH. Federal agencies should use the most efficient approach for EFH consultation that is appropriate for a given action or actions. The five approaches are: use of existing environmental review procedures, General Concurrence, abbreviated consultation, expanded consultation, and programmatic consultation.

(3) *Early notification and coordination.* The Federal agency should notify NMFS in writing as early as practicable regarding actions that may adversely affect EFH. Notification will facilitate discussion of measures to conserve EFH. Such early coordination should occur during pre-application planning for projects subject to a Federal permit or license and during preliminary planning for projects to be funded or undertaken directly by a Federal agency.

(b) *Designation of lead agency.* If more than one Federal agency is responsible for a Federal action, the consultation requirements of sections 305(b)(2) through (4) of the Magnuson-Stevens Act may be fulfilled through a lead agency. The lead agency should notify NMFS in writing that it is representing one or more additional agencies. Alternatively, if one Federal agency has completed an EFH consultation for an action and another Federal agency acts separately to authorize, fund, or undertake the same activity (such as issuing a permit for an activity that was funded via a separate Federal action), the completed EFH consultation may suffice for both Federal actions if it adequately addresses the adverse effects of the actions on EFH. Federal agencies may need to consult with NMFS separately if, for example, only one of the agencies has the authority to implement measures necessary to minimize adverse effects on EFH and that agency does not act as the lead agency.

(c) *Designation of non-Federal representative.* A Federal agency may designate a non-Federal representative to conduct an EFH consultation by giving written notice of such designation to NMFS. If a non-Federal representative is used, the Federal action agency remains ultimately responsible for compliance with sections 305(b)(2) and 305(b)(4)(B) of the Magnuson-Stevens Act.

(d) *Best available information.* The Federal agency and NMFS must use the best scientific information available regarding the effects of the action on EFH and the measures that can be taken to avoid, minimize, or offset such effects. Other appropriate sources of information may also be considered.

(e) *EFH Assessments*—(1) *Preparation requirement.* For any Federal action that may adversely affect EFH, Federal agencies must provide NMFS with a written assessment of the effects of that action on EFH. For actions covered by a General Concurrence under paragraph (g) of this section, an EFH Assessment should be completed during the development of the General Concurrence and is not required for the individual actions. For actions addressed by a programmatic consultation under paragraph (j) of this section, an EFH Assessment should be completed during the programmatic consultation and is not required for individual actions implemented under the program, except in those instances identified by NMFS in the programmatic consultation as requiring separate EFH consultation. Federal agencies are not required to provide NMFS with assessments regarding actions that they have determined would not adversely affect EFH. Federal agencies may incorporate an EFH Assessment into documents prepared for other purposes such as Endangered Species Act (ESA) Biological Assessments pursuant to 50 CFR part 402 or National Environmental Policy Act (NEPA) documents and public notices pursuant to 40 CFR part 1500. If an EFH Assessment is contained in another document, it must include all of the information required in paragraph (e)(3) of this section and be clearly identified as an EFH Assessment. The procedure for combining an EFH consultation with other environmental reviews is set forth in paragraph (f) of this section.

(2) *Level of detail.* The level of detail in an EFH Assessment should be commensurate with the complexity and

magnitude of the potential adverse effects of the action. For example, for relatively simple actions involving minor adverse effects on EFH, the assessment may be very brief. Actions that may pose a more serious threat to EFH warrant a correspondingly more detailed EFH Assessment.

(3) *Mandatory contents.* The assessment must contain:

(i) A description of the action.

(ii) An analysis of the potential adverse effects of the action on EFH and the managed species.

(iii) The Federal agency's conclusions regarding the effects of the action on EFH.

(iv) Proposed mitigation, if applicable.

(4) *Additional information.* If appropriate, the assessment should also include:

(i) The results of an on-site inspection to evaluate the habitat and the site-specific effects of the project.

(ii) The views of recognized experts on the habitat or species that may be affected.

(iii) A review of pertinent literature and related information.

(iv) An analysis of alternatives to the action. Such analysis should include alternatives that could avoid or minimize adverse effects on EFH.

(v) Other relevant information.

(5) *Incorporation by reference.* The assessment may incorporate by reference a completed EFH Assessment prepared for a similar action, supplemented with any relevant new project specific information, provided the proposed action involves similar impacts to EFH in the same geographic area or a similar ecological setting. It may also incorporate by reference other relevant environmental assessment documents. These documents must be provided to NMFS with the EFH Assessment.

(f) *Use of existing environmental review procedures*—(1) *Purpose and criteria.* Consultation and commenting under sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes, such as NEPA, the Fish and Wildlife Coordination Act, Clean Water Act, ESA, and Federal Power Act. The requirements of sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act, including consultations that would be considered to be abbreviated or expanded consultations under paragraphs (h) and (i) of this section, can be combined with existing procedures required by other statutes if such processes meet, or are modified to meet, the following criteria:

(i) The existing process must provide NMFS with timely notification of actions that may adversely affect EFH. The Federal agency should notify NMFS according to the same timeframes for notification (or for public comment) as in the existing process. Whenever possible, NMFS should have at least 60 days notice prior to a final decision on an action, or at least 90 days if the action would result in substantial adverse impacts. NMFS and the action agency may agree to use shorter timeframes provided that they allow sufficient time for NMFS to develop EFH Conservation Recommendations.

(ii) Notification must include an assessment of the impacts of the action on EFH that meets the requirements for EFH Assessments contained in paragraph (e) of this section. If the EFH Assessment is contained in another document, the Federal agency must identify that section of the document as the EFH Assessment.

(iii) NMFS must have made a finding pursuant to paragraph (f)(3) of this section that the existing process can be used to satisfy the requirements of sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act.

(2) *NMFS response to Federal agency.* If an existing environmental review process is used to fulfill the EFH consultation requirements, the comment deadline for that process should apply to the submittal of NMFS EFH Conservation Recommendations under section 305(b)(4)(A) of the Magnuson-Stevens Act, unless NMFS and the Federal agency agree to a different deadline. If NMFS EFH Conservation Recommendations are combined with other NMFS or NOAA comments on a Federal action, such as NOAA comments on a draft Environmental Impact Statement, the EFH Conservation

Recommendations will be clearly identified as such (e.g., a section in the comment letter entitled ''EFH Conservation Recommendations'') and a Federal agency response pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act is required for only the identified portion of the comments.

(3) *NMFS finding.* A Federal agency with an existing environmental review process should contact NMFS at the appropriate level (regional offices for regional processes, headquarters office for national processes) to discuss how to combine the EFH consultation requirements with the existing process, with or without modifications. If, at the conclusion of these discussions, NMFS determines that the existing or modified process meets the criteria of paragraph (f)(1) of this section, NMFS will make a finding that the process can be used to satisfy the EFH consultation requirements of the Magnuson-Stevens Act. If NMFS does not make such a finding, or if there are no existing consultation processes relevant to the Federal agency's actions, the agency and NMFS should follow one of the approaches for consultation discussed in the following sections.

(g) *General Concurrence*—(1) *Purpose.* A General Concurrence identifies specific types of Federal actions that may adversely affect EFH, but for which no further consultation is generally required because NMFS has determined, through an analysis of that type of action, that it will likely result in no more than minimal adverse effects individually and cumulatively. General Concurrences may be national or regional in scope.

(2) *Criteria.* (i) For Federal actions to qualify for General Concurrence, NMFS must determine that the actions meet all of the following criteria:

(A) The actions must be similar in nature and similar in their impact on EFH.

(B) The actions must not cause greater than minimal adverse effects on EFH when implemented individually.

(C) The actions must not cause greater than minimal cumulative adverse effects on EFH.

(ii) Actions qualifying for General Concurrence must be tracked to ensure that their cumulative effects are no more than minimal. In most cases, tracking actions covered by a General Concurrence will be the responsibility of the Federal agency. However, NMFS may agree to track such actions. Tracking should include numbers of actions and the amount and type of habitat adversely affected, and should specify the baseline against which the actions will be tracked. The agency responsible for tracking such actions should make the information available to NMFS, the applicable Council(s), and to the public on an annual basis.

(iii) Categories of Federal actions may also qualify for General Concurrence if they are modified by appropriate conditions that ensure the actions will meet the criteria in paragraph (g)(2)(i) of this section. For example, NMFS may provide General Concurrence for additional actions contingent upon project size limitations, seasonal restrictions, or other conditions.

(iv) If a General Concurrence is proposed for actions that may adversely affect habitat areas of particular concern, the General Concurrence should be subject to a higher level of scrutiny than a General Concurrence not involving a habitat area of particular concern.

(3) *General Concurrence development.* A Federal agency may request a General Concurrence for a category of its actions by providing NMFS with an EFH Assessment containing a description of the nature and approximate number of the actions, an analysis of the effects of the actions on EFH, including cumulative effects, and the Federal agency's conclusions regarding the magnitude of such effects. If NMFS agrees that the actions fit the criteria in paragraph (g)(2)(i) of this section, NMFS will provide the Federal agency with a written statement of General Concurrence that further consultation is not required. If NMFS does not agree that the actions fit the criteria in paragraph (g)(2)(i) of this section, NMFS will notify the Federal agency that a General Concurrence will not be issued and that another type of consultation will be required. If NMFS identifies specific types of Federal actions that may meet

the requirements for a General Concurrence, NMFS may initiate and complete a General Concurrence.

(4) *Further consultation*. NMFS may request notification for actions covered under a General Concurrence if NMFS concludes there are circumstances under which such actions could result in more than a minimal impact on EFH, or if it determines that there is no process in place to adequately assess the cumulative impacts of actions covered under the General Concurrence. NMFS may request further consultation for these actions on a case-by-case basis. Each General Concurrence should establish specific procedures for further consultation, if appropriate.

(5) *Notification*. After completing a General Concurrence, NMFS will provide a copy to the appropriate Council(s) and will make the General Concurrence available to the public by posting the document on the internet or through other appropriate means.

(6) *Revisions*. NMFS will periodically review and revise its General Concurrences, as appropriate.

(h) *Abbreviated consultation procedures*—(1) *Purpose and criteria*. Abbreviated consultation allows NMFS to determine quickly whether, and to what degree, a Federal action may adversely affect EFH. Federal actions that may adversely affect EFH should be addressed through the abbreviated consultation procedures when those actions do not qualify for a General Concurrence, but do not have the potential to cause substantial adverse effects on EFH. For example, the abbreviated consultation procedures should be used when the adverse effect(s) of an action could be alleviated through minor modifications.

(2) *Notification by agency and submittal of EFH Assessment*. Abbreviated consultation begins when NMFS receives from the Federal agency an EFH Assessment in accordance with paragraph (e) of this section and a written request for consultation.

(3) *NMFS response to Federal agency*. If NMFS determines, contrary to the Federal agency's assessment, that an action would not adversely affect EFH, or if NMFS determines that no EFH Conservation Recommendations are needed, NMFS will notify the Federal agency either informally or in writing of its determination. If NMFS believes that the action may result in substantial adverse effects on EFH, or that additional analysis is needed to assess the effects of the action, NMFS will request in writing that the Federal agency initiate expanded consultation. Such request will explain why NMFS believes expanded consultation is needed and will specify any new information needed. If expanded consultation is not necessary, NMFS will provide EFH Conservation Recommendations, if appropriate, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act.

(4) *Timing*. The Federal agency must submit its EFH Assessment to NMFS as soon as practicable, but at least 60 days prior to a final decision on the action. NMFS must respond in writing within 30 days. NMFS and the Federal agency may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 30 days for consultation, or to conduct consultation earlier in the planning cycle for actions with lengthy approval processes.

(i) *Expanded consultation procedures*—(1) *Purpose and criteria*. Expanded consultation allows maximum opportunity for NMFS and the Federal agency to work together to review the action's impacts on EFH and to develop EFH Conservation Recommendations. Expanded consultation procedures must be used for Federal actions that would result in substantial adverse effects to EFH. Federal agencies are encouraged to contact NMFS at the earliest opportunity to discuss whether the adverse effects of an action make expanded consultation appropriate.

(2) *Notification by agency and submittal of EFH Assessment*. Expanded consultation begins when NMFS receives from the Federal agency an EFH Assessment in accordance with paragraph (e) of this section and a written request for expanded consultation. Federal agencies are encouraged to provide in the EFH Assessment the additional information identified under paragraph (e)(4) of this section to facilitate review of the effects of the action on EFH.

(3) *NMFS response to Federal agency.* NMFS will:

(i) Review the EFH Assessment, any additional information furnished by the Federal agency, and other relevant information.

(ii) Conduct a site visit, if appropriate, to assess the quality of the habitat and to clarify the impacts of the Federal agency action. Such a site visit should be coordinated with the Federal agency and appropriate Council(s), if feasible.

(iii) Coordinate its review of the action with the appropriate Council(s).

(iv) Discuss EFH Conservation Recommendations with the Federal agency and provide such recommendations to the Federal agency, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act.

(4) *Timing.* The Federal agency must submit its EFH Assessment to NMFS as soon as practicable, but at least 90 days prior to a final decision on the action. NMFS must respond within 60 days of submittal of a complete EFH Assessment unless consultation is extended by agreement between NMFS and the Federal agency. NMFS and Federal agencies may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 60 days for consultation, or to conduct consultation earlier in the planning cycle for actions with lengthy approval processes.

(5) *Extension of consultation.* If NMFS determines that additional data or analysis would provide better information for development of EFH Conservation Recommendations, NMFS may request additional time for expanded consultation. If NMFS and the Federal agency agree to an extension, the Federal agency should provide the additional information to NMFS, to the extent practicable. If NMFS and the Federal agency do not agree to extend consultation, NMFS must provide EFH Conservation Recommendations to the Federal agency using the best scientific information available to NMFS.

(j) *Programmatic consultation*—(1) *Purpose.* Programmatic consultation provides a means for NMFS and a Federal agency to consult regarding a potentially large number of individual actions that may adversely affect EFH. Programmatic consultation will generally be the most appropriate option to address funding programs, large-scale planning efforts, and other instances where sufficient information is available to address all reasonably foreseeable adverse effects on EFH of an entire program, parts of a program, or a number of similar individual actions occurring within a given geographic area.

(2) *Process.* A Federal agency may request programmatic consultation by providing NMFS with an EFH Assessment in accordance with paragraph (e) of this section. The description of the proposed action in the EFH Assessment should describe the program and the nature and approximate number (annually or by some other appropriate time frame) of the actions. NMFS may also initiate programmatic consultation by requesting pertinent information from a Federal agency.

(3) *NMFS response to Federal agency.* NMFS will respond to the Federal agency with programmatic EFH Conservation Recommendations and, if applicable, will identify any potential adverse effects that could not be addressed programmatically and require project-specific consultation. NMFS may also determine that programmatic consultation is not appropriate, in which case all EFH Conservation Recommendations will be deferred to project-specific consultations. If appropriate, NMFS' response may include a General Concurrence for activities that qualify under paragraph (g) of this section.

(k) *Responsibilities of Federal agency following receipt of EFH Conservation Recommendations*—(1) *Federal agency response.* As required by section 305(b)(4)(B) of the Magnuson-Stevens Act, the Federal agency must provide a detailed response in writing to NMFS and to any Council commenting on the action under section 305(b)(3) of the Magnuson-Stevens Act within 30 days after receiving an EFH Conservation Recommendation from NMFS. Such a response must be provided at least 10 days prior to final approval of the action if the response is inconsistent with any of NMFS' EFH Conservation Recommendations, unless NMFS and

the Federal agency have agreed to use alternative time frames for the Federal agency response. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with NMFS Conservation Recommendations, the Federal agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects.

(2) *Further review of decisions inconsistent with NMFS or Council recommendations*. If a Federal agency decision is inconsistent with a NMFS EFH Conservation Recommendation, the Assistant Administrator for Fisheries may request a meeting with the head of the Federal agency, as well as with any other agencies involved, to discuss the action and opportunities for resolving any disagreements. If a Federal agency decision is also inconsistent with a Council recommendation made pursuant to section 305(b)(3) of the Magnuson-Stevens Act, the Council may request that the Assistant Administrator initiate further review of the Federal agency's decision and involve the Council in any interagency discussion to resolve disagreements with the Federal agency. The Assistant Administrator will make every effort to accommodate such a request. NMFS may develop written procedures to further define such review processes.

(l) *Supplemental consultation*. A Federal agency must reinitiate consultation with NMFS if the agency substantially revises its plans for an action in a manner that may adversely affect EFH or if new information becomes available that affects the basis for NMFS EFH Conservation Recommendations.

§ 600.925 NMFS EFH Conservation Recommendations to Federal and state agencies.

(a) *General*. Under section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS is required to provide EFH Conservation Recommendations to Federal and state agencies for actions that would adversely affect EFH. NMFS will not recommend that state or Federal agencies take actions beyond their statutory authority.

(b) *Recommendations to Federal agencies*. For Federal actions, EFH Conservation Recommendations will be provided to Federal agencies as part of EFH consultations conducted pursuant to § 600.920. If NMFS becomes aware of a Federal action that would adversely affect EFH, but for which a Federal agency has not initiated an EFH consultation, NMFS may request that the Federal agency initiate EFH consultation, or NMFS will provide EFH Conservation Recommendations based on the information available.

(c) *Recommendations to state agencies*—(1) *Establishment of procedures*. The Magnuson-Stevens Act does not require state agencies to consult with the Secretary regarding EFH. NMFS will use existing coordination procedures or establish new procedures to identify state actions that may adversely affect EFH, and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies.

(2) *Coordination with states on recommendations to Federal agencies*. When an action that would adversely affect EFH is authorized, funded, or undertaken by both Federal and state agencies, NMFS will provide the appropriate state agencies with copies of EFH Conservation Recommendations developed as part of the Federal consultation procedures in § 600.920. NMFS will also seek agreements on sharing information and copies of recommendations with Federal or state agencies conducting similar consultation and recommendation processes to ensure coordination of such efforts.

(d) *Coordination with Councils*. NMFS will coordinate with each Council to identify the types of actions on which Councils intend to comment pursuant to section 305(b)(3) of the Magnuson-Stevens Act. For such actions NMFS will share pertinent information with the Council, including copies of NMFS' EFH Conservation Recommendations.

§ 600.930 Council comments and recommendations to Federal and state agencies.

Under section 305(b)(3) of the Magnuson-Stevens Act, Councils may comment on and make recommendations to the Secretary and any Federal or state agency concerning any activity or proposed activity authorized, funded, or undertaken by the agency that, in the view of the Council, may affect the habitat, including EFH, of a fishery resource under its authority. Councils must provide such comments and recommendations concerning any activity that, in the view of the Council, is likely to substantially affect the habitat, including EFH, of an anadromous fishery resource under Council authority.

(a) *Establishment of procedures.* Each Council should establish procedures for reviewing Federal or state actions that may adversely affect the habitat, including EFH, of a species under its authority. Each Council may receive information on actions of concern by methods such as directing Council staff to track proposed actions, recommending that the Council's habitat committee identify actions of concern, or entering into an agreement with NMFS to have the appropriate Regional Administrator notify the Council of actions of concern that would adversely affect EFH. Federal and state actions often follow specific timetables which may not coincide with Council meetings. Therefore, Councils should consider establishing abbreviated procedures for the development of Council recommendations.

(b) *Early involvement.* Councils should provide comments and recommendations on proposed state and Federal actions of concern as early as practicable in project planning to ensure thorough consideration of Council concerns by the action agency. Each Council should provide NMFS with copies of its comments and recommendations to state and Federal agencies.

Subpart L—Fishing Capacity Reduction Framework

AUTHORITY: 16 U.S.C. 1861a(b)–(e).

SOURCE: 65 FR 31443, May 18, 2000, unless otherwise noted.

§ 600.1000 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings:

Address of Record means the business address of a person, partnership, or corporation. Addresses listed on permits or other NMFS records are presumed to be business addresses, unless clearly indicated otherwise.

Bid means the price a vessel owner or reduction fishery permit holder requests for reduction of his/her fishing capacity. It is an irrevocable offer in response to the invitation to bid in § 600.1009.

Borrower means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery.

Business plan means the document containing the information specified in § 600.1003(n) and required to be submitted with a request for a financed program.

Business week means a 7-day period, Saturday through Friday.

Controlling fishery management plan or program (CFMP) means either any fishery management plan or any state fishery management plan or program, including amendments to the plan or program, pursuant to which a fishery is managed.

Delivery value means:

(1) For unprocessed fish, all compensation that a fish buyer pays to a fish seller in exchange for fee fish; and

(2) For processed fish, all compensation that a fish buyer would have paid to a fish seller in exchange for fee fish if the fee fish had been unprocessed fish instead of processed fish.

Delivery value encompasses fair market value, as defined herein, and includes the value of all in-kind compensation or all other goods or services exchanged in lieu of cash. It is synonymous with the statutory term ''ex-vessel value'' as used in section 312 of the Magnuson Act.

Deposit principal means all collected fee revenue that a fish buyer deposits in a segregated account maintained at a federally insured financial institution for the sole purpose of aggregating

collected fee revenue before sending the fee revenue to NMFS for repaying a reduction loan.

Fair market value means the amount that a buyer pays a seller in an arm's length transaction or, alternatively, would pay a seller if the transaction were at arm's length.

Fee means the amount that fish buyers deduct from the delivery value under a financed reduction program. The fee is the delivery value times the reduction fishery's applicable fee rate under section 600.1013.

Fee fish means all fish harvested from a reduction fishery involving a financed program during the period in which any amount of the reduction loan remains unpaid. The term fee fish excludes fish harvested incidentally while fishing for fish not included in the reduction fishery.

Final development plan means the document NMFS prepares, under § 600.1006(b) and based on the preliminary development plan the requester submits, for a subsidized program.

Financed means funded, in any part, by a reduction loan.

Fish buyer means the first ex-vessel party who:

(1) In an arm's—length transaction, purchases fee fish from a fish seller;

(2) Takes fish on consignment from a fish seller; or

(3) Otherwise receives fish from a fish seller in a non arm's-length transaction.

Fish delivery means the point at which a fish buyer first purchases fee fish or takes possession of fee fish from a fish seller.

Fishing capacity reduction specifications means the minimum amount of fishing capacity reduction and the maximum amount of reduction loan principal specified in a business plan.

Fish seller means the party who harvests and first sells or otherwise delivers fee fish to a fish buyer.

Fishery Management Plan (FMP) means any Federal fishery management plan, including amendments to the plan, that the Secretary of Commerce approves or adopts pursuant to section 303 of the Magnuson-Stevens Act.

Fund means the Fishing Capacity Reduction Fund, and each subaccount for each program, established in the U.S. Treasury for the deposit into, and disbursement from, all funds, including all reduction loan capital and all fee revenue, involving each program.

Implementation plan means the plan in § 600.1008 for carrying out each program.

Implementation regulations mean the regulations in § 600.1008 for carrying out each program.

Net delivery value means the delivery value minus the fee.

Post-bidding referendum means a referendum that follows bidding under § 600.1009.

Post-reduction means after a program reduces fishing capacity in a reduction fishery.

Pre-bidding referendum means a referendum that occurs at any time after a request for a financed program but before a proposal under § 600.1008 of an implementation plan and implementation regulations.

Preliminary development plan means the document specified in § 600.1005(g) and required to be submitted with a request for a subsidized program.

Processed fish means fish in any form different from the form in which the fish existed at the time the fish was first harvested, unless any such difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

Program means each instance of reduction under this subpart, in each reduction fishery—starting with a request and ending, for a financed program, with full reduction loan repayment.

Reduction means the act of reducing fishing capacity under any program.

Reduction amendment means any amendment, or, where appropriate, framework adjustment, to a CFMP that may be necessary for a program to meet the requirements of this subpart.

Reduction amendment specifications mean the reduction amendment to a CFMP specified in a business plan.

Reduction contract means the invitation to bid under § 600.1009, together with each bidder's irrevocable offer and NMFS' conditional or non-conditional

acceptance of each such bid under § 600.1009.

Reduction cost means the total dollar amount of all reduction payments to fishing permit owners, fishing vessel owners, or both, in a reduction fishery.

Reduction fishery means the fishery or portion of a fishery to which a program applies. The reduction fishery must specify each included species, as well as any limitations by gear type, fishing vessel size, geographic area, and any other relevant factor(s).

Reduction loan means a loan, under section 1111 and section 1112 of Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1279f and g App.), for financing any portion, or all, of a financed program's reduction cost and repayable by a fee under, and in accordance with, § 600.1012, § 600.1013, and § 600.1014.

Reduction payment means the Federal Government's fishing capacity reduction payment to a fishing permit owner, fishing vessel owner, or both, under a reduction contract. Additionally, it is payment for reduction to each bidder whose bid NMFS accepts under § 600.1009. In a financed program each reduction payment constitutes a disbursement of a reduction loan's proceeds and is for either revoking a fishing permit or both revoking a fishing permit and withdrawing a vessel from fishing either by scrapping or title restriction.

Reduction permit means any fishing permit revoked in a program in exchange for a reduction payment under a reduction contract.

Reduction vessel means any fishing vessel withdrawn from fishing either by scrapping or title restriction in exchange for a reduction payment under a reduction contract.

Referendum means the voting process under § 600.1010 for approving the fee system for repaying a reduction loan.

Request means a request, under § 600.1001, for a program.

Requester means a Council for a fishery identified in § 600.1001(c) or a state governor for a fishery identified in § 600.1001(d), or a majority of permit holders in the fishery.

Scrap means to completely and permanently reduce a fishing vessel's hull, superstructures, and other fixed structural components to fragments having value, if any, only as raw materials for reprocessing or for other non-fisheries use.

Subsidized means wholly funded by anything other than a reduction loan.

Treasury percentage means the annual percentage rate at which NMFS must pay interest to the U.S. Treasury on any principal amount that NMFS borrows from the U.S. Treasury in order to generate the funds with which to later disburse a reduction loan's principal amount.

Unprocessed fish means fish in the same form as the fish existed at the time the fish was harvested, unless any difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

Vote means a vote in a referendum.

[65 FR 31443, May 18, 2000, as amended at 75 FR 62328, Oct. 8, 2010]

§ 600.1001 Requests.

(a) A Council, the Governor of a State under whose authority a proposed reduction fishery is subject, or a majority of permit holders in the fishery may request that NMFS conduct a program in that fishery. Each request shall be in writing. Each request shall satisfy the requirements of § 600.1003 or § 600.1005, as applicable, and enable NMFS to make the determinations required by § 600.1004 or § 600.1006, as applicable.

(b) NMFS cannot conduct a program in any fishery subject to the jurisdiction of a Council or a state unless NMFS first receives a request from the Council or the governor to whose jurisdiction the fishery is subject.

(c) For a fishery subject to the jurisdiction of a Council, only that Council can or must make the request. If the fishery is subject to the jurisdiction of two or more Councils, those Councils must make a joint request. No Council may make a request, or join in making a request, until after the Council conducts a public hearing about the request.

(d) For a fishery subject to the jurisdiction of a State, only the Governor of that State can make the request. If the fishery is subject to the jurisdiction of

two or more states, the Governors of those States shall make a joint request. No Governor of a State may make a request, or join in making a request, until the State conducts a public hearing about the request.

(e) For a fishery under the direct management authority of the Secretary, NMFS may conduct a program on NMFS' own motion by fulfilling the requirements of this subpart that reasonably apply to a program not initiated by a request.

(f) Where necessary to accommodate special circumstances in a particular fishery, NMFS may waive, as NMFS deems necessary and appropriate, compliance with any specific requirements under this subpart not required by statute.

[65 FR 31443, May 18, 2000, as amended at 75 FR 62328, Oct. 8, 2010]

§ 600.1002 General requirements.

(a) Each program must be:

(1) Necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the reduction fishery;

(2) Accompanied by the appropriate environmental, economic and/or socioeconomic analyses, in accordance with applicable statutes, regulations, or other authorities; and

(3) Consistent with the CFMP, including any reduction amendment, for the reduction fishery.

(b) Each CFMP for a reduction fishery must:

(1) Prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet;

(2) Establish a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(3) Include, for a financed program in a reduction fishery involving only a portion of a fishery, appropriate provisions for the post-reduction allocation of fish between the reduction fishery and the rest of the fishery that both protect the borrower's reduction investment in the program and support the borrower's ability to repay the reduction loan.

(c) The Secretary may not make a fishing capacity reduction program payment with respect to a reduction vessel that will not be scrapped unless the Secretary certifies that the vessel will not be used for fishing in the waters of the U.S., a foreign nation, or on the high seas.

[65 FR 31443, May 18, 2000, as amended at 75 FR 62328, Oct. 8, 2010]

§ 600.1003 Content of a request for a financed program.

A request for a financed program shall:

(a) Specify the reduction fishery.

(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Specify whether the program is to be wholly or partially financed and, if the latter, specify the amount and describe the availability of all funding from sources other than a reduction loan.

(d) Project the availability of all Federal appropriation authority or other funding, if any, that the financed program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(f) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b).

(g) If a reduction amendment is necessary, include an actual reduction amendment or the requester's endorsement in principle of the reduction amendment specifications in the business plan. Endorsement in principle is non-binding.

(h) Request that NMFS conduct, at the appropriate time, a referendum under § 600.1010 of this subpart.

(i) List the names and addresses of record of all fishing permit or fishing

vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester. The list shall take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves. The list may include any relevant information that NMFS may supply to the requester.

(j) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (i) of this section.

(k) Specify the criteria for determining the types and number of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(1) The characteristics of the fishery;

(2) Whether the program is limited to a particular gear type within the reduction fishery or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor;

(3) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels;

(4) The reduction amendment required;

(5) The needs of fishing communities;

(6) Minimizing the program's reduction cost; and

(7) All other relevant factors.

(l) Include the requester's assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts.

(m) Include any other information or guidance that would assist NMFS in developing an implementation plan and implementation regulations.

(n) Include a business plan, prepared by, or on behalf of, knowledgeable and concerned harvesters in the reduction fishery, that:

(1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least reduction cost and in the minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Establish the appropriate point for NMFS to conduct a pre-bidding referendum and be sufficiently detailed to enable NMFS to readily:

(A) Design, propose, and adopt a timely and reliable implementation plan,

(B) Propose and issue timely and reliable implementation regulations,

(C) Invite bids,

(D) Accept or reject bids, and

(E) Complete a program in accordance with this subpart, and

(ii) Address, consistently with this subpart:

(A) The contents and terms of invitations to bid,

(B) Bidder eligibility,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids,

(E) The terms of bid acceptances,

(F) Any referendum procedures in addition to, but consistent with, those in § 600.1010, and

(G) All other technical matters necessary to conduct a program;

(2) Projects and supports the reduction fishery's annual delivery value during the reduction loan's repayment period based on documented analysis of actual representative experience for a reasonable number of past years in the reduction fishery;

(3) Includes the fishing capacity reduction specifications upon which both the pre-bidding referendum and the bidding under § 600.1009 will be based. The reduction loan's maximum principal amount cannot, at the interest rate projected to prevail at the time of reduction, exceed the principal amount that can be amortized in 20 years by 5 percent of the projected delivery value;

(4) States the reduction loan's repayment term and the fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over its repayment term;

(5) Analyzes and demonstrates the ability to repay the reduction loan at the minimum reduction level and at various reduction-level increments reasonably greater than the minimum one, based on the:

(i) Best and most representative historical fishing revenue and expense data and any other relevant productivity measures available in the reduction fishery, and

(ii) Projected effect of the program on the post-reduction operating economics of typical harvesters in the reduction fishery, with particular emphasis on the extent to which the reduction increases the ratio of delivery value to fixed cost and improves harvesting's other relevant productivity measures;

(6) Demonstrates how the business plan's proposed program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(7) Demonstrates how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);

(8) Includes, if a reduction amendment is necessary, the reduction amendment specifications upon which the pre-bidding referendum will be based;

(9) Includes an assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts;

(10) Specifies the names and addresses of record of all fish buyers who can, after reduction, reasonably be expected to receive deliveries of fee fish. This shall be based on the best information available, including any information that NMFS may be able to supply to the business planners;

(11) Specifies, after full consultation with fish buyers, any special circumstances in the reduction fishery that may require the implementing regulations to contain provisions in addition to, or different from, those contained in § 600.1013 and/or § 600.1014 in order to accommodate the circumstances of, and practices in, the reduction fishery while still fulfilling the intent and purpose of § 600.1013 and/or § 600.1014—including, but not limited to:

(i) In the case of reduction fisheries in which state data confidentiality laws or other impediments may negatively affect the efficient and effective conduct of the same, specification of who needs to take what action to resolve any such impediments, and

(ii) In the case of reduction fisheries in which some fish sellers sell unprocessed, and other fish sellers sell processed fish to fish buyers, specification of an accurate and efficient method of establishing the delivery value of processed fish; and

(12) Demonstrates by a survey of potential voters, or by any other convincing means, a substantial degree of potential voter support for the business plan and confidence in its feasibility.

(o) Include the requester's statement of belief that the business plan, the CFMP, the reduction amendment specifications, and all other request aspects constitute a complete, realistic, and practical prospect for successfully completing a program in accordance with this subpart.

§ 600.1004 Accepting a request for, and determinations about initiating, a financed program.

(a) *Accepting a request.* Once it receives a request, NMFS will review any request for a financed program to determine whether the request conforms with the requirements of § 600.1003. If the request does not conform, NMFS will return the request with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the FEDERAL REGISTER requesting public comments on the request. Such notice shall state the name and address of record of each eligible voter, as well as the basis for having determined the eligibility of those voters. This shall constitute notice and opportunity to respond about

adding eligible voters, deleting ineligible voters, and/or correcting any voter's name and address of record. If, in NMFS' discretion, the comments received in response to such notice warrants it, or other good cause warrants it, NMFS may modify such list by publishing another notice in the FEDERAL REGISTER.

(b) *Determination about initiating a financed program.* After receipt of a conforming request for a financed program, NMFS will, after reviewing and responding to any public comments received in response to the notice published in the FEDERAL REGISTER under paragraph (a) of this section, initiate the program if NMFS determines that:

(1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);

(3) The program, if successfully implemented, is cost effective;

(4) The reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart and the borrower is capable of repaying the reduction loan. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart; and

(5) The program accords with all other applicable law.

§ 600.1005 Content of a request for a subsidized program.

A request for a subsidized program shall:

(a) Specify the reduction fishery.

(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Project the reduction cost, the amount of reduction cost to be funded by Federal appropriations, and the amount, if any, to be funded by other sources.

(d) Project the availability of Federal appropriations or other funding, if any, that completion of the program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester, including any information that NMFS may supply to the requester, and take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves.

(f) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (e) of this section.

(g) Include a preliminary development plan that:

(1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least cost and in a minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Be sufficiently detailed to enable NMFS to prepare a final development plan to serve as the basis for NMFS to readily design, propose, and adopt a timely and reliable implementation plan and propose and issue timely and reliable implementation regulations, and

(ii) Include:

(A) The contents and terms of invitations to bid,

(B) Eligible bidders,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids, and

(E) The terms of bid acceptances;

(2) Specifies the criteria for determining the types and numbers of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(i) The characteristics of the fishery,

(ii) Whether the program is limited to a particular gear type within the reduction fishery, or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor,

(iii) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels,

(iv) The reduction amendment required,

(v) The needs of fishing communities, and

(vi) The need to minimize the program's reduction cost; and

(3) Demonstrates the program's cost effectiveness.

(h) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(i) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2).

(j) Specify any other information or guidance that assists NMFS in preparing a final development plan and a proposed implementation plan and proposed implementation regulations.

(k) Include the requester's statement of belief that the program constitutes a reasonably realistic and practical prospect for successfully completing a program in accordance with this subpart.

§ 600.1006 Accepting a request for, and determinations about conducting, a subsidized program.

(a) *Accepting a request.* NMFS will review any request for a subsidized program submitted to NMFS to determine whether the request conforms with the requirements of § 600.1005. If the request does not conform, NMFS will return it with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the FEDERAL REGISTER requesting public comments about the request.

(b) *Final development plan.* After receipt of a conforming request, NMFS will prepare a final development plan if NMFS determines that the reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart. NMFS will, as far as possible, base the final development plan on the requester's preliminary development plan. Before completing the final development plan, NMFS will consult, as NMFS deems necessary, with the requester, Federal agencies, state and regional authorities, affected fishing communities, participants in the reduction fishery, conservation organizations, and other interested parties in preparing the final development plan.

(c) *Reaffirmation of the request.* After completing the final development plan, NMFS will submit the plan to the requester for the requester's reaffirmation of the request. Based on the final development plan, the reaffirmation shall: (1) Certify that the final development plan meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) Certify that the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) Project the date on which the requester will forward any necessary reduction amendment and, if the requester is a Council, proposed regulations to implement the reduction amendment. The requester shall base any necessary reduction amendment on the final development plan.

(d) *Determinations about conducting a subsidized program.* After NMFS' receipt of the requester's reaffirmation, any required reduction amendment, and any proposed regulations required to implement the amendment, NMFS will initiate the program if NMFS determines that:

(1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) The program is reasonably capable of being successfully implemented;

(4) The program, if successfully implemented, will be cost effective; and

(5) The program is in accord with all other applicable provisions of the Magnuson-Stevens Act and this subpart.

§ 600.1007 Reduction amendments.

(a) Each reduction amendment may contain provisions that are either dependent upon or independent of a program. Each provision of a reduction amendment is a dependent provision unless the amendment expressly designates the provision as independent.

(b) Independent provisions are effective without regard to any subsequent program actions.

(c) Dependent provisions are initially effective for the sole limited purpose of enabling initiation and completion of the pre-reduction processing stage of a program.

(d) All dependent provisions of a reduction amendment for a financed program are fully in force and effect for all other purposes only when NMFS either:

(1) For bidding results that conform to the fishing capacity reduction specifications and are not subject to any other condition, notifies bidders, under § 600.1009(e)(3), that reduction contracts then exist between the bidders and the United States; or

(2) For bidding results that do not conform to the fishing capacity reduction specifications or are subject to any other condition, notifies bidders whose bids NMFS had conditionally accepted, under § 600.1010 (d)(8)(iii), that the condition pertaining to the reduction contracts between them and the United States is fulfilled.

(e) If NMFS does not, in accordance with this subpart and any special provisions in the implementation regulations, subsequently make all reduction payments that circumstances, in NMFS' judgment, reasonably permit NMFS to make and, thus, complete a program, no dependent provisions shall then have any further force or effect for any purpose and all final regulations involving such dependent provisions shall then be repealed.

§ 600.1008 Implementation plan and implementation regulations.

(a) As soon as practicable after deciding to initiate a program, NMFS will prepare and publish, for a 60-day public comment period, a proposed implementation plan and implementation regulations. During the public comment period, NMFS will conduct a public hearing of the proposed implementation plan and implementation regulations in each state that the program affects.

(b) To the greatest extent practicable, NMFS will base the implementation plan and implementation regulations for a financed program on the business plan. The implementation plan for a financed program will describe in detail all relevant aspects of implementing the program, including:

(1) The reduction fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The maximum reduction loan amount, if different from the maximum reduction cost;

(5) The reduction cost funding, if any, other than a reduction loan;

(6) The minimum acceptable reduction level;

(7) The potential amount of the fee;

(8) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;

(9) The invitation to bid and bidding procedures;

(10) The criteria for determining bid acceptance;

(11) The referendum procedures; and

(12) Any relevant post-referendum reduction procedures other than those in the implementation regulations or this subpart.

(c) NMFS will base each implementation plan and implementation regulations for a subsidized program on the final development plan. The implementation plan will describe in detail all relevant aspects of implementing the program, including:

(1) The reduction fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The reduction-cost funding, if any, other than Federal appropriations;

(5) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;

(6) The invitation to bid and bidding procedures;

(7) The criteria for determining bid acceptance; and

(8) Any relevant post-bidding program procedures other than those in the implementation regulations or this subpart.

(d) The implementation regulations will:

(1) Specify, for invitations to bid, bids, and reduction contracts under § 600.1009:

(i) Bidder eligibility,

(ii) Bid submission requirements and procedures,

(iii) A bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iv) A bid expiration date after which the irrevocable offer contained in each bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(v) The manner of bid submission and the information each bidder shall supply for NMFS to deem a bid responsive,

(vi) The conditions under which NMFS will accept or reject a bid,

(vii) The manner in which NMFS will accept or reject a bid, and

(viii) The manner in which NMFS will notify each bidder of bid acceptance or rejection;

(2) Specify any other special referendum procedures or criteria; and

(3) Specify such other provisions, in addition to and consistent with those in this subpart, necessary to regulate the individual terms and conditions of each program and reduction loan. This includes, but is not limited to:

(i) Provisions for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with § 600.1013 and § 600.1014,

(ii) Prospective fee rate determinations, and

(iii) Any other aspect of fee payment, collection, deposit, disbursement, accounting, record keeping, and/or reporting.

(e) NMFS will issue final implementation regulations and adopt a final implementation plan within 45 days of the close of the public-comment period.

(f) NMFS may repeal the final implementation regulations for any program if:

(1) For a financed program, the bidding results do not conform to the fishing capacity reduction specifications or a post-bidding referendum does not subsequently approve an industry fee system based on the bidding results;

(2) For a subsidized program, NMFS does not accept bids; and

(3) For either a financed program or a subsidized program, if NMFS is unable to make all reduction payments due to a material adverse change.

§ 600.1009 Bids.

(a) Each invitation to bid, bid, bid acceptance, reduction contract, and bidder—or any other party in any way affected by any of the foregoing—under this subpart is subject to the terms and conditions in this section:

(1) Each invitation to bid constitutes the entire terms and conditions of a reduction contract under which:

(i) Each bidder makes an irrevocable offer to the United States of fishing capacity for reduction, and

(ii) NMFS accepts or rejects, on behalf of the United States, each bidder's offer;

(2) NMFS may, at any time before the bid expiration date, accept or reject any or all bids;

(3) For a financed program in which bidding results do not conform to the fishing capacity reduction specifications, NMFS' acceptance of any bid is subject to the condition that the industry fee system necessary to repay the reduction loan is subsequently approved by a successful post-bidding referendum conducted under § 600.1010. Approval or disapproval of the industry fee system by post-bidding referendum is an event that neither the United States nor the bidders can control. Disapproval of the industry fee system by an unsuccessful post-bidding referendum fully excuses both parties

from any performance and fully discharges all duties under any reduction contract;

(4) For a financed program in one reduction fishery that is being conducted under appropriate implementation regulations simultaneously with another financed program in another reduction fishery, where the acceptance of bids for each financed program is conditional upon successful post-bidding referenda approving industry fee systems for both financed programs, NMFS' acceptance of all bids is, in addition to any condition under paragraph (a)(3) of this section, also subject to the additional conditions that both referenda approve the industry fee systems required for both financed programs—all as otherwise provided in paragraph (a)(3) of this section;

(5) Upon NMFS' acceptance of the bid and tender of a reduction payment, the bidder consents to:

(i) The revocation, by NMFS, of any reduction permit, and

(ii) Where the program also involves the withdrawal of reduction vessels from fishing:

(A) Title restrictions imposed by the U.S. Coast Guard on any reduction vessel that is Federally documented to forever prohibit and effectively prevent any future use of the reduction vessel for fishing:

(*1*) In any area subject to the jurisdiction of the United States, or any state, territory, commonwealth, or possession of the United States, or

(*2*) On the high seas, or

(*3*) In the waters of a foreign nation; or

(B) Scrapping of all reduction vessels involved in a fishing capacity reduction program, unless the reduction program vessel has been certified by the Secretary, and the requirements established under § 600.1002(c) are met. Where reduction vessel scrapping is involved and the reduction vessel's owner does not comply with the owner's obligation under the reduction contract to scrap the reduction vessel, the Secretary may take such measures as necessary to cause the reduction vessel's prompt scrapping. The scrapping will be at the reduction vessel owner's risk and expense. Upon completion of scrapping, NMFS will take such action as may be necessary to recover from the reduction vessel owner any cost, damages, or other expense NMFS incurred in the scrapping of the reduction vessel.

(6) Money damages not being an adequate remedy for a bidder's breach of a reduction contract, the United States is, in all particulars, entitled to specific performance of each reduction contract. This includes, but is not limited to, the scrapping of a reduction vessel;

(7) Any reduction payment is available, upon timely and adequately documented notice to NMFS, to satisfy liens, as allowed by law, against any reduction permit/and or reduction vessel; provided, however, that:

(i) No reduction payment to any bidder either relieves the bidder of responsibility to discharge the obligation which gives rise to any lien or relieves any lien holder of responsibility to protect the lien holder's interest,

(ii) No reduction payment in any way gives rise to any liability of the United States for the obligation underlying any lien,

(iii) No lien holder has any right or standing, not otherwise provided by law, against the United States in connection with the revocation of any reduction permit or the title restriction or scrapping of any reduction vessel under this subpart, and

(iv) This subpart does not provide any lien holder with any right or standing to seek to set aside any revocation of any reduction permit or the title restriction or scrapping of any reduction vessel for which the United States made, or has agreed to make, any reduction payment. A lien holder is limited to recovery against the holder of the reduction permit or the owner of the reduction vessel as otherwise provided by law; and

(8) Each invitation to bid may specify such other terms and conditions as NMFS believes necessary to enforce specific performance of each reduction contract or otherwise to ensure completing each program. This includes, but is not limited to, each bidder's certification, subject to the penalties in § 600.1017, of the bidder's full authority to submit each bid and to dispose of the property involved in the bid in the

manner contemplated by each invitation to bid.

(b) NMFS will not invite bids for any program until NMFS determines that:

(1) Any necessary reduction amendment is fully and finally approved and all provisions except those dependent on the completion of reduction are implemented;

(2) The final implementation plan is adopted and the final implementation regulations are issued;

(3) All required program funding is approved and in place, including all Federal appropriation and apportionment authority;

(4) Any reduction loan involved is fully approved;

(5) Any non-Federal funding involved is fully available at the required time for NMFS disbursement as reduction payments; and

(6) All other actions necessary to disburse reduction payments, except for matters involving bidding and post-bidding referenda, are completed.

(c) After making the affirmative determinations required under paragraph (b) of this section, NMFS will publish a FEDERAL REGISTER notice inviting eligible bidders to offer to the United States, under this subpart, fishing capacity for reduction.

(d) NMFS may extend a bid closing date and/or a bid expiration date for a reasonable period. NMFS may also issue serial invitations to bid if the result of previous bidding, in NMFS' judgment, warrant this.

(e) After the bid expiration date, NMFS will:

(1) Analyze responsive bids;

(2) Determine which bids, if any, NMFS accepts; and

(3) Notify, by U.S. mail at each bidder's address of

record, those bidders whose bids NMFS accepts that a reduction contract now exists between them and the United States—subject, where appropriate, to the conditions provided for elsewhere in this subpart.

(f) NMFS will keep confidential the identity of all bidders whose bids NMFS does not accept. In financed programs where bidding results do not conform to the fishing capacity reduction specifications, NMFS also will keep confidential the identity of all bidders whose bids NMFS does accept until after completing a successful post-bidding referendum under § 600.1010.

[65 FR 31443, May 18, 2000, as amended at 75 FR 62329, Oct. 8, 2010]

§ 600.1010 Referenda.

(a) *Referendum success.* A referendum is successful if at least a majority of the permit holders in the fishery who participate in the fishery cast ballots in favor of an industry fee system.

(b) *Pre-bidding referendum*—(1) *Initial referendum.* An initial pre-bidding referendum shall be conducted for each financed program. The business plan shall, subject to this subpart, determine the chronological relationship of the initial pre-bidding referendum to other pre-bidding aspects of the reduction process sequence. The initial pre-bidding referendum shall be based on the fishing capacity reduction specifications. If the initial pre-bidding referendum precedes the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the reduction amendment specifications. If the initial pre-bidding referendum follows the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the adopted reduction amendment;

(2) *Successful initial pre-bidding referendum.* If the initial pre-bidding referendum is successful, the reduction process will proceed as follows:

(i) If the initial pre-bidding referendum follows reduction amendment adoption, no second pre-bidding referendum shall be conducted,

(ii) If the initial pre-bidding referendum precedes reduction amendment adoption, a second pre-bidding referendum shall be conducted if, in NMFS' judgment, the reduction amendment subsequently adopted differs, in any respect materially affecting the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan, from the reduction amendment specifications upon which the initial pre-bidding referendum successfully occurred. The sole purpose of any second pre-bidding referendum shall be to determine whether the voters authorize

an industry fee system despite any such difference between the reduction amendment specifications and a subsequently adopted reduction amendment.

(3) *Unsuccessful initial pre-bidding referendum.* If the initial pre-bidding referendum is unsuccessful, the reduction process will either cease or NMFS may suspend the process pending an appropriate amendment of the business plan and the request.

(c) *Post-bidding referendum.* A post-bidding referendum shall occur only if, in NMFS' judgment, the result of bidding under §600.1009 does not conform, in any material respect, to the fishing capacity reduction specifications and such result justifies, in NMFS' judgment, conducting a post-bidding referendum. Bidding that results in reducing fishing capacity in any amount not less than the minimum fishing capacity reduction amount for any reduction loan amount not more than the maximum reduction loan amount, and otherwise achieves all material requirements of the fishing capacity reduction specifications, shall conform to the fishing capacity reduction specifications. The sole purpose of any post-bidding referendum shall be to determine whether voters authorize an industry fee system for bidding that results in reducing fishing capacity in any amount materially less than the minimum amount in the fishing capacity reduction specifications.

(d) NMFS will conduct referenda in accordance with the following:

(1) *Eligible voters.* The parties eligible to vote in each referendum are the parties whose names are listed as being eligible to vote in the notice published in the FEDERAL REGISTER under §600.1004(a);

(2) *Ballot issuance.* NMFS will mail, by U.S. certified mail, return receipt requested, a ballot to each eligible voter. Each ballot will bear a randomly derived, 5-digit number assigned to each eligible voter. Each ballot will contain a place for the voter to vote for or against the proposed industry fee system and a place, adjacent to the 5-digit number, for the signature of the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf. Each ballot will contain a place for the person signing the ballot to print his or her name. NMFS will enclose with each ballot a specially-marked, postage-paid, pre-addressed envelope that each voter shall use to return the ballot to NMFS;

(3) *Voter certification.* Each ballot will contain a certification, subject to the penalties set forth in §600.1017, that the person signing the ballot is the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf;

(4) *Information included on a ballot.* Each ballot mailing will:

(i) Summarize the referendum's nature and purpose,

(ii) Specify the date by which NMFS must receive a ballot in order for the ballot to be counted as a qualified vote,

(iii) Identify the place on the ballot for the voter to vote for or against the proposed industry fee system, the place on the ballot where the voter shall sign the ballot, and the purpose of the return envelope,

(iv) For each pre-bidding referendum, state:

(A) The fishing capacity reduction specifications,

(B) The reduction loan's repayment term, and

(C) The fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over the loan's term,

(v) For each initial pre-bidding referendum that precedes reduction amendment adoption, state the reduction amendment specifications,

(vi) For each initial pre-bidding referendum that follows reduction amendment adoption, summarize the material aspects of the reduction amendment adopted,

(vii) For each second pre-bidding referendum, summarize how the adopted reduction amendment materially differs from the reduction amendment specifications upon which a successful initial pre-bidding referendum occurred

and how this material difference affects the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan,

(viii) For each post-bidding referendum, specify the actual bidding results that do not conform to the fishing capacity reduction specifications, and

(ix) State or include whatever else NMFS deems appropriate;

(5) *Enclosures to accompany a ballot.* Each ballot mailing will include:

(i) A specially-marked, postage-paid, and pre-addressed envelope that a voter must use to return the original of a ballot to NMFS by whatever means of delivery the voter chooses, and

(ii) Such other materials as NMFS deems appropriate;

(6) *Vote qualification.* A completed ballot qualifies to be counted as a vote if the ballot:

(i) Is physically received by NMFS on or before the last day NMFS specifies for receipt of the ballot,

(ii) Is cast for or against the proposed industry fee system,

(iii) Is signed by the voter,

(iv) Is the original ballot NMFS sent to the voter bearing the same 5-digit number that NMFS assigned to the voter, and

(v) Was returned to NMFS in the specially-marked envelope that NMFS provided for the ballot's return;

(6) *Vote tally and notification.* NMFS will:

(i) Tally all ballots qualified to be counted as referendum votes,

(ii) Notify, by U.S. mail at the address of record, all eligible voters who received ballots of:

(A) The number of potential voters,

(B) The number of actual voters who returned a ballot,

(C) The number of returned ballots that qualified to be counted as referendum votes,

(D) The number of votes for and the number of votes against the industry fee system, and

(E) Whether the referendum was successful and approved the industry fee system or unsuccessful and disapproved the industry fee system, and

(iii) If a successful referendum is a post-bidding referendum, NMFS will, at the same time and in the same manner, also notify the bidders whose bids were conditionally accepted that the condition pertaining to the reduction contracts between them and the United States is fulfilled;

(7) *Conclusiveness of referendum determinations.* NMFS' determinations about ballot qualifications and about all other referendum matters, including, but not limited to, eligible voters and their addresses of record, are conclusive and final as of the date NMFS makes such determinations. No matter respecting such determinations shall impair, invalidate, avoid, or otherwise render unenforceable any referendum, reduction contract, reduction loan, or fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan;

(8) *Ballot confidentiality.* NMFS will not voluntarily release the name of any party who voted. NMFS will restrict the availability of all voter information to the maximum extent allowed by law; and

(9) *Conclusive authorization of industry fee system.* Each successful referendum conclusively authorizes NMFS' imposition of an industry fee system—including the fee payment, collection, and other provisions regarding fee payment and collection under § 600.1013 and § 600.1014—to repay the reduction loan for each financed program that NMFS conducts under this subpart.

[65 FR 31443, May 18, 2000, as amended at 75 FR 62329, Oct. 8, 2010]

§ 600.1011 Reduction methods and other conditions.

(a) *Reduction permits or reduction permits and reduction vessels.* Each program may involve either the surrender and revocation of reduction permits or both the surrender and revocation of reduction permits and the withdrawal from fishing either by title restriction or by scrapping of reduction vessels. No financed program may, however, require such title restriction or scrapping of reduction vessels unless the business plan voluntarily includes the same.

(b) *Reduction permit revocation and surrender.* Each reduction permit is, upon NMFS' tender of the reduction payment for the reduction permit, forever revoked. Each reduction permit

holder shall, upon NMFS' tender of the reduction payment, surrender the original reduction permit to NMFS. The reduction permit holder, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction permit and with the fishing vessel that was used to harvest fishery resources under the reduction permit that could qualify the reduction permit holder or the fishing vessel owner for any present or future limited access system fishing permit in the reduction fishery.

(c) *Reduction vessel title restriction or scrapping*. For each program that involves reduction vessel title restriction or scrapping:

(1) Each reduction vessel that is subject to title restriction only and is thus not required to be scrapped, is, upon NMFS' tender of the reduction payment, forever prohibited from any future use for fishing in any area subject to the jurisdiction of the United States or any State, territory, possession, or commonwealth of the United States. NMFS will request that the U.S. Coast Guard permanently restrict each such reduction vessel's title to exclude the reduction vessel's future use for fishing in any such area;

(2) Each reduction vessel owner whose reduction vessel is required to be scrapped shall, upon NMFS' tender of the reduction payment, immediately cease all further use of the reduction vessel and arrange, without delay and at the reduction vessel owner's expense, to scrap the reduction vessel to NMFS' satisfaction, including adequate provision for NMFS to document the physical act of scrapping; and

(3) Each reduction vessel owner, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction vessel and with the reduction permit that could qualify the reduction vessel owner or the reduction permit holder for any present or future limited access system fishing permit in the reduction fishery.

(d) *Fishing permits in a non-reduction fishery*. A financed program that does not involve the withdrawal from fishing or scrapping of reduction vessels may not require any holder of a reduction permit in a reduction fishery to surrender any fishing permit in any non-reduction fishery or restrict or revoke any fishing permit other than a reduction permit in the reduction fishery, except those fishing permits authorizing the incidental harvesting of species in any non-reduction fishery during, and as a consequence of, directed fishing for species in the reduction fishery.

(e) *Reduction vessels disposition*. Where a business plan requires the withdrawal from fishing of reduction vessels as well as the revocation of reduction permits:

(1) Each reduction vessel that is not documented under Federal law must in every case always be scrapped, without regard to whether a program is a financed program or a subsidized program;

(2) No financed program may require any disposition of a reduction vessel documented under Federal law other than the title restriction in paragraph (b) of this section unless the business plan volunteers to do otherwise; and

(3) Any subsidized program may require the scrapping of reduction vessels documented under Federal law.

(f) *Reduction payments*. NMFS will disburse all reduction payments in the amount and in the manner prescribed in reduction contracts, except reduction payments that a bidder's reduction-contract nonperformance prevents NMFS from disbursing. In financed programs, the reduction loan's principal amount is the total amount of all reduction payments that NMFS disburses from the proceeds of a reduction loan. Any reduction payment that NMFS, because of a bidder's reduction-contract nonperformance, disburses but subsequently recovers, shall reduce the principal amount of the reduction loan accordingly.

(g) *Effect of reduction-contract nonperformance*. No referendum, no reduction contract, no reduction loan, and no fee payment and collection obligation under §600.1013 and §600.1014 necessary to repay any reduction loan, shall be impaired, invalidated, avoided, or otherwise rendered unenforceable by virtue of any reduction contract's nonperformance. This is without regard to the cause of, or reason for, nonperformance. NMFS shall endeavor to enforce

the specific performance of all reduction contracts, but NMFS' inability, for any reason, to enforce specific performance for any portion of such reduction contracts shall not relieve fish sellers of their obligation to pay, and fish buyers of their obligation to collect, the fee necessary to fully repay the full reduction loan balance that results from all reduction payments that NMFS actually makes and does not recover.

(h) *Program completion.* Other than the payment and collection of the fee that repays a reduction loan and any other residual matters regarding reduction payments and the disposition of reduction permits and reduction vessels, a program shall be completed when NMFS tenders or makes all reduction payments under all reduction contracts that circumstances, in NMFS' judgment, reasonably permit NMFS to make.

§ 600.1012 Reduction loan.

(a) *Obligation.* The borrower shall be obligated to repay a reduction loan. The borrower's obligation to repay a reduction loan shall be discharged by fish sellers paying a fee in accordance with § 600.1013. Fish buyers shall be obligated to collect the fee in accordance with § 600.1013 and to deposit and disburse the fee revenue in accordance with § 600.1014.

(b) *Principal amount, interest rate, repayment term, and penalties for non-payment or non-collection.* The reduction loan shall be:

(1) In a principal amount that shall be determined by subsequent program events under this subpart, but which shall not exceed the maximum principal amount in the fishing capacity reduction specifications;

(2) At an annual rate, that shall be determined by subsequent events, of simple interest on the reduction loan's principal balance that shall equal 2 percent plus the Treasury percentage;

(3) Repayable over the repayment term specified in the business plan or otherwise determined by subsequent events; and

(4) Subject to such provisions as implementation regulations shall specify for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and § 600.1014.

(c) *Effect of prospective interest rate.* Any difference between a prospective interest rate projected, for the purpose of any aspect of reduction planning or processing under this subpart, before the U.S. Treasury determines the Treasury percentage and an interest rate first known after the U.S. Treasury determines the Treasury percentage shall not void, invalidate, or otherwise impair any reduction contract, any reduction loan repayment obligation, or any other aspect of the reduction process under this subpart. Should any such difference result in a reduction loan that cannot, at the maximum fee rate allowed by law, be repaid, as previously projected, within the maximum maturity, any amount of the reduction loan remaining unpaid at maturity shall be repaid after maturity by continuing fee payment and collection under this subpart at such maximum fee rate until the reduction loan's unpaid principal balance and accrued interest is fully repaid. The above notwithstanding, at the discretion of the Secretary, the reduction contract can be voided if a material adverse change affects the reduction contract, reduction loan obligation, or any other aspect of the reduction process under this subpart.

§ 600.1013 Fee payment and collection.

(a) *Amount.* The fee amount is the delivery value times the fee rate.

(b) *Rate.* NMFS will establish the fee rate. The fee rate may not exceed 5 percent of the delivery value. NMFS will establish the initial fee rate by calculating the fee revenue annually required to amortize a reduction loan over the reduction loan's term, projecting the annual delivery value, and expressing such fee revenue as a percentage of such delivery value. Before each anniversary of the initial fee rate determination, NMFS will recalculate the fee rate reasonably required to ensure reduction loan repayment. This will include any changed delivery value projections and any adjustment required to correct for previous delivery values higher or lower than projected.

(c) *Payment and collection.* (1) The full fee is due and payable at the time of

fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying, or promising to pay, the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value, or the fish buyer's promise to pay the net delivery value, rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(2) In the event of any post-delivery payment for fee fish—including, but not limited to bonuses—whose amount depends on conditions that cannot be known until after fish delivery, that either first determines the delivery value or later increases the previous delivery value, the fish seller shall pay, and the fish buyer shall collect, at the time the amount of such post-delivery payment first becomes known, the fee that would otherwise have been due and payable as if the amount of the post-delivery payment had been known, and as if the post-delivery payment had consequently occurred, at the time of initial fish delivery;

(3)(i) Each fish seller shall be deemed to be, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, both the fish seller and the fish buyer, and shall be responsible for all requirements and liable for any penalties under this subpart applicable to fish sellers and/or fish buyers, each time that a fish seller sells fee fish to:

(A) Any party whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) Any party who is a general foodservice wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other party not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, either with or without processing the fish, or

(C) Any other party who the fish seller has good reason to believe is a party not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, record keeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(4) Fee payment begins on the date NMFS specifies under the notification procedures of paragraph (d) of this section and continues without interruption at the fee rates NMFS specifies in accordance this subpart until NMFS determines that the reduction loan is fully repaid. If a reduction loan is, for any reason, not fully repaid at the maturity of the reduction loan's original amortization period, fee payment and collection shall continue until the reduction loan is fully repaid, notwithstanding that the time required to fully repay the reduction loan exceeds the reduction loan's initially permissible maturity.

(d) *Notification*. (1) At least 30 days before the effective date of any fee or of any fee rate change, NMFS will publish a FEDERAL REGISTER notice establishing the date from and after which the fee or fee rate change is effective. NMFS will then also send, by U.S. mail, an appropriate notification to each affected fish seller and fish buyer of whom NMFS has notice;

(2) When NMFS determines that a reduction loan is fully repaid, NMFS will publish a FEDERAL REGISTER notice that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send, by U.S. mail, notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(3) If NMFS fails to notify a fish seller or a fish buyer by U.S. mail, or if the fish seller or fish buyer otherwise does not receive the notice, of the date fee payments start or of the fee rate in effect, each fish seller is, nevertheless, obligated to pay the fee at the fee rate

in effect and each fish buyer is, nevertheless, obligated to collect the fee at the fee rate in effect.

(e) *Failure to pay or collect.* (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish that the fish seller delivered, and

(iv) The fish buyer's reason, if known, for refusing to collect the fee in accordance with this subpart;

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next 7 calendar days, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish the fish seller delivered or attempted to deliver,

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(v) The fish seller's reason, if known, for refusing to pay the fee in accordance with this subpart.

(f) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee payment and/or collection provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section, NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

§ 600.1014 Fee collection deposits, disbursements, records, and reports.

(a) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement.* On the last business day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to the Fund subaccount to which the deposit principal relates. The fish buyer shall mail each such check to the Fund subaccount lockbox that NMFS establishes for the receipt of the disbursements for each

program. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the Fund subaccount lockbox and the manner and form of settlement sheet by means of the notification in § 600.1013(d).

(d) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(i) The date of delivery,

(ii) The seller's identity,

(iii) The weight, number, or volume of each species of fee fish delivered,

(iv) The identity of the fishing vessel that delivered the fee fish,

(v) The delivery value of each species of fee fish,

(vi) The net delivery value,

(vii) The identity of the party to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value was paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the Fund's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* In each year, on the date to be specified in each implementation regulation, succeeding the year during which NMFS first implemented a fee, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year, or whatever longer period may be involved in the first annual report, for all fee fish each fish buyer purchases from fish sellers: (1) Total weight, number, or volume bought;

(2) Total delivery value paid;

(3) Total fee amounts collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to each Fund lockbox account;

(6) Total amount of interest earned on deposits; and

(7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section. If any state law or regulation prohibits fish buyers, or fish sellers where appropriate, from keeping, for the purpose of complying with any requirement of this section, separate records that involve some or all of the same data elements as the landing records that the fish buyers also keep, for state purposes and under state law or regulation, then a financed reduction program will not be possible.

(g) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of reduction loans, the financial records of fish buyers and fish sellers in each reduction fishery in order to ensure proper fee payment, collection, deposit, disbursement, accounting, record keeping, and reporting. Fish buyers and fish sellers shall make all records of all program transactions involving post-reduction fish harvests, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, record keeping, and reporting available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the pounds of fee fish that each fish buyer

buys from each fish seller each time that each fish buyer does so and each price that each fish buyer then pays to each fish seller for the fee fish) are essential audit documentation.

(h) *Confidentiality of records.* NMFS and NMFS' auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes).

(i) *Refunds.* When NMFS determines that a reduction loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(j) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee collection deposit, disbursement, or records provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section, NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

§ 600.1015 Late charges.

The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

§ 600.1016 Enforcement.

In accordance with applicable law or other authority, NMFS may take appropriate action against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

§ 600.1017 Prohibitions and penalties.

(a) The following activities are prohibited, and it is unlawful for any party to:

(1) Vote in any referendum under this subpart if the party is ineligible to do so;

(2) Vote more than once in any referendum under this subpart;

(3) Sign or otherwise cast a ballot on behalf of a voter in any referendum under this subpart unless the voter has fully authorized the party to do so and doing so otherwise comports with this subpart;

(4) Interfere with or attempt to hinder, delay, buy, or otherwise unduly or unlawfully influence any eligible voter's vote in any referendum under this subpart;

(5) Submit a fraudulent, unauthorized, incomplete, misleading, unenforceable by specific performance, or inaccurate bid in response to an invitation to bid under this subpart or, in any other way, interfere with or attempt to interfere with, hinder, or delay, any invitation to bid, any bid submitted under any invitation to bid, any reduction contract, or any other reduction process in connection with any invitation to bid;

(6) Revoke or attempt to revoke any bid under this subpart;

(7) Fail to comply with the terms and conditions of any invitation to bid, bid, or reduction contract under this subpart, including NMFS' right under such reduction contracts to specific performance;

(8) Fail to fully and properly pay and collect any fee due payable, and collectible under this subpart or otherwise

avoid, decrease, interfere with, hinder, or delay any such payment and collection,

(9) Convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

(10) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the Fund's lockbox account—all as this subpart requires;

(11) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS-all as this subpart requires;

(12) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(13) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or it agents in the course of their activities under this subpart;

(14) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(15) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(16) Otherwise materially interfere with the efficient and effective conduct of reduction and the repayment of reduction loans under this subpart.

(b) Any party who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide—including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses—and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

(c) Additionally, NMFS may take any and all appropriate actions, including the communication of action at law, against each party responsible for the non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with §600.1013 and/or §600.1014 to enforce the United States' receipt from such party of any fee—including penalties and all costs of collection—due and owing the United States on account of the reduction loan that such party should have, but did not, pay, collect, deposit, and/or disburse in accordance with §600.1013 and/or §600.1014. All such reduction loan recoveries shall be applied to reduce the unpaid balances of reduction loans.

Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations

AUTHORITY: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117, Pub. L. 107–206, Pub. L. 108–7, Pub. L. 108–199, Pub. L. 108–447, Pub. L. 109–479, Pub. L. 110–161, Section 209 of Title II of Division B of Pub. L. 108–447, Section 121 of Pub. L. 109–447, Section 121 of Pub. L. 109–479, Pub. L. 110–161, and 46 U.S.C. 53701 *et seq.*

SOURCE: 69 FR 53361, Sept. 1, 2004, unless otherwise noted.

EFFECTIVE DATE NOTE: At 77 FR 58779, Sept. 24, 2012, the authority citation to subpart M of part 600 was revised, effective Oct. 24, 2012. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 53735, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117, Pub. L. 107–206, Pub. L. 108–7, Pub. L. 108–199, and Pub. L. 108–447.

§600.1100 [Reserved]

§600.1101 Inshore fee system for repayment of the loan to harvesters of Pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

(a) *Definition.* In addition to the definitions in the Magnuson-Stevens Act

and in § 679.2 of this title, the terms used in this subpart have the following meanings:

American Fisheries Act (AFA) means Title II of Pub.L. 105–277.

Borrower means (individually and collectively) all persons who, after January 1, 2000, harvest fee fish from the IC directed fishing allowance.

Business week means a 7-day period, Saturday through Friday.

Delivery value means the gross ex-vessel value of all fee fish at fish delivery.

Deposit principal means all collected fee revenue that a fish buyer deposits in a segregated deposit account maintained in a federally chartered national bank for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying the loan.

Fee means the six-tenths (0.6) of one cent that fish buyers deduct at fish delivery from the delivery value of each pound of round weight fee fish.

Fee fish means all pollock harvested from the IC directed fishing allowance beginning on February 10, 2000 and ending at such time as the loan's principal and interest are fully repaid.

Fish buyer means the first ex-vessel fish buyer who purchases fee fish from a fish seller.

Fish delivery means the point at which a fish buyer first takes delivery or possession of fee fish from a fish seller.

Fish seller means the harvester who catches and first sells fee fish to a fish buyer.

IC directed fishing allowance means the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

Loan means the loan authorized by section 207(a) of the AFA.

Net delivery value means the delivery value minus the fee.

Subaccount means the Inshore Component Pollock Subaccount of the Fishing Capacity Reduction Fund in the U.S. Treasury for the deposit of all funds involving the loan.

(b) *Loan*—(1) *Principal amount*. The loan's principal amount is $75,000,000 (seventy five million dollars).

(2) *Interest*. Interest shall, from December 30, 1998, when NMFS disbursed the loan, until the date the borrower fully repays the loan, accrue at a fixed rate of 7.09 percent. Interest shall be simple interest and shall accrue on the basis of a 365-day year.

(3) *Repayment*. The fee shall be the exclusive source of loan repayment. The fee shall be paid on all fee fish.

(4) *Application of fee receipts*. NMFS shall apply all fee receipts it receives, first, to payment of the loan's accrued interest and, second, to reduction of the loan's principal balance.

(5) *Obligation*. The borrower shall repay the loan in accordance with the AFA and this subpart.

(c) *Fee payment and collection*—(1) *Payment and collection*. (i) The fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying or promising later to pay the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value or the fish buyer's promise later to pay the net delivery value rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(ii)(A) Each fish seller shall be deemed, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, to be both the fish seller and the fish buyer—and all requirements and penalties under this subpart applicable to both a fish seller and a fish buyer shall equally apply to the fish seller—each time that the fish seller sells fee fish to:

(*1*) Any fish buyer whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(*2*) Any fish buyer who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other fish buyer not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, or

(*3*) Any other fish buyer who the fish seller has good reason to believe is a fish buyer not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, recordkeeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(2) *Notification*. (i) NMFS will send an appropriate fee payment and collection commencement notification to each affected fish seller and fish buyer of whom NMFS has knowledge.

(ii) When NMFS determines that the loan is fully repaid, NMFS will publish a FEDERAL REGISTER notification that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send an appropriate fee termination notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(3) *Failure to pay or collect*. (i) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(A) The fish buyer's and fish seller's name, address, and telephone number,

(B) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(C) The quantity and delivery value of fee fish that the fish seller delivered, and

(D) The fish buyer's reason (if known) for refusing to collect the fee in accordance with this subpart;

(ii) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next 7 calendar days, advise NMFS in writing of the full particulars, including:

(A) The fish buyer's and fish seller's name, address, and telephone number,

(B) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(C) The quantity and delivery value of fee fish the fish seller delivered or attempted to deliver,

(D) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(E) The fish seller's reason (if known) for refusing to pay the fee in accordance with this subpart.

(d) *Fee collection deposits, disbursements, records, and reports*—(1) *Deposit accounts*. Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(2) *Fee collection deposits*. Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer has collected through a date not more than 2 calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the subaccount in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the

deposit account for the fish buyer's own use and purposes.

(3) *Deposit principal disbursement.* On the last business day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to ''NOAA Inshore Component Pollock Loan Subaccount.'' The fish buyer shall mail each such check to the subaccount lockbox account that NMFS establishes for the receipt of the disbursements of deposit principal. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the subaccount's lockbox and the manner and form of settlement sheet by means of the notification in § 600.1101(c).

(4) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(i) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(A) The date of delivery,

(B) The fish seller's identity,

(C) The round weight of fee fish delivered,

(D) The identity of the fishing vessel that delivered the fee fish,

(E) The delivery value,

(F) The net delivery value,

(G) The identity of the party to whom the net delivery value is paid, if other than the fish seller,

(H) The date the net delivery value was paid, and

(I) The total fee amount collected;

(ii) For all fee collection deposits to and disbursements from the deposit account:

(A) The dates and amounts of deposits,

(B) The dates and amounts of disbursements to the subaccount's lockbox account, and

(C) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(5) *Annual report.* By January 15, 2001, and by each January 15 thereafter until the loan is fully repaid, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year for all fee fish each fish buyer purchases from fish sellers:

(i) Total round weight bought;

(ii) Total delivery value paid;

(iii) Total fee amount collected;

(iv) Total fee collection amounts deposited by month;

(v) Dates and amounts of monthly disbursements to the subaccount lockbox;

(vi) Total amount of interest earned on deposits; and

(vii) Depository account balance at year-end.

(6) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section.

(7) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of the loan, the financial records of the fish buyers and the fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers shall make all records of all transactions involving fee fish catches, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, recordkeeping, and reporting available to NMFS or its agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the round weight pounds of fee fish that each fish buyer buys from each fish seller each time

that each fish buyer does so) are essential audit documentation.

(8) *Confidentiality of records*. NMFS and its auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart, unless otherwise required by law; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes.

(9) *Refunds*. When NMFS determines that the loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(e) *Late charges*. The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed within 5 days of the date due. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

(f) *Enforcement*. In accordance with applicable law or other authority, NMFS may take appropriate action against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

(g) *Prohibitions and penalties*. (1) The following activities are prohibited, and it is unlawful for anyone to:

(i) Avoid, decrease, interfere with, hinder, or delay payment or collection of, or otherwise fail to fully and properly pay or collect, any fee due and payable under this subpart or convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

(ii) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the subaccount's lockbox account—all as this subpart requires;

(iii) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS-all as this subpart requires;

(iv) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(v) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or it agents in the course of their activities under this subpart;

(vi) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(vii) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(viii) Otherwise materially interfere with the efficient and effective repayment of the loan.

(2) Anyone who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide (including, but not limited to: civil penalties, sanctions, forfeitures, and punishment

for criminal offenses) and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

§ 600.1102 Pacific Coast groundfish fee.

(a) *Purpose*. This section implements the fee for repaying the reduction loan financing the Pacific Coast Groundfish Program authorized by section 212 of Division B, Title II, of Public Law 108–7 and implemented by a final notification in the FEDERAL REGISTER (July 18, 2003; 68 FR 42613).

(b) *Definitions*. Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Borrower means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery, in any or all of the fee-share fisheries, or in both the reduction fishery and any or all of the fee-share fisheries.

Deposit principal means all collected fee revenue that a fish buyer deposits in an account maintained at a federally insured financial institution for the purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying the reduction loan.

Fee fish means all fish harvested from the reduction fishery during the period in which any portion of the reduction fishery's subamount is outstanding and all fish harvested from each of the fee-share fisheries during the period in which any portion of each fee-share fishery's subamount is outstanding.

Fee-share fishery means each of the fisheries for coastal Dungeness crab and pink shrimp in each of the States of California and Oregon and the fishery for coastal Dungeness crab and ocean pink shrimp in the State of Washington.

Fee-share fishery subaccount means each of the six subaccounts established in the groundfish program's fund subaccount in which each of the six fee-share fishery subamounts are deposited.

Reduction fishery means all species in, and that portion of, the limited entry trawl fishery under the Federal Pacific Coast Groundfish Fishery Management Plan that is conducted under permits, excluding those registered to whiting catcher-processors, which are endorsed for trawl gear operation.

Reduction fishery subaccount means the subaccount established in the groundfish program's fund subaccount in which the reduction fishery subamount is deposited.

Subamount means each portion of the reduction loan's original principal amount which is allocated either to the reduction fishery or to any one of the fee-share fisheries.

(c) *Reduction loan amount*. The reduction loan's original principal amount is $35,662,471.

(d) *Subamounts*. The subamounts of the reduction loan amount are:

(1) Reduction fishery, $28,428,719; and

(2) Fee-share fisheries:

(i) California coastal Dungeness crab fee-share fishery, $2,334,334,

(ii) California pink shrimp fee-share fishery, $674,202,

(iii) Oregon coastal Dungeness crab fee-share fishery, $1,367,545,

(iv) Oregon pink shrimp fee-share fishery, $2,228,845,

(v) Washington coastal Dungeness crab fee-share fishery, $369,426, and

(vi) Washington ocean pink shrimp fee-share fishery, $259,400.

(e) *Interest accrual inception*. Interest began accruing on each portion of the reduction loan amount on and from the date each such portion was disbursed.

(f) *Interest rate*. The reduction loan's interest rate is 6.97 percent. This is a fixed rate of interest for the full term of the reduction loan's life.

(g) *Repayment term*. For the purpose of determining fee rates, the reduction loan's repayment term shall be 30 years from March 1, 2004, but each fee shall continue for as long as necessary to fully repay each subamount.

(h) *Reduction loan*. The reduction loan shall be subject to the provisions of § 600.1012 of subpart L, except that:

(1) The borrower's obligation to repay the reduction loan shall be discharged by fish sellers in the reduction fishery and in each of the fee-share fisheries paying the fee applicable to

each such fishery's subamount in accordance with § 600.1013 of subpart L, and

(2) Fish buyers in the reduction fishery and in each of the fee-share fisheries shall be obligated to collect the fee applicable to each such fishery's subamount in accordance with § 600.1013 of this subpart.

(i) *Fee collection, deposits, disbursements, records, and reports.* Fish buyers in the reduction fishery and in each of the fee share fisheries shall deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery in accordance with § 600.1014 of this subpart, except that:

(1) *Deposit accounts.* Each fish buyer that this section requires to collect a fee shall maintain an account at a federally insured financial institution for the purpose of depositing collected fee revenue and disbursing the deposit principal directly to NMFS in accordance with paragraph (i)(3) of this section. The fish buyer may use this account for other operational purposes as well, but the fish buyer shall ensure that the account separately accounts for all deposit principal collected from the reduction fishery and from each of the six fee-share fisheries. The fish buyer shall separately account for all fee collections as follows:

(i) All fee collections from the reduction fishery shall be accounted for in a reduction fishery subaccount,

(ii) All fee collections from the California pink shrimp fee-share fishery shall be accounted for in a California shrimp fee-share fishery subaccount,

(iii) All fee collections from the California coastal Dungeness crab fishery shall be accounted for in a California crab fee-share fishery subaccount,

(iv) All fee collections from the Oregon pink shrimp fee-share fishery shall be accounted for in an Oregon shrimp fee-share fishery subaccount,

(v) All fee collections from the Oregon coastal Dungeness crab fee-share fishery shall be accounted for in an Oregon crab fee-share fishery subaccount,

(vi) All fee collections from the Washington ocean pink shrimp fee-share fishery shall be accounted for in a Washington ocean shrimp fee-share fishery subaccount, and

(vii) All fee collections from the Washington coastal Dungeness crab fishery shall be accounted for in a Washington crab fee-share fishery subaccount;

(2) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (i)(1) of this section, all collected fee revenue not previously deposited that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit principal may not be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the fund in accordance with paragraph (i)(3) of this section. The fish buyer is entitled, at any time, to withdraw interest (if any) on the deposit principal, but never the deposit fee principal itself, for the fish buyer's own use and purposes;

(3) *Deposit principal disbursement.* Not later than the 14th calendar day after the last calendar day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit principal then in the deposit account, provided that the deposit principal then totals $100 or more. If the deposit principal then totals less than $100, the fish buyer need not disburse the deposit principal until either the next month during which the deposit principal then totals $100 or more, or not later than the 14th calendar day after the last calendar day of any year in which the deposit principal has not since the last required disbursement totaled $100 or more, whichever comes first. The fish buyer shall disburse deposit principal by check made payable to the groundfish program's fund subaccount. The fish buyer shall mail each such check to the groundfish program's fund subaccount lockbox that NMFS establishes for the receipt of groundfish program disbursements. Each disbursement shall be accompanied by the fish buyer's fee collection report completed in the manner and form which NMFS specifies. NMFS will, before fee payment and collection begins, specify the groundfish program's fund subaccount lockbox and the manner and form of

fee collection report. NMFS will do this by means of the notification in § 600.1013(d) of subpart L. NMFS' fee collection report instructions will include provisions for the fish buyer to specify the amount of each disbursement which was disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts;

(4) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(i) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(A) The date of delivery,

(B) The fish seller's identity,

(C) The weight, number, or volume of each species of fee fish delivered,

(D) Information sufficient to specifically identify the fishing vessel which delivered the fee fish,

(E) The delivery value of each species of fee fish,

(F) The net delivery value of each species of fee fish,

(G) The identity of the payor to whom the net delivery value is paid, if different than the fish seller,

(H) The date the net delivery value was paid,

(I) The total fee amount collected as a result of all fee fish, and

(J) The total fee amount collected as a result of all fee fish from the reduction fishery and/or all fee fish from each of the six fee-share fisheries; and

(ii) For all collected fee deposits to, and disbursements of deposit principal from, the deposit account include:

(A) The date of each deposit,

(B) The total amount deposited,

(C) The total amount deposited in the reduction fishery subaccount and/or in each of the six fee-share fishery subaccounts,

(D) The date of each disbursement to the Fund's lockbox,

(E) The total amount disbursed,

(F) The total amount disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts, and

(G) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits; and

(5) *Annual report.* No fish buyer needs to submit an annual report about fee fish collection activities unless, during the course of an audit under § 600.1014(g), NMFS requires a fish buyer to submit such a report or reports.

(j) Other provisions. The reduction loan is, in all other respects, subject to the provisions of § 600.1012 through applicable portions of § 600.1017, except § 600.1014(e).

[70 FR 40229, July 13, 2005, as amended at 71 FR 28, Jan. 3, 2006]

§ 600.1103 Bering Sea and Aleutian Islands (BSAI) Crab species program.

(a) *Purpose.* This section's purpose is to implement the program that Section 144(d) of Division B of Pub. L. 106–554, as amended by section 2201 of Pub. L. 107–20 and section 205 of Pub. L. 107–117, enacted for BSAI crab species.

(b) *Terms.* Unless otherwise defined in this section, the terms defined in § 600.1000 expressly apply to the program for BSAI crab. Likewise, the terms defined in § 679.2 of this chapter also apply to terms not otherwise defined in either § 600.1000 or this section. The following terms used in this section have the following meanings for the purpose of this section:

Acceptance means NMFS' acceptance, on behalf of the United States, of a bid.

Bid means a bidder's irrevocable offer, in response to an invitation to bid under this section, to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner this section requires, the bidder's reduction fishing interest.

Bid amount means the dollar amount of each bid.

Bidder means either a qualifying bidder bidding alone or a qualifying bidder and a co-bidder bidding together who at the time of bidding holds the reduction fishing interests specified at § 600.1018(e).

Bid crab means the crab that NMFS determines each bidder's reduction/history vessel (see definition) harvested, according to the State of Alaska's records of the documented harvest of crab, from each reduction endorsement

fishery and from the Norton Sound fishery during the most recent 5 calendar years in which each reduction endorsement fishery was for any length of time open for directed crab fishing during a 10–calendar-year period beginning on January 1, 1990, and ending on December 31, 1999.

Bid score means the criterion by which NMFS decides in what order to accept bids in the reverse auction this section specifies.

Co-bidder means a person who is not a qualifying bidder, but who at the time of bidding owns the reduction/privilege vessel this section requires to be included in a bid and is bidding together with a qualifying bidder.

Crab means the crab species covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs pursuant to § 679.2 of this chapter.

Crab license means a License Limitation Program license for crab issued pursuant to § 679.4(k)(5) of this chapter.

Crab reduction permit means a non-interim crab license endorsed for one or more reduction endorsement fisheries, regardless of whether it is also endorsed for the Norton Sound fishery.

FSD means NMFS' Financial Services Division, located in NMFS' Silver Spring, MD, headquarters office.

Non-crab reduction permit means a fishing license, including all of its predecessor history, for which a bidder is the holder of record on December 12, 2003 and which was issued based on the fishing history of the bidder's -reduction/history vessel.

Norton Sound fishery means the non-reduction fishery defined in § 679.2 of this chapter as the area/species endorsement for Norton Sound red king and Norton Sound blue king crab.

NVDC means the U.S. Coast Guard's National Vessel Documentation Center located in Falling Waters, WV.

Qualifying bidder means a person who at the time of bidding is the license holder of record of a crab reduction permit.

Qualifying voter means a person who at the time of voting in a referendum is the license holder of record either of an interim or a non-interim crab license, except a crab license whose sole area/species endorsement is for the Norton Sound fishery.

RAM Program means NMFS' Restricted Access Management Program located in NMFS' Juneau, AK, regional office.

Reduction endorsement fishery means any of the seven fisheries that § 679.2 of this chapter defines as area/species endorsements except the area/species endorsement for the Norton Sound fishery.

Reduction fishery means the fishery for all crab covered by the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan under all area/species endorsements that section 679.2 of the chapter defines, except the area/species endorsement for the Norton Sound fishery.

Reduction fishing history means, for each bid, the complete documented harvest of the bidder's reduction/history vessel, upon any part of which such harvest NMFS based issuance of the crab license included in the bid as a crab reduction permit, plus such fishing history, after the issuance of such crab license, of any other vessel upon which the bidder used such crab license.

Reduction fishing interest means, for each bid, the bidder's:

(1) Reduction fishing privilege (see definition);

(2) Crab reduction permit;

(3) Non-crab reduction permit;

(4) Reduction fishing history (see definition); and

(5) Any other claim that could in any way qualify the owner, holder, or retainer of any of the reduction components, or any person claiming under such owner, holder, or retainer, for any present or future limited access system fishing license or permit in any United States fishery (including, but not limited to, any harvesting privilege or quota allocation under any present or future individual fishing quota system).

Reduction fishing privilege means the worldwide fishing privileges of a bid's reduction/privilege vessel (see definition).

Reduction/history vessel means the vessel or vessels which generated the reduction fishing history.

Reduction loan sub-amount means the portion of the original principal amount of reduction loan this section specifies each reduction endorsement fishery must repay with interest.

Reduction/privilege vessel means the vessel designated on a crab license on December 12, 2003.

Referendum means a referendum under this section to determine whether voters approve the fee required to repay this program's reduction loan.

Replacement vessel means a reduction/history vessel which replaced the lost or destroyed one whose reduction fishing history qualified during the general qualification period and the endorsement qualification period and, which under the exceptions in Amendment 10, qualified during the recent participation period.

(c) *Relationship to this subpart*—(1) *Provisions that apply*. The provisions of § 600.1000 through § 600.1017 of this subpart apply to this program except as paragraph (c)(2) of this section provides; and

(2) *Provisions that do not apply*. The following sections, or portions of them, of this subpart do not apply to this program:

(i) All of:

(A) Section 600.1001,

(B) Section 600.1002,

(C) Section 600.1003,

(D) Section 600.1004,

(E) Section 600.1005,

(F) Section 600.1006, and

(G) Section 600.1007,

(ii) The portions of § 600.1008:

(A) Pertaining to an implementation plan,

(B) Pertaining to a 60–day comment period for a proposed implementation regulation,

(C) Pertaining to public hearings in each State that the this program affects,

(D) Pertaining to basing the implementation regulation on a business plan,

(E) Within paragraphs (d)(1)(ii) through (viii),

(F) Within paragraph (d)(2)(ii),

(G) Within paragraph (e), and

(H) Within paragraph (f) and pertaining to fishing capacity reduction specifications and a subsidized program,

(iii) The portions of § 600.1009:

(A) Pertaining to fishing capacity reduction specifications,

(B) Within paragraph (a)(4),

(C) Pertaining to a reduction amendment,

(D) Within paragraph (a)(5)(ii), to the extent that the paragraph is inconsistent with the requirements of this section,

(E) Within paragraph (b)(i), and

(F) Pertaining to an implementation plan,

(iv) The portions of § 600.1010:

(A) Within paragraph (b),

(B) Pertaining to fishing capacity reduction specifications,

(C) Within paragraph (d)(1), and

(D) Within paragraphs (d)(4))(iv) through (vii),

(v) The portions of § 600.1011:

(A) That comprise the last sentence of paragraph (a),

(B) Within paragraph (d), and

(C) Within paragraph (e)(2),

(vi) The portions of § 600.1012:

(A) Within paragraph (b)(3) following the word ''subpart'', and

(B) Within paragraph (b)(3), and

(vii) The last sentence of § 600.1014(f).

(d) *Reduction cost financing*. NMFS will use the proceeds of a reduction loan, authorized for this purpose, to finance 100 percent of the reduction cost. The original principal amount of the reduction loan will be the total of all reduction payments that NMFS makes under reduction contracts. This amount shall not exceed $100 million.

(e) *Who constitutes a bidder*. A bidder is a person or persons who is the:

(1) Holder of record and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's crab reduction permit and the bid's non-crab reduction permit;

(2) Reduction/privilege vessel owner, title holder of record, and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing privilege; and

(3) Retainer and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing history.

(f) *How crab licenses determine qualifying bidders and qualifying voters*—(1) *Non-interim crab licenses*. Each person

who is the record holder of a non-interim crab license endorsed for one or more reduction endorsement fisheries is both a qualifying bidder and a qualifying voter and can both bid and vote;

(2) *Interim crab licenses*. Each person who is the record holder of an interim crab license endorsed for one or more reduction endorsement fisheries is a qualifying voter but not a qualifying bidder and can vote but not bid;

(3) *Crab licenses endorsed solely for the Norton Sound Fishery*. Each person who is the record holder of any crab license endorsed solely for the Norton Sound fishery is neither a qualifying bidder nor a qualifying voter and can neither bid nor vote; and

(4) *Time at which qualifying bidders and voters must hold required crab licenses*. A qualifying bidder must be the record holder of the required crab license at the time the qualifying bidder submits its bid. A qualifying voter must be the record holder of the required crab license at the time the qualifying voter submits its referendum ballot.

(g) *Qualifying bidders and co-bidders*—(1) *Qualifying bidders bidding alone*. There is no co-bidder when a qualifying bidder owns, holds, or retains all the required components of the reduction fishing interest;

(2) *Qualifying bidders bidding together with co-bidders*. When a qualifying bidder does not own the reduction/privilege vessel, the person who does may be the qualifying bidder's co-bidder; and

(3) *Minimum reduction components that qualifying bidders must hold or retain when bidding with co-bidders*. At a minimum, a qualifying bidder must hold the crab reduction permit and the non-crab reduction permit and retain the reduction fishing history. The reduction/privilege vessel may, however, be owned by another person who is a co-bidder.

(h) *Reduction fishing interest*—(1) *General requirements*. Each bidder must:

(i) In its bid, offer to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner that this section requires, the reduction fishing interest,

(ii) At the time of bidding, hold, own, or retain the reduction fishing interest and be fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest, and

(iii) Continuously thereafter hold, own, or retain the reduction fishing interest and remain fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest until:

(A) The bid expires without NMFS first having accepted the bid,

(B) NMFS notifies the bidder that NMFS rejects the bid,

(C) NMFS notifies the bidder that a reduction contract between the bidder and the United States no longer exists, or

(D) NMFS tenders reduction payment to the bidder;

(2) *Reduction/privilege vessel requirements*. The reduction/privilege vessel in each bid must be:

(i) The vessel designated, at the time this final rule is published in the FEDERAL REGISTER, on a crab license which becomes a bid's crab reduction permit, and

(ii) Be neither lost nor destroyed at the time of bidding;

(3) *Reduction fishing privilege requirements*. The reduction fishing privilege in each bid must be the reduction/privilege vessel's:

(i) Fisheries trade endorsement under the Merchant Marine Act, 1936 (46 U.S.C.A. 12108),

(ii) Qualification for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement under foreign registry or operation under the authority of a foreign country, and

(iii) Any other privilege to ever fish anywhere in the world;

(4) *Crab reduction permit requirements*. (i) Except as otherwise provided in paragraph (i) of this section, the crab reduction permit must in each bid:

(A) Be the crab license that NMFS issued on the basis of the bidder's reduction fishing history,

(B) Be non-interim at the time each bidder submits its bid, and

(C) Include an area/species endorsement for any one or more reduction endorsement fisheries,

(ii) Although the Norton Sound fishery is not a reduction endorsement fishery, an area/species endorsement for the Norton Sound fishery occurring on a crab reduction permit must be surrendered and revoked (and all fishing history involving it relinquished) in the same manner as all other reduction endorsement fisheries occurring on the crab reduction permit;

(5) *Non-crab reduction permit requirements*. The non-crab reduction permit must in each bid be every license, permit, or other harvesting privilege that:

(i) NMFS issued on the basis of the fishing history of the bidder's reduction/history vessel, and

(ii) For which the bidder was the license holder of record on the effective date of this section; and

(6) *Reduction fishing history requirements*. Except as otherwise provided in paragraph (i) of this section, the reduction fishing history in each bid must that of a single reduction/history vessel.

(i) *Exceptions to the reduction fishing interest requirements*—(1) *Lost or destroyed vessel salvaged*. When a bidder has salvaged a lost or destroyed vessel and has made from the salvaged vessel the documented harvest of crab § 679.4(k)(5)(iii)(B)(*3*) of this chapter requires, the crab portion of the reduction fishing history is the salvaged vessel's documented harvest of crab; and

(2) *Lost or destroyed vessel not salvaged*. When a bidder has not salvaged the lost or destroyed vessel but has made from a replacement vessel the documented harvest of crab § 679.4(k)(5)(iii)(B)(*3*) of this chapter requires:

(i) The crab portion of the reduction fishing history is the total of the lost or destroyed vessel's documented harvest of crab through the date of such vessel's loss or destruction plus the replacement vessel's documented harvest of crab after such date, and

(ii) For the purposes of this program, the lost or destroyed vessel's documented harvest of crab merges with, and becomes a part of, the replacement vessel's documented harvest of crab; and

(3) *Acquired crab fishing history*. When a bidder, in the manner § 679.4(k)(5)(iv) of this chapter requires, has made a documented harvest of crab from one vessel and has acquired a replacement vessel's documented harvest of crab:

(i) The crab portion of the reduction fishing history is the total of the acquired documented harvest of crab through December 31, 1994, plus the documented harvest of crab after December 31, 1994, of the vessel from which the bidder made the documented crab harvest § 679.4(k)(5)(iv) of this chapter requires, and

(ii) [Reserved]

(iii) For the purposes of this program, the acquired documented harvest of crab merges with, and becomes a part of, the non-acquired documented harvest of crab.

(j) *Determining value of reduction/history vessels' bid crab*—(1) *In each fishery*. NMFS will determine the dollar value of each reduction/history vessel's bid crab in each reduction endorsement fishery and in the Norton Sound Fishery by multiplying each reduction/history vessel's number of pounds of each species of bid crab by the average ex-vessel price per pound that the State of Alaska annually publishes for each crab species in the bid crab; and

(2) *In all fisheries*. NMFS will determine the dollar value of each reduction/history vessel's bid crab in all reduction endorsement fisheries and in the Norton Sound fishery by adding each of the products of the multiplications in paragraph (j)(1) of this section; and

(3) *Crab excluded from bid crab*. A reduction/history vessel's bid crab may not include, to the extent that NMFS has knowledge:

(i) Triangle tanner crab, grooved tanner crab, and any other crab not involved in the various area/species endorsements,

(ii) Discarded crab,

(iii) Crab caught for personal use,

(iv) Unspecified crab, and

(v) Any other crab for which the dollar value, crab fishery, landing date, or harvesting vessel NMFS cannot, for whatever reason, determine.

(k) *Determining bid score*. NMFS will determine each bid score by dividing each bid amount by the sum in paragraph (j)(2) of this section.

(l) *Determining reduction loan subamount*—(1) *Value of all bid crab in each*

fishery. NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in each reduction endorsement fishery;

(2) *Value of all bid crab in all fisheries*. NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in all reduction endorsement fisheries plus the Norton Sound fishery;

(3) *Each fishery as a percentage of all fisheries*. NMFS will divide each of the sums in paragraph (l)(1) of this section by the sum in paragraph (l)(2) of this section. The result of this calculation will be the dollar value of all bid crab in each reduction endorsement fishery as a percentage of the dollar value of all bid crab in all reduction endorsement fisheries plus the Norton Sound fishery;

(4) *Applying percentages to loan amount*. NMFS will multiply the reduction loan's full original principal amount by each of the yields in paragraph (l)(3) of this section; and

(5) *Loan sub-amount*. Each of the amounts resulting from the calculation in paragraph (l)(4) of this section will be the reduction loan subamount that a reduction endorsement fishery must repay.

(m) *Prospectively qualifying bidder and voter notification*—(1) *General*. At the appropriate point before issuing an invitation to bid, NMFS will publish a notification in the FEDERAL REGISTER listing all persons who at the time of publishing the notification prospectively are qualifying bidders and qualifying voters;

(2) *Qualifying bidder list*. The prospectively qualifying bidder list will include the names and addresses of record of each license holder of record for all non-interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(3) Qualifying voter list. The prospectively qualifying voter list will include the names and addresses of record of each license holder of record for all non-interim and interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(4) *Basis of lists*. NMFS will base both the lists on the RAM Program's license holder records for crab licenses meeting the requirements of § 679.4(k)(5) of this chapter as well as the requirements of this section;

(5) *Purpose*. The purpose of the notification is to provide the public notice of:

(i) The prospectively qualifying bidders, and

(ii) The prospectively qualifying voters; and

(6) *Public comment*. Any person who wants to comment about the notification has 30 days from the notification's publication date to do so. Persons should send their comments to both FSD and the RAM Program (at addresses that the notification will specify). Comments may address:

(i) Persons who appear on one or more lists but should not,

(ii) Persons who do not appear on one or more lists but should, and

(iii) Persons who believe their names and/or business mailing addresses appearing on one or more lists are incorrect.

(n) *Invitation to bid*—(1) *Notification*. At the appropriate point after issuing the notification in paragraph (m) of this section, NMFS will publish the invitation to bid in the FEDERAL REGISTER notification further specified in § 600.1009(c) of this subpart, along with a bidding form and terms of capacity reduction agreement. No person may, however, bid at this stage;

(2) *Notification contents*. The invitation to bid notification will state all applicable bid submission requirements and procedures (including, but not limited to, those included in this section). In particular, the invitation to bid notification will:

(i) State the date on which NMFS will invite bids by mailing an invitation to bid to each person on the prospectively qualifying bidder list,

(ii) State a bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iii) State a bid expiration date after which each bid expires unless, prior to that date, NMFS accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(iv) State the manner of bid submission and the information each bidder must submit for NMFS to deem a bid responsive,

(v) State any other information required for bid submission, and

(vi) Include a facsimile of the invitation to bid, along with a bidding form and terms of capacity reduction agreement comprising the entire terms and conditions of the reduction contract under which each bidder must bid and under which NMFS must accept a bid; and

(3) *Mailing*. On the date specified in this notification, NMFS will invite bids by mailing the invitation to bid and a bidding package, including a bidding form terms of capacity reduction agreement, to each person then on the prospectively qualifying bidder list. NMFS will not mail the invitation to bid to any potential co-bidder because NMFS will not then know which bids may include a co-bidder. Each qualifying bidder is solely responsible to have any required co-bidder properly complete the bid. No person may bid before receiving the invitation to bid and the bidding package that NMFS mailed to that person.

(o) *Bids*—(1) *Content*. Each invitation to bid that NMFS mails to a qualifying bidder will have a bid form requiring each bid to:

(i) Identify, by name, regular mail address, telephone number, and (if available) electronic mail address, the qualifying bidder and each co-bidder,

(ii) State the bid amount in U.S. dollars,

(iii) Identify, by crab license number, the qualifying bidder's crab reduction permit and include an exact copy of this crab license (which the RAM Program issued),

(iv) Identify, by vessel name and official number, the bidder's reduction/privilege vessel, and include an exact copy of this vessel's official document (which NVDC issued),

(v) Identify, by license or permit number, each of the bidder's non-crab reduction permits; and include an exact copy of each of these licenses or permits (which the RAM Program issued for licenses or permits involving species under the jurisdiction of NMFS' Alaska Region and which other NMFS offices issued for licenses or permits involving species under those offices' jurisdiction),

(vi) Identify, separately for crab and for each other species:

(A) The qualifying bidder's reduction fishing history, and

(B) The dates that each portion of the reduction fishing history encompasses; the name and official number of the reduction/history vessel or vessels which gave rise to it; and the dates during which the qualifying bidder owned such vessels or, if the qualifying bidder acquired any reduction fishing history from another person, the name of the person from which the qualifying bidder acquired such reduction fishing history and the manner in which and the date on which the qualifying bidder did so,

(vii) State, declare, and affirm that the qualifying bidder holds the crab reduction permit and retains the complete reduction fishing history, and is fully and legally entitled to offer both in the manner this section requires,

(viii) State, declare, and affirm that either the qualifying bidder or the co-bidder owns the reduction/privilege vessel and holds the non-crab reduction permit and is fully and legally entitled to offer both in the manner that this section requires, and

(ix) Provide any other information or materials that NMFS believes is necessary and appropriate; and

(2) *Rejection*. NMFS, regardless of bid scores, will reject any bid that NMFS believes is unresponsive to the invitation to bid. All bid rejections will constitute final agency action as of the date of rejection. Before rejection, NMFS may, however, contact any bidder to attempt to correct a bid deficiency if NMFS, in its discretion, believes the attempt warranted.

(p) *Acceptance*—(1) *Reverse auction*. NMFS will determine which responsive bids NMFS accepts by using a reverse auction in which NMFS first accepts the responsive bid with the lowest bid score and successively accepts each additional responsive bid with the next lowest bid score until either there are no more responsive bids to accept or acceptance of the last responsive bid with the next lowest bid score would cause the reduction cost to exceed $100

million. If two or more responsive bid scores are exactly the same, NMFS will first accept the bid that NMFS first received;

(2) *Notification*. NMFS will, after the conclusion of a successful referendum, notify accepted bidders that NMFS had, before the referendum, accepted their bids; and

(3) *Post-acceptance reduction permit transfer*. After NMFS has accepted bids, neither the RAM Program (nor any other NMFS office) will transfer to other persons any reduction permits that accepted bidders included in the bids unless and until FSD advises the RAM Program (or some other NMFS office) that the resulting reduction contracts are no longer in effect because a referendum failed to approve the fee that this section requires to repay this program's reduction loan.

(q) *Reduction contracts subject to successful post-bidding referendum condition*. Although this program involves no fishing capacity reduction specifications under this subpart, each bid, each acceptance, and each reduction contract is nevertheless subject to the successful post-bidding referendum condition that § 600.1009(a)(3) of this subpart specifies for bidding results that do not conform to the fishing capacity reduction specifications.

(r) *Post-bidding referendum*—(1) *Purpose*. NMFS will conduct a post-bidding referendum whose sole purpose is to determine whether, based on the bidding results, qualifying voters who cast referendum ballots in the manner that this section requires authorize the fee required to repay this program's reduction loan;

(2) *Manner of conducting*. NMFS will mail a referendum ballot to each person then on the prospectively qualifying voter list for each crab license that the person holds and otherwise conduct the referendum as specified in § 600.1010 of this subpart;

(3) *One vote per crab license*. Each qualifying voter may cast only one vote for each crab license that each qualifying voter holds;

(4) *Crab license numbers on ballots*. Each referendum ballot that NMFS mails will contain the license number of the prospectively qualifying voter's crab license to which the ballot relates;

(5) *Potential reduction results stated*. Each referendum ballot that NMFS mails will state the aggregate potential reduction results of all the bids that NMFS accepted, including:

(i) The amount of reduction that all accepted bids potentially effect, including:

(A) The number of crab reduction permits, together with each area/species endorsement for which each of these licenses is endorsed,

(B) The number of reduction/privilege vessels and reduction/history vessels, and

(C) The aggregate and average dollar value of bid crab (together with the number of pounds of bid crab upon which NMFS based the dollar value), in each reduction endorsement fishery and in the reduction fishery, for all reduction/history vessels during the period for which NMFS calculates the dollar value of bid crab,

(ii) The reduction loan sub-amount that each reduction endorsement fishery must repay if a referendum approves the fee, and

(iii) Any other useful information NMFS may then have about the potential sub-fee rate initially necessary in each reduction endorsement fishery to repay each reduction loan sub-amount; and

(6) *Notice that condition fulfilled*. If the referendum is successful, NMFS will notify accepted bidders, in the manner that § 600.1010(d)(6)(iii) of this subpart specifies, that a successful referendum has fulfilled the reduction contracts' successful post-bidding referendum condition specified in paragraph (q) of this section.

(s) *Reduction method*. In return for each reduction payment, NMFS will permanently:

(1) Revoke each crab reduction permit;

(2) Revoke each non-crab reduction permit;

(3) Revoke each reduction fishing privilege (which revocation will run with the reduction/privilege vessel's title in the manner § 600.1009(a)(5)(ii)(A) of this subpart requires and in accordance with 46 U.S.C. 12108(d));

(4) Effect relinquishment of each reduction fishing history for the purposes specified in this section by noting in

the RAM Program records (or such other records as may be appropriate for reduction permits issued elsewhere) that the reduction fishing history has been relinquished under this section and will never again be available to anyone for any fisheries purpose; and

(5) Otherwise restrict in accordance with this subpart each reduction/privilege vessel and fully effect the surrender, revocation, restriction, relinquishment, withdrawal, or extinguishment by other means of all components of each reduction fishing interest.

(t) *Reduction payment tender and disbursement*—(1) *Fishing continues until tender*. Each accepted bidder may continue fishing as it otherwise would have absent the program until NMFS, after a successful referendum, tenders reduction payment to the accepted bidder;

(2) *Notification to the public*. After a successful referendum but before tendering reduction payment, NMFS will publish a notification in the FEDERAL REGISTER listing all proposed reduction payments and putting the public on notice:

(i) Of the crab reduction permits, the reduction/privilege vessels, the reduction fishing histories, and the non-crab reduction permits upon whose holding, owning, retaining, or other legal authority representations accepted bidders based their bids and NMFS based its acceptances, and

(ii) That NMFS intends, in accordance with the reduction contracts, to tender reduction payments in return for the actions specified in paragraph (s) of this section;

(3) *Public response*. The public has 30 days after the date on which NMFS publishes the reduction payment tender notification to advise NMFS in writing of any holding, owning, or retaining claims that conflict with the representations upon which the accepted bidders based their bids and on which NMFS based its acceptances;

(4) *Tender and disbursement parties*. NMFS will tender reduction payments only to accepted bidders, unless otherwise provided contrary written instructions by accepted bidders. Creditors or other parties with secured or other interests in reduction/privilege vessels or reduction permits are responsible to make their own arrangements with accepted bidders;

(5) *Time of tender*. At the end of the reduction payment tender notification period, NMFS will tender reduction payments to accepted bidders, unless NMFS then knows of a material dispute about an accepted bidder's authority to enter into the reduction contract with respect to any one or more components of the reduction fishing interest that warrants, in NMFS' discretion, an alternative course of action;

(6) *Method of tender and disbursement*. NMFS will tender reduction payment by requesting from each accepted bidder specific, written instructions for paying the reduction payments. Upon receipt of these payment instructions, NMFS will immediately disburse reduction payments in accordance with the payment instructions; and

(7) *Effect of tender*. Concurrently with NMFS' tender of reduction payment to each accepted bidder:

(i) All fishing activity for any species anywhere in the world in any way associated with each accepted bidder's reduction fishing interest must cease,

(ii) Each accepted bidder must retrieve all fixed fishing gear for whose deployment the accepted bidder's reduction/privilege vessel was responsible, and

(iii) NMFS will fully exercise its reduction contract rights with respect to the reduction fishing interest by taking the actions specified in paragraph (s) of this section.

(u) *Fee payment and collection*—(1) *Fish sellers who pay the fee*. Any person who harvests any crab, but whom ADF&G's fisheries reporting requirements do not require to record and submit an ADF&G fish ticket for that crab, is a fish seller for the purpose of paying any fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart;

(2) *Fish buyers who collect the fee*. Any person whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for any crab that another person harvested is a fish buyer for the purpose of collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart; and

(3) *Persons who are both fish sellers and fish buyers and both pay and collect the fee.* Any person who harvests any crab, and whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for that crab, is both a fish seller and a fish buyer for the purpose of paying and collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

(v) *Fishing prohibition and penalties*—(1) *General.* Fishing, for the purpose of this section, includes the full range of activities defined in the term ''fishing'' in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801),

(2) *Prohibitions.* Concurrently with NMFS' tender of each reduction payment, and with the sole exception in paragraph (t)(7)(i) of this section, no person whatsoever may, and it is unlawful for any person to:

(i) Fish with or attempt to fish with, or allow others to fish with or attempt to fish with, the reduction/privilege vessel anywhere in the world for any species under any conditions and regardless of the reduction/privilege vessel's ownership or registry for so long as the reduction/privilege vessel exists. This prohibition includes, but is not limited to, fishing on the high seas or in the jurisdiction of any foreign country (to the extent prohibited by law) while operating under U.S. flag,

(ii) Place or attempt to place, or allow others to place or attempt to place, the reduction/privilege vessel under foreign flag or registry,

(iii) Operate or attempt to operate, or allow others to operate or attempt to operate, the reduction/privilege vessel under the authority of a foreign country to the extent prohibited by law,

(iv) Otherwise avoid or attempt to avoid, or allow others to avoid or attempt to avoid, the revocation of the reduction fishing privilege with respect to any reduction/privilege vessel, and

(v) Make any claim or attempt to make any claim, or allow others to claim or attempt to make any claim, for any present or future limited access fishing license or permit in any U.S. fishery (including, but not limited to, any quota allocation under any present or future individual quota allocation system) based in any way on any portion of a reduction fishing interest surrendered, revoked, restricted, relinquished, withdrawn, or extinguished by other means under this section; and

(3) *Penalties.* The activities that this paragraph prohibits are subject to the full penalties provided in § 600.1017 of this subpart, and immediate cause for NMFS to take action to, among other things:

(i) At the reduction/privilege vessel owner's expense, seize and scrap the reduction/privilege vessel, and

(ii) Pursue such other remedies and enforce such other penalties as may be applicable.

(w) *Program administration*—(1) *FSD responsibilities.* FSD is responsible for implementing and administering this program. FSD will:

(i) Issue all notifications and mailings that this section requires,

(ii) Prepare and issue the invitation to bid,

(iii) Receive bids,

(iv) Reject bids,

(v) Score bids,

(vi) Make acceptances,

(vii) Prepare and issue referendum ballots,

(viii) Receive referendum ballots,

(ix) Tally referendum ballots,

(x) Determine referendum success or failure,

(xi) Tender and disburse reduction payments,

(xii) Administer reduction contracts,

(xiii) Administer fees and reduction loan repayment, and

(xiv) Discharge all other management and administration functions that this section requires;

(2) *RAM Program responsibilities.* Upon FSD's advice, the RAM Program (for fishing licenses under the jurisdiction of NMFS's Alaska Region) and any other appropriate NMFS authority (for fishing licenses under the jurisdiction of any other NMFS office) will revoke reduction permits and effect the surrender of fishing histories in accordance with this section; and

(3) *NVDC and MARAD responsibilities.* FSD will advise NVDC, MARAD, such other agency or agencies as may be involved, or all of them to revoke reduction/privilege vessels' fisheries trade

endorsements and otherwise restrict reduction/privilege vessels in accordance with this section.

(x) *Reduction loan and reduction loan sub-amounts.* [Reserved]

[68 FR 69337, Dec. 12, 2003. Redesignated at 69 FR 53362, Sept. 1, 2004]

§ 600.1104 Bering Sea and Aleutian Islands (BSAI) crab species fee payment and collection system.

(a) *Purpose.* As authorized by Public Law 106–554, this section's purpose is to:

(1) In accordance with § 600.1012 of subpart L, establish:

(i) The borrower's obligation to repay a reduction loan, and

(ii) The loan's principal amount, interest rate, and repayment term; and

(2) In accordance with § 600.1013 through § 600.1016 of subpart L, implement an industry fee system for the reduction fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L and § 600.1103 of this subpart expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Crab rationalization crab means the same as in § 680.2 of this chapter.

Crab rationalization fisheries means the same as in § 680.2 of this chapter.

Reduction endorsement fishery means any of the seven fisheries that § 679.2 of this chapter formerly (before adoption of part 680 of this chapter) defined as crab area/species endorsements, except the area/species endorsement for Norton Sound red king. More specifically, the reduction endorsement fisheries, and the crab rationalization fisheries which (after adoption of part 680 of this chapter) correspond to the reduction endorsement fisheries, are:

(1) Bristol Bay red king (the corresponding crab rationalization fishery is Bristol Bay red king crab),

(2) Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* (the corresponding crab rationalization fisheries are two separate fisheries, one for Bering Sea snow crab and another for Bering Sea Tanner crab),

(3) Aleutian Islands brown king (the corresponding crab rationalization fisheries are the two separate fisheries, one for Eastern Aleutian Islands golden king crab and another for Western Aleutian Islands golden king crab),

(4) Aleutian Islands red king (the corresponding crab rationalization fishery is Western Aleutian Islands red king crab),

(5) Pribilof red king and Pribilof blue king (the corresponding crab rationalization fishery is Pribilof red king and blue king crab), and

(6) St. Matthew blue king (the corresponding crab rationalization fishery is also St. Matthew blue king crab).

Reduction fishery means the fishery for all crab rationalization crab, excluding CDQ allocations, in all crab rationalization fisheries.

Sub-amount means the portion of the reduction loan amount for whose repayment the borrower in each reduction endorsement fishery is obligated.

(c) *Reduction loan amount.* The reduction loan's original principal amount is $97,399,357.11.

(d) *Sub-amounts.* The sub-amounts are:

(1) For Bristol Bay red king, $17,129,957.23;

(2) For Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi*, $66,410,767.20;

(3) For Aleutian Islands brown king, $6,380,837.19;

(4) For Aleutian Islands red king, $237,588.04;

(5) For Pribilof red king and Pribilof blue king, $1,571,216.35; and

(6) For St. Matthew blue king, $5,668,991.10.

(e) *Interest accrual from inception.* Interest began accruing on each portion of the reduction loan amount on and from the date on which NMFS disbursed each such portion.

(f) *Interest rate.* The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year 2005 plus 2 percent.

(g) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from January 19, 2005, but each fee shall continue indefinitely for as long as necessary to fully repay each subamount.

(h) *Reduction loan repayment.* (1) The borrower shall, in accordance with § 600.1012, repay the reduction loan;

(2) Fish sellers in each reduction endorsement fishery shall, in accordance with § 600.1013, pay the fee at the rate applicable to each such fishery's subamount;

(3) Fish buyers in each reduction endorsement fishery shall, in accordance with § 600.1013, collect the fee at the rate applicable to each such fishery;

(4) Fish buyers in each reduction endorsement fishery shall in accordance with § 600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery; except the requirements specified under paragraph (c) of this section concerning the deposit principal disbursement shall be made to NMFS not later than the 7th calendar day of each month; and the requirements specified under paragraph (e) of this section concerning annual reports which shall be submitted to NMFS by July 1 of each calendar year; and,

(5) The reduction loan is, in all other respects, subject to the provisions of § 600.1012 through § 600.1017.

[70 FR 54656, Sept. 16, 2005, as amended at 71 FR 27210, May 10, 2006]

§ 600.1105 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.

(a) *Purpose*. This section implements the capacity reduction program that Title II, Section 219(e) of Public Law 108–447 enacted for the longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery.

(b) *Definitions*. Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L of this part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Act means Title II, Section 219 of Public Law 108–447.

AI means the Aleutian Islands.

Application Form means the form published on the FLCC's website that sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer Ranking Ballots on behalf of the Subsector Member.

Auditor means Jack V. Tagart, Ph.D., d.b.a. Tagart Consulting.

Authorized Party means the individuals authorized by Subsector Members on the application form to execute and submit Offers, Rankings, protests and other documents and/or notices on behalf of Subsector Member.

Ballot means the form found on the auditor's website used to cast a vote in favor of, or in opposition to, the currently Selected Offers.

BS means the Bering Sea.

BSAI means the Bering Sea and the Aleutian Islands.

BSAI Pacific Cod ITAC means the Total Allowable Catch for Pacific cod after the subtraction of the 7.5 percent Community Development Program reserve.

Capacity Reduction Agreement or Reduction Agreement means an agreement entered into by the Subsector Members and the FLCC under which the FLCC is permitted to develop and submit a Capacity Reduction Plan to the Secretary.

Certificate of Documentation (COD) means a document issued by the U.S. Coast Guard's National Documentation Center that registers the vessel with the United States Government.

Closing Vote means a vote held pursuant to paragraph (d)(7) of this section, after two-thirds (⅔) or more of the Nonoffering Subsector Members submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process, and there are no unresolved Protests or Arbitrations.

Current Offer means an Offer submitted by a Subsector Member to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term ''Current Offer'' includes Selected Offers.

Current Offeror means an Offering Subsector Member that has submitted an Offer to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term ''Current Offeror'' includes Selected Offerors.

Database means the online LLP License database maintained by NMFS as downloaded by the Auditor pursuant to paragraph (c)(1) of this section.

Effective Date means the date the Capacity Reduction Agreement becomes effective pursuant to section 4.e of the Capacity Reduction Agreement.

Fishing Capacity Reduction Contract or Reduction Contract means the contract that any Current Offeror must sign and agree to abide by if NMFS accepts the offer by signing the Reduction Contract.

FLCC Counsel means Bauer Moynihan & Johnson LLP or other counsel representing the FLCC in any review or arbitration under the Capacity Reduction Agreement.

Latent License means an LLP License on which a vessel was not designated at the time an Offer is submitted.

LLP License means a Federal License Limitation Program groundfish license issued pursuant to § 679.4(k) of this chapter or successor regulation that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for BS or AI catcher processor fishing activity, C/P, Pacific cod and hook and line gear.

Longline Subsector means the longline catcher processor subsector of the BSAI non-pollock groundfish fishery as defined in the Act.

Longline Subsector ITAC means the longline catcher processor subsector remainder of the Total Allowable Catch after the subtraction of the 7.5 percent Community Development Program reserve.

Nonoffering Subsector Member shall have the meaning ascribed thereto in paragraph (d)(5)(i) of this section.

Offer Content means all information included in Offers submitted to the Auditor pursuant to paragraph (d)(2)(ii) of this section.

Offer Form means the form found on the Auditor's website used to make an offer.

Offer(s) means a binding offer(s) from a Subsector Member to sell its LLP, right to participate in the fisheries, the fishing history associated with such LLP, and any vessel set forth on the Offer Form submitted by Offeror pursuant to the terms of this Capacity Reduction Agreement.

Opening Date means the first Monday following the Effective Date set forth in paragraph (c)(3) of this section.

Person includes any natural person(s) and any corporation, partnership, limited partnership, limited liability company, association or any other entity whatsoever, organized under the laws of the United States or of a state.

Prequalification Offer shall have the meaning ascribed thereto in paragraph (d)(2)(iii) of this section.

Ranking Form means the form posted by the Auditor pursuant to paragraph (d)(5)(iii) of this section.

Ranking Period shall have the meaning ascribed thereto in paragraph (d)(5)(ii) of this section.

Reduction Fishery means the BSAI non-pollock groundfish fishery.

Reduction Fishing Interests shall have the meaning ascribed thereto in the Fishing Capacity Reduction Contract.

Reduction Plan means a business plan prepared by the Subsector Members in accordance with Section 1 of the Capacity Reduction Agreement and forwarded to the Secretary for approval.

Reduction Privilege Vessel means the vessel listed on the Offeror's License Limitation Program license.

Rejected Offer means an Offer that has been through one or more Rankings and is not a Selected Offer following the latest Ranking Period, with respect to which the Offering Subsector Member's obligations have terminated pursuant to paragraphs (d)(2)(i) and (d)(6)(v) of this section.

Rejected Offeror means a Subsector Member that has submitted an Offer which has been ranked and was not posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

Restricted Access Management (*RAM*) means the Restricted Access Management Program in the Alaska Region, NMFS, located in Juneau, Alaska.

Secretary means the Secretary of Commerce or a designee.

Selected Offer shall have the meaning ascribed thereto in paragraph (d)(6)(iv) of this section.

Selected Offeror means a Subsector Member that has submitted an Offer which has been ranked and is posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

Selection Process means the process set forth in paragraph (d) of this section for selecting the fishing capacity to be removed by the Reduction Plan.

Submission Period(s) or Submitting Period(s) shall have the meaning ascribed thereto in paragraph (d)(3)(ii) of this section.

Subsector Member(s) means a member(s) of the Longline Subsector.

Web site means the internet Web site developed and maintained on behalf of the FLCC for implementation of the Selection Process described herein with a URL address of *http://www.freezerlonglinecoop.org*.

(c) *Qualification and enrollment of subsector members*—(1) *Distribution*. A copy of the Reduction Agreement, Application Form, and Reduction Contract shall be mailed to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear, as the Auditor determines from the Database downloaded by the Auditor as of January 30, 2006, regardless of whether the LLP License is indicated in the Database as noninterim and transferable or otherwise.

(2) *Application*. Any person, regardless of whether having received the mailing described in paragraph (c)(1) of this section, may as a Subsector Member apply to enroll with the FLCC to participate in the Reduction Program, by submitting all of the following documents:

(i) Fully executed Reduction Agreement;

(ii) Photocopy of the LLP License(s) evidencing Subsector Member's qualification as a member of the Longline Subsector;

(iii) Unless applying as the holder of a Latent License, a photocopy of Federal Fisheries Permit for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member;

(iv) Unless applying as the holder of a Latent License, a photocopy of the Certificate of Documentation (COD) for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member; and

(v) An executed Application Form which sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer Ranking Ballots on behalf of the Subsector Member.

(3) *Examination by Auditor*—(i) *In general*. Each application must be submitted to the Auditor who will examine applications for completeness and inconsistencies, whether on the face of the documents or with the Database. Any application which is incomplete or which contains inconsistencies shall be invalid. The Auditor shall notify by e-mail or mail an applicant of the basis for the Auditor's finding an application invalid. An applicant may resubmit a revised application. If the application meets all requirements, the Auditor may accept the application as valid and enroll the applicant.

(ii) *Interim LLP Licenses*. If an LLP License is interim and/or nontransferable, the applicant's enrollment shall be accepted as a Subsector Member and may fully participate in the Selection Process. However, any posting of an Offer submitted with respect to such LLP License shall note the status of such LLP License until that Subsector Member submits to the Auditor a letter from the RAM confirming that it is within the Subsector Member's control to cause the qualifying LLP License to be issued as noninterim and transferable upon withdrawal of all applicable appeals.

(4) *Enrollment period*. Applications that meet all requirements will be accepted until the Selection Process is completed.

(5) *Effective date*. The Effective Date of any Reduction Agreement shall be ten (10) calendar days after written notice is sent by the Auditor to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear (as determined by the Auditor from the Auditor's examination of the Database) advising that the number of Subsector Members that have delivered to the Auditor a complete Application, including a fully executed Reduction Agreement, exceeds seventy percent (70 percent) of the members of the Longline Subsector (as determined by the Auditor from the Auditor's examination of the Database).

(6) *Notice*. All notices related to the effective date of the Reduction Agreement shall be sent by the Auditor via registered mail.

(7) *Withdrawal*. A Subsector Member, unless such Subsector Member is a Current Offeror or Selected Offeror, may terminate the Reduction Agreement at any time with respect to that Subsector Member by giving ten (10) calendar days written notice to the Auditor preferably via e-mail. Withdrawal of a Subsector Member shall not affect the validity of the Reduction Agreement with respect to any other Subsector Members. Once effective, the Reduction Agreement shall continue in full force and effect regardless of whether subsequent withdrawals reduce the number of Subsector Members below that level required to effectuate the Reduction Agreement. Attempted withdrawal by a Current Offeror or Selected Offeror shall be invalid, and such Offer shall remain a binding, irrevocable Offer, unaffected by the attempted withdrawal.

(d) *Selection of fishing capacity to be removed by Reduction Plan*. The fishing capacity removed by the Reduction Plan will be the Reduction Fishing Interests voluntarily offered through the Reduction Plan by offering Subsector Members and as selected by the Nonoffering Subsector Members, up to an aggregate amount of thirty six million dollars ($36,000,000) as set forth in this paragraph (d).

(1) *Overview*. The Selection Process will begin upon the Effective Date of the Reduction Agreement. The Selection Process will alternate on a weekly basis between:

(i) Submitting Periods, during which individual Subsector Members may submit Offers of fishing capacity they wish to include in the Reduction Plan; and

(ii) Ranking Periods, during which Nonoffering Subsector Members will rank the submitted Offers.

(2) *Offers*—(i) *Binding agreement*. An Offer from a Subsector Member shall be a binding, irrevocable offer from a Subsector Member to relinquish to NMFS the Reduction Fishing Interests for the price set forth on the Offer contingent on such Offer being a Selected Offer at the closing of the Selection Process. Once submitted, an Offer may not be revoked or withdrawn while that Offer is a Current Offer or Selected Offer. An Offer that is submitted by a Subsector Member, but is not a Selected Offer during the subsequent Ranking Period, shall be deemed to be terminated and the Subsector Member shall have no further obligation with respect to performance of that Offer.

(ii) *Offer content*. All Offers submitted to the Auditor shall include the following information: LLP License number; LLP License number(s) of any linked crab LLP Licenses; license MLOA (MLOA—maximum length overall of a vessel is defined at § 679.2 of this chapter); the license area, gear and species endorsements; a summary of the Pacific cod catch history for the calendar years 1995–2004; and the offered price. The Offer shall also state whether a vessel is currently designated on the LLP License and as such will be withdrawn from all fisheries if the Offer is selected for reduction in the Reduction Plan. If so, the Offer shall identify such vessel by name, official number, and current owner. In addition, the Offer shall provide a summary of the Pacific cod catch history for the calendar years 1995–2004 of the vessel to be retired from the fisheries. All summary catch histories included in Offers shall be calculated utilizing both the weekly production report and best blend methodology and shall separately state for each methodology the Pacific cod catch in metric tons and as a percentage of the overall catch for the longline catcher processor subsector on an annual basis for each of the required years. If the vessel stated to be withdrawn from the fisheries is not owned by the LLP License owner of record, the Offer shall be countersigned by the owner of record of the vessel. An Offer offering a Latent License shall state on the Offer Form that the offered LLP License is a Latent License. The Offer Form shall also include a comment section for any additional information that Offerors wish to provide to the Subsector Members concerning the Offer.

(iii) *Prequalification of offers*. A Subsector Member may submit a Prequalification Offer to the Auditor at any time prior to the Opening Date.

A Prequalification Offer shall contain all elements of an Offer, except that a price need not be provided. The Auditor shall notify the Subsector Member submitting a Prequalification Offer as to any deficiencies as soon as practicable. All details of a Prequalification Offer shall be kept confidential by the Auditor.

(3) *Submitting an offer*—(i) *Offer submission*. Commencing on the first Tuesday following the Opening Date and during all Submission Periods until the Selection Process is closed, any Subsector Member may submit an Offer. All Offers are to be on the applicable form provided on the FLCC website, executed by an Authorized Party and submitted to the Auditor by facsimile. Any Subsector Member may submit an Offer during any Submission Period, even if that Subsector Member has not submitted an Offer in any previous Submission Period. If a Subsector Member holds more than one LLP License, such Subsector Member may, but is not required to, submit an Offer for each LLP License held during a Submission Period.

(ii) *Submission periods*. The initial Submission Period shall commence at 9 a.m. (Pacific time) on the Tuesday following the Opening Date and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Submission Periods shall commence at 9 a.m. (Pacific time) on the first Tuesday following the preceding Ranking Period and end at 5 p.m. (Pacific time) on the Friday of that week. All times set forth in the Reduction Agreement and used in the Offer process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology.

(iii) *Validity of offer*. The Auditor shall examine each Offer for consistency with the Database and information contained in the enrollment documents. If there is an inconsistency in the information contained in the Offer, any of the elements required of an Offer pursuant to paragraph (d)(2)(ii) of this section are missing, or the Auditor does not receive the original Offer Form before the Offers are to be posted pursuant to paragraph (d)(4) of this section, the Auditor shall notify the offering Subsector Member by e-mail or mail that the Offer is nonconforming as soon as practicable after discovering the basis of invalidity. The Subsector Member may submit a revised, conforming Offer prior to the close of that Submission Period or, in any subsequent Submission Period. Only one Offer may be submitted with respect to an LLP License during a Submission Period. In the event a Subsector Member submits more than one Offer with respect to an LLP License during a Submission Period, the first conforming Offer received by the Auditor shall be binding and irrevocable and any subsequent Offers shall be deemed invalid.

(iv) *Warranty*. By submitting an Offer, the Offering Subsector Member, warrants and represents that the Offering Subsector Member has read and understands the terms of the Reduction Agreement, the Offer, and the Reduction Contract and has had the opportunity to seek independent legal counsel regarding such documents and/or agreements and the consequences of submitting an Offer.

(4) *Posting offers*—(i) *Current offers*. For each Offer received during a Submission Period, the Auditor shall post on the Website no later than 5 p.m. (Pacific time) on the following Tuesday all of the details of such Offer as set forth on the Offer Form. In addition, the Auditor shall post, as available to Auditor, a summary by year of up to ten (10) years catch history during the period 1995–2004 in total round weight equivalents and percentage of Longline Subsector ITAC harvested for any vessel that is included in the Offer. Subsector Member (or vessel owner, if other than the Subsector Member) expressly authorizes Auditor to release the catch history summary information previously prepared for that Subsector Member or vessel owner by the Auditor as part of the analysis of FLCC's membership's catch history previously conducted by the Auditor on behalf of the FLCC.

(ii) *Posting order*. Offers shall be posted on the Website by the Auditor in alphabetical order of the Offering Subsector Member's name.

(iii) *Questions as to offer*. The Auditor shall respond to no questions from Subsector Member regarding Offers except

to confirm that the posting accurately reflects the details of the Offer. If an Offering Subsector Member notices an error in an Offer posting on the Website, such Subsector Member shall notify the Auditor as soon as practicable. The Auditor shall review such notice, the posting and the original Offer. If an error was made in posting the Auditor shall correct the posting as soon as practicable and notify the Subsector Members via e-mail or mail of the correction. In the event such an error is not discovered prior to Ranking, an Offering Subsector Member shall be bound to the terms of the submitted Offer, not the terms of the posted Offer.

(iv) *Archive.* The Auditor shall maintain on the Website an archive of prior Offers posted, which shall be available for review by all Subsector Members.

(5) *Ranking*—(i) *Eligibility.* Each Subsector Member that has not submitted an Offer during the preceding Submission Period, or whose vessel is not included as a withdrawing vessel in an Offer during the preceding Submission Period (i.e., a Nonoffering Subsector Member), may submit to the Auditor a Ranking Form during a Ranking Period. With respect to Ranking, a Subsector Member that holds more than one LLP License may participate in the Ranking process for each LLP License not included in an Offer.

(ii) *Ranking period.* The initial Ranking Period shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Ranking Periods shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week.

(iii) *Ranking form.* Prior to each Ranking Period, the Auditor will post a Ranking Form on the Website in ''pdf'' file format. Each eligible Subsector Member wishing to rank the current Offers shall rank the Offers on the Ranking Form numerically in the Subsector Member's preferred order of purchase. The Offer that Subsector Member would most like to have accepted should be ranked number one (1), and subsequent Offers ranked sequentially until the Offer that the Subsector Member would least like to see accepted is ranked with the highest numerical score. A Subsector Member wishing to call for a Closing Vote shall, in lieu of ranking the Current Offers, mark the Ranking Form to accept the Selected Offers selected during the prior Ranking Period and close the Selection Process. To be valid, the Ranking Form must rank each Current Offer listed on the Ranking Form or, if applicable, be marked to call for a Closing Vote. Ranking Forms shall be submitted by sending a completed Ranking Form, signed by an Authorized Party, to the Auditor by facsimile or mail prior to the end of the Ranking Period. A Subsector Member is not required to rank the Offers during a Ranking Period or call for a Closing Vote.

(iv) *Validity of subsector member ranking.* The Auditor shall examine each Ranking Form for completeness, whether the form either ranks the Offers or calls for a Closing Vote (but not both), and authorized signature. Any incomplete or otherwise noncompliant Ranking Form(s) shall be invalid, and shall not be included in the Rankings of the Current Offers. The Auditor shall notify the Subsector Member of the reason for declaring any Ranking Form invalid as soon as practicable. A Subsector Member may cure the submission of an invalid Ranking Form by submitting a complying Ranking Form if accomplished before the end of the applicable Ranking Period.

(6) *Ranking results*—(i) *Compiling the rankings.* Unless two-thirds (⅔) of the Nonoffering Subsector Members have called for a Closing Vote, the Auditor shall compile the results of the Ranking Forms by assigning one point for each position on a Ranking Form. That is, the Offer ranked number one (1) on a Ranking Form shall be awarded one (1) point, the Offer ranked two (2) shall receive two (2) points, and continuing on in this manner until all Offers have been assigned points correlating to its ranking on each valid Ranking Form. The Offer with the least number of total points assigned shall be the highest ranked Offer, and the Offer with the greatest total points assigned shall be the lowest ranked Offer.

(ii) *Posting rankings.* The Auditor shall post the results of the compilation of the Ranking Forms on the Website in alphabetical order based on the Offering Subsector Member's name no later than 5 p.m. (Pacific time) on the Monday following the Ranking Period. The Auditor shall post the highest consecutive ranking Offers that total thirty six million dollars ($36,000,000) or less. Those Offering Subsector Members whose Offers are posted shall be deemed Selected Offerors and their Offers shall be deemed Selected Offers. Those Offering Subsector Members whose Offers are not posted shall be deemed Rejected Offerors.

(iii) *Selected offer information or confidentiality.* The Auditor shall post the name of the Offering Subsector Member, the amount of the Offer, and a summary of the total number of Ranking Forms received and the number of such forms on which the Members called for a Closing Vote. Other than the foregoing, the Auditor shall not post any details of the compilation of the Ranking Forms.

(iv) *Selected offerors.* Selected Offerors may not withdraw their Offers unless in subsequent rankings their Offers no longer are within the highest ranking Offers and they become Rejected Offerors. A Selected Offeror may, however, modify a Selected Offer solely to the extent such modification consists of a reduction in the Offer price. A Selected Offeror may submit a modified Offer to the Auditor during the next Offering Period as set forth in paragraph (d)(3) of this section. Unless a Selected Offeror becomes a Rejected Offeror in a subsequent Ranking, a Selected Offeror shall be bound by the terms of the lowest Selected Offer submitted as if such modified Offer had been the original Selected Offer. In the event a Selected Offeror submits a modified Offer and such Offer is not ranked because sufficient votes are received to call for a Closing Vote, the previously Selected Offer shall remain the Selected Offer.

(v) *Rejected offerors.* The Offer of a Rejected Offeror is terminated and the Rejected Offeror is no longer bound by the terms of its Offer. A Rejected Offeror may, at its sole discretion, resubmit the same Offer, submit a revised Offer, or elect not to submit an Offer during any subsequent Submission Period until the Selection Process is closed.

(vi) *Ties.* In the event there is a tie with respect to Offers which results in the tied Offers exceeding thirty-six million dollars ($36,000,000), the tied Offers and all Offers ranked lower than the tied Offers shall be deemed to be rejected and the Rejected Offerors may, at their option, submit an Offer in a subsequent Submission Period.

(vii) *Archive.* Auditor shall maintain on the Website an archive of prior Offer Rankings as posted over the course of the Selection Process, which shall be available for Subsector Member review.

(7) *Closing.* The Selection Process will close when two-thirds (⅔) or more of the Nonoffering Subsector Members of the Longline Subsector, as determined by the Auditor, affirmatively vote to accept the Selected Offerors selected during the prior Ranking Period as part of the Reduction Plan to be submitted to the Secretary.

(i) *Call for vote.* A Closing Vote will be held when: at least two-thirds (⅔) of the Nonoffering Subsector Members submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process in lieu of Ranking the current Offers; and there are no unresolved Protests or Arbitrations. The Auditor shall notify all Subsector Members by e-mail or mail and posting a notice on the Website as soon as practicable that a Closing Vote is to be held. Such notice shall state the starting and ending dates and times of the voting period, which shall be not less than three (3) nor more than seven (7) calendar days from the date of such notice. A voting period shall commence at 9 a.m. (Pacific time) on Monday and end at 5 p.m. on the Friday of that week.

(ii) *Voting.* No less than three (3) calendar days prior to the voting period, the Auditor will post a Closing Ballot on the Website in ''pdf'' file format. Each eligible Nonoffering Subsector Member wishing to vote shall print out the Closing Ballot, and, with respect to each of the currently Selected Offers on the Closing Ballot, vote either in favor of or opposed to accepting that Selected Offer and submit a completed

and signed Closing Ballot to the Auditor preferably by facsimile prior to the end of the Voting Period.

(iii) *Ballot verification.* The Auditor shall examine each submitted Closing Ballot for completeness and authorized signature. Any incomplete Closing Ballot shall be void, and shall not be included in the voting results. The Auditor shall not notify the Subsector Member of an invalid Closing Ballot.

(iv) *Voting results.* The Auditor shall post the results of the Vote as soon as practicable after voting closes. Each Offer on the Closing Ballot that receives votes approving acceptance of such Offer from two-thirds (⅔) or more of the total number of Nonoffering Subsector Members shall be a Selected Offeror and shall be the basis for the Reduction Plan submitted to NMFS. Any Offer on the Closing Ballot that does not receive such two-thirds (⅔) approval shall be rejected and shall not be included among the Offers included among the Reduction Plan submitted to NMFS.

(v) *Notification to NMFS.* Upon closing of the Selection Process, FLCC shall notify NMFS in writing of the identities of the Selected Offerors and provide to NMFS a completed and fully executed original Reduction Agreement from each of the Selected Offerors and a certified copy of the fully executed Reduction Agreement and Reduction Contract.

(e) *Submission of reduction plan, including repayment.* Upon completion of the offering process, the FLCC on behalf of the Subsector Members shall submit to NMFS the Reduction Plan which shall include the provisions set forth in this paragraph (e).

(1) *Capacity reduction.* The Reduction Plan shall identify as the proposed capacity reduction, without auction process, the LLP Licenses as well as the vessels and the catch histories related to the LLP Licenses, linked crab LLP Licenses, and any other fishing rights or other interests associated with the LLP Licenses and vessels included in the Selected Offers. The aggregate of all Reduction Agreements and Reduction Contracts signed by Subsector Members whose offers to participate in this buyback were accepted by votes of the Subsector Members, will together with the FLCC's supporting documents and rationale for recognizing that these offers represent the expenditure of the least money for the greatest capacity reduction, constitute the Reduction Plan to be submitted to NMFS for approval on behalf of the Secretary of Commerce.

(2) *Loan repayment*—(i) *Term.* As authorized by Section 219(B)(2) of the Act, the capacity reduction loan (the ''Reduction Loan'') shall be amortized over a thirty (30) year term. The Reduction Loan's original principal amount may not exceed thirty-six million dollars ($36,000,000), but may be less if the reduction cost is less. Subsector Members acknowledge that in the event payments made under the Reduction Plan are insufficient to repay the actual loan, the term of repayment shall be extended by NMFS until the loan is paid in full.

(ii) *Interest.* The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus 2 percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be 2 percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed, and will not vary over the remainder of the reduction loan's 30-year term. The Reduction loan will be subject to a level debt amortization. There is no prepayment penalty.

(iii) *Fees.* The Reduction Loan shall be repaid by fees collected from the Longline Subsector. The fee amount will be based upon: The principal and interest due over the next twelve months divided by the product of the Hook & Line, Catcher Processor (Longline Subsector; sometimes referred to as the ''H&LCP Subsector'') portion of the BSAI Pacific cod ITAC (in metric tons) set by the North Pacific Fishery Management Council (NPFMC) in December of each year multiplied by 2,205 (i.e., the number of

pounds in a metric ton). In the event that the Longline Subsector portion for the ensuing year is not available, the Longline Subsector portion forecast from the preceding year will be used to calculate the fee.

(A) The fee will be expressed in cents per pound rounded up to the next one-tenth of a cent. For example: If the principal and interest due equal $2,900,000 and the Longline Subsector portion equals 100,000 metric tons, then the fee per round weight pound of Pacific cod will equal 1.4 cents per pound. [2,900,000 /(100,000 × 2,205) = .01315]. The fee will be accessed and collected on Pacific cod to the extent possible and if not, will be accessed and collected as provided for in this paragraph (e).

(B) Fees must be accessed and collected on Pacific cod used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel production value of all post-reduction Longline Subsector landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a penny per pound round weight fee will be calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.

(C) The additional fee will be limited to the amount necessary to amortize the remaining twelve months principal and interest in addition to the 5 percent fee accessed against Pacific cod. The additional fee will be a minimum of one cent per pound. In the event that collections exceed the total principal and interest needed to amortize the payment due, the principal balance of the loan will be reduced. To verify that the fees collected do not exceed 5 percent of the fishery revenues, the annual total of principal and interest due will be compared to the latest available annual Longline Subsector revenues to ensure it is equal to or less than 5 percent of the total ex-vessel production revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or for any other reason NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such a time that new calculations are made and communicated to the post reduction fishery participants.

(D) It is possible that the fishery may not open during some years and no Longline Subsector portion of the ITAC is granted. Consequently, the fishery will not produce fee revenue with which to service the reduction loan during those years. However, interest will continue to accrue on the principal balance. When this happens, if the fee rate is not already at the maximum 5 percent, NMFS will increase the fisheries' fee rate to the maximum 5 percent of the revenues for Pacific cod and the species mentioned in paragraph (e)(2)(iii)(B), apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

(iv) *Reduction loan*. NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs (§ 600.1000 *et seq.*). The reduction loan shall be subject to the provisions of § 600.1012, except that: the borrower's obligation to repay the reduction loan shall be discharged by the owner of the Longline Subsector license regardless of which vessel catches fish under this license and regardless of who processes the fish in the reduction fishery in accordance with § 600.1013. Longline Subsector license owners in the reduction fishery shall be obligated to collect the fee in accordance with § 600.1013.

(v) *Collection*. The LLP License holder of the vessel harvesting in the post-capacity reduction plan Longline Subsector shall be responsible for self-collecting the repayment fees owed by that LLP License holder. Fees shall be submitted to NMFS monthly and shall be due no later than fifteen (15) calendar days following the end of each calendar month.

(vi) *Record keeping and Reporting*. The holder of the LLP License on which a

vessel harvesting in the post-capacity reduction plan Longline Subsector is designated shall be responsible for compliance with the applicable record keeping and reporting requirements.

(3) *Agreement with Secretary*. Each Selected Offeror, and vessel owner if not the Subsector Member, that has submitted a Selected Offer shall complete and deliver to the FLCC for inclusion in the Reduction Plan submitted to NMFS, designee for the Secretary, a completed and fully executed Reduction Contract. Any and all LLP License(s) and or vessels set forth on a Selected Offer shall be included as Reduction Fishing Interests in such Reduction Contract.

(f) *Decisions of the Auditor and the FLCC*. Time is of the essence in developing and implementing a Reduction Plan and, accordingly, the Offerors shall be limited to, and bound by, the decisions of the Auditor and the FLCC.

(1) The Auditor's examination of submitted applications, Offers, Prequalification Offers and Rankings shall be solely ministerial in nature. That is, the Auditor will verify whether the documents submitted by Subsector Members are, on their face, consistent with each other and the Database, in compliance with the requirements set forth in the Reduction Agreement, and, signed by an Authorized Party. The Auditor may presume the validity of all signatures on documents submitted. The Auditor shall not make substantive decisions as to compliance (e.g., whether an interim LLP License satisfies the requirements of the Act, or whether a discrepancy in the name appearing on LLP Licenses and other documents is material).

(2) [Reserved]

(g) *Enforcement/specific performance*. The parties to the Reduction Agreement have agreed that the opportunity to develop and submit a capacity reduction program for the Longline Subsector under the terms of the Act is both unique and finite and that failure of a Selected Offeror, and vessel owner, if not a Subsector Member, to perform the obligations provided by the Reduction Agreement will result in irreparable damage to the FLCC, the Subsector Members and other Selected Offerors. Accordingly, the parties to the Reduction Agreement expressly acknowledge that money damages are an inadequate means of redress and agree that upon the failure of the Selected Offeror, and vessel owner if not a Subsector Member, to fulfill its obligations under the Reduction Agreement that specific performance of those obligations may be obtained by suit in equity brought by the FLCC in any court of competent jurisdiction without obligation to arbitrate such action.

(h) *Miscellaneous*—(1) *Time/Holidays*. All times related to the Selection Process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology. In the event that any date occurring within the Selection Process is a Federal holiday, the date shall roll over to the next occurring business day.

(2) *Termination*. The Reduction Agreement shall automatically terminate if no vote of acceptance is completed by December 31, 2007. The Reduction Agreement may be terminated at any time prior to approval of the Reduction Plan by NMFS, on behalf of the Secretary, by written notice from 50 percent of Subsector Members.

(3) *Choice of law/venue*. The Reduction Agreement shall be construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law provisions. The parties submit to the exclusive personal jurisdiction of the United States District Court located in Seattle, Washington, with respect to any litigation arising out of or relating to the Reduction Agreement or out of the performance of services hereunder.

(4) *Incorporation*. All executed counterparts of the Reduction Agreement, Application Forms and Offers constitute the agreement between the parties with respect to the subject matter of the Reduction Agreement and are incorporated into the Reduction Agreement as if fully written.

(5) *Counterparts*. The Reduction Agreement may be executed in multiple counterparts and will be effective as to signatories on the Effective Date. The Reduction Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and

duplicate originals together shall constitute the same agreement, whether or not all parties execute each counterpart.

(i) The facsimile signature of any party to the Reduction Agreement shall constitute the duly authorized, irrevocable execution and delivery of the Reduction Agreement as fully as if the Reduction Agreement contained the original ink signatures of the party or parties supplying a facsimile signature.

(ii) [Reserved]

(i) *Amendment*. Subsector Member acknowledges that the Reduction Agreement, the Reduction Contract, and the Reduction Plan may be subject to amendment to conform to the requirements for approval of the Reduction Plan by NMFS on behalf of the Secretary. The Auditor shall distribute to each Subsector Member in electronic format the amended form of the Reduction Agreement, the Reduction Contract, and the Reduction Plan, which amended documents in the form distributed by the Auditor and identified by the Auditor by date and version, the version of each such document then in effect at the time of any dispute arising or action taken shall be deemed binding upon the parties with respect to such dispute and/or action.

(j) *Warranties*. Subsector Member must expressly warrant and represent in the Reduction Agreement that:

(1) Subsector Member has had an opportunity to consult with Subsector Member's attorney or other advisors of Subsector Member with respect to the Reduction Agreement, the Reduction Contract, and the Act and the ramifications of the ratification of the Reduction Plan contemplated therein;

(2) Subsector Member has full understanding and appreciation of the ramifications of executing and delivering the Reduction Agreement and, free from coercion of any kind by the FLCC or any of its members, officers, agents and/or employees, executes and delivers the Reduction Agreement as the free and voluntary act of Subsector Member;

(3) The execution and delivery of the Reduction Agreement, does not and will not conflict with any provisions of the governing documents of Subsector Member;

(4) The person executing the Reduction Agreement has been duly authorized by Subsector Member to execute and deliver the Reduction Agreement and to undertake and perform the actions contemplated herein; and

(5) Subsector Member has taken all actions necessary for the Reduction Agreement to constitute the valid and binding obligation of Subsector Member, enforceable in accordance with its terms.

(k) *Approval of the reduction plan*. Acceptance of the Offers are at the sole discretion of NMFS on behalf of the Secretary of Commerce. To be approved by NMFS, on behalf of the Secretary, any Reduction Plan developed and submitted in accordance with this section and subpart M to this part must be found by the Assistant Administrator of NMFS, to:

(1) Be consistent with the requirements of Section 219(e) of the FY 2005 Appropriations Act (Public Law 108–447);

(2) Be consistent with the requirements of Section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a)) except for the requirement that a Council or Governor of a State request such a program (as set out in section 312(b)(1)) and for the requirements of section 312(b)(4);

(3) Contain provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by the Longline Subsector and that it provide for the assessment of such fees;

(4) Not require a bidding or auction process;

(5) Result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and

(6) Permit vessels in the Longline Subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.

(l) *Referenda*. The provisions of § 600.1010 (including §§ 600.1004(a),

600.1008, 600.1009, 600.1013, 600.1014, and 600.1017(a)(5), (6) and (7)) shall apply to the Reduction Plan of this section to the extent that they do not conflict with this section or with subpart M of this part.

APPENDIX TO § 600.1105—FISHING CAPACITY REDUCTION CONTRACT: BERING SEA AND ALEUTIAN ISLANDS LONGLINE CATCHER PROCESSOR SUBSECTOR

FISHING CAPACITY REDUCTION CONTRACT: BERING SEA AND ALEUTIAN ISLANDS LONGLINE CATCHER PROCESSOR SUBSECTOR

This agreement, (the ''Reduction Contract'') is entered into by and between the party or parties named in section 46 of this contract entitled, ''Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification,'' as the qualifying Offeror and as the co-Offeror (if there is a co-Offeror) (collectively the ''Offeror'') and the United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division (''NMFS''). The Reduction Contract is effective when NMFS signs the Reduction Contract and, thereby, accepts the Offeror's offer, subject to the condition subsequent of NMFS' formal notification of a successful referendum.

Witnesseth

Whereas, Section 219, Title II, Division B of the Consolidated Appropriations Act, 2005, as enacted on December 8, 2004, (the ''Act'') authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands (''BSAI'') non-pollock groundfish fishery as set forth in the Act;

Whereas, the longline catcher processor subsector (the ''Longline Subsector'') is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act;

Whereas, the Freezer Longline Conservation Cooperative (the ''FLCC'') has developed and is submitting to NMFS concurrently with this Reduction Contract a capacity reduction plan for the Longline Subsector (the ''Reduction Plan'');

Whereas, the selection process will be pursuant to the fishing capacity Reduction Contract and the Reduction Plan;

Whereas, the term ''Reduction Fishery'' is defined by the Reduction Plan as the longline catcher processor subsector of the BSAI non-pollock groundfish fishery;

Whereas, the Reduction Plan's express objective is to permanently reduce harvesting capacity in the Reduction Fishery; Whereas, NMFS implements the Reduction Plan pursuant to Section 219 of the Act as well as the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)–(e))(as excepted by the Act, including inter alia, any requirement that the Reduction Plan include a bidding or auction process) and other applicable law;

Whereas, NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs, portions of which are applicable to the Reduction Plan, (50 CFR 600.1000 *et seq.*);

Whereas, NMFS can implement the Reduction Plan only after giving notice to all members of the Longline Subsector of the Reduction Plan pursuant to Section 219(3)(b) of the Act and approval of the Reduction Plan by referendum of the Longline Subsector; and

Whereas, this Reduction Contract is submitted by Offeror and the FLCC as an integral element of the Reduction Plan and is expressly subject to the terms and conditions set forth herein, the framework regulations, the final rule (as used in this contract ''final rule'' means the final rule promulgated by NMFS which sets forth the regulations implementing the Reduction Plan for the Longline Subsector) and applicable law.

Now therefore, for good and valuable consideration and the premises and covenants hereinafter set forth the receipt and sufficiency of which the parties to the Reduction Contract hereby acknowledge, and intending to be legally bound hereby, the parties hereto agree as follows:

1. *Incorporation of Recitals.* The foregoing recitals are true and correct and are expressly incorporated herein by this reference.

2. *Further Incorporation.* The Act, framework regulations, final rule and any other rule promulgated pursuant to the Act are expressly incorporated herein by this reference. In the event of conflicting language, the framework regulations, the final rule and any other rule promulgated pursuant to the Act, take precedence over the Reduction Contract.

3. *Contract Form.* By completing and submitting the Reduction Contract to NMFS the Offeror hereby irrevocably offers to relinquish its Reduction Fishing Interests. If NMFS discovers any deficiencies in the Offeror's submission to NMFS, NMFS may, at its sole discretion, contact the Offeror in an attempt to correct such offer deficiency. ''Reduction Fishing Interests'' means all of Offeror(s) rights, title and interest to the Groundfish Reduction Permit, Reduction Permit(s), Reduction Fishing Privilege and Reduction Fishing History as defined in this Reduction Contract.

4. *Groundfish Reduction Permit.* Offeror expressly acknowledges that it hereby offers to permanently surrender, relinquish, and have

NMFS permanently revoke the valid non-interim Federal License Limitation Program groundfish license issued pursuant to 50 CFR 679.4(k) (or successor regulation) endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pacific cod, and hook and line gear identified in section 46 of this contract as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License and any offered and accepted interim permit that Offeror causes to become a non-interim permit, (the ''Groundfish Reduction Permit'').

5. *Reduction Permit(s)*. Offeror hereby acknowledges that it offers to permanently surrender, relinquish, and have NMFS permanently revoke any and all Federal fishery licenses, fishery permits, and area and species endorsements issued for any vessel named on the Groundfish Reduction Permit as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License, (the ''Reduction Permits'').

6. *Reduction Privilege Vessel*. The Reduction Privilege Vessel is the vessel listed on the Offeror's License Limitation Program license.

7. *Reduction Fishing Privilege*. If a vessel is specified in section 46 of this contract (the ''Reduction Privilege Vessel''), Offeror hereby acknowledges that Offeror offers to relinquish and surrender the Reduction Privilege Vessel's fishing privilege and consents to the imposition of Federal vessel documentation restrictions that have the effect of permanently revoking the Reduction Privilege Vessel's legal ability to fish anywhere in the world as well as its legal ability to operate under foreign registry or control—including the Reduction Privilege Vessel's: fisheries trade endorsement under the Commercial Fishing Industry Vessel Anti-Reflagging Act (46 U.S.C. 12108); eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the privilege otherwise to ever fish again anywhere in the world (the ''Reduction Fishing Privilege''). Offeror agrees to instruct the United States Coast Guard's Vessel Documentation Center to remove the fishery endorsement from the Reduction Privilege Vessel. If the Reduction Privilege Vessel is not a federally documented vessel, the Offeror offers to promptly scrap the vessel and allow NMFS whatever access to the scrapping NMFS deems reasonably necessary to document and confirm the scrapping.

8. *Reduction Fishing History*. Offeror surrenders, relinquishes, and consents to NMFS' permanent revocation of the following Reduction Fishing History (the ''Reduction Fishing History''):

a. The Reduction Privilege Vessel's full and complete documented harvest of groundfish;

b. For any documented harvest of the Reduction Privilege Vessel whatsoever, including that specified in section 8 of this contract, any right or privilege to make any claim in any way related to any fishery privilege derived in whole or in part from any such other and documented harvest which could ever qualify any party for any future limited access system fishing license, permit, and other harvest authorization of any kind; including without limitation crab LLP licenses linked to License Limitation Program (''LLP'') licenses, state fishing rights appurtenant to Reduction Fishing Vessels, and all fishing history associated therewith, but without prejudice to any party who before submission of this offer may have for value independently acquired the fishing history involving any such documented harvest;

c. Any documented harvest on any other vessel (Reduction Fishing Vessel) that gave rise to the Groundfish Reduction Permit; and

d. All fishing history associated with the latent LLP license identified on the Selected Offer and any fishing history associated with the fishing vessel that gave rise to the latent LLP license that remains in the Offeror's possession as of August 11, 2006 (*i.e.*, date of publication of the proposed rule in the FEDERAL REGISTER).

9. *Halibut, Sablefish and Crab IFQs Excluded*. Notwithstanding any other provision of this Reduction Contract, no right, title and/or interest to harvest, process or otherwise utilize individual fishing quota (''IFQ'') quota share in the halibut, sablefish and crab fisheries pursuant to 50 CFR parts 679 and 680, nor crab LLP license history to the extent necessary for the issuance of crab IFQ pursuant to 50 CFR part 680 as in effect as of the date of this Contract, shall be included among Offeror's Reduction Fishing Interests.

10. *Representations and Warranties*. Offeror represents and warrants that, as of the date of submission of this Reduction Contract, Offeror is:

a. The holder of record, according to NMFS' official fishing license records, at the time of offer, of the Groundfish Reduction Permit and the Reduction Permit(s).

b. The Reduction Privilege Vessel's owner of record, according to the National Vessel Documentation Center's official vessel documentation records, at the time of offer, and that the Reduction Privilege Vessel is neither lost nor destroyed at the time of offer.

c. In retention of and fully and legally entitled to offer and dispose of hereunder, full and complete rights to the Reduction Privilege Vessel's full and complete Reduction

Fishing History necessary to fully and completely comply with the requirements of section 8 of this contract.

11. *Offer Amount*. NMFS' payment to Offeror in the exact amount of the amount set forth by Offeror in section 46 of this contract is full and complete consideration for the Offeror's offer.

12. *Additional Offer Elements*. Offeror shall include with its offer an exact photocopy of the Reduction Privilege Vessel's official vessel documentation or registration (i.e., the certificate of documentation the U.S. Coast Guard's National Vessel Documentation Center issued for federally documented vessels or the registration a State issues for State registered vessels) and an exact photocopy of the Groundfish Reduction Permit and all Reduction Permit(s). The Offeror shall also include with the offer all other information required in this Reduction Contract and otherwise comply with Reduction Contract requirements.

13. *Use of Official Fishing License or Permit Databases*. Offeror expressly acknowledges that NMFS shall use the appropriate official governmental fishing license or permit database to:

Determine the Offeror's address of record; verify the Offeror's qualification to offer; determine the holder of record of the Groundfish Reduction Permit and Reduction Permit(s); and verify the Offeror's inclusion in the offer of all permits and licenses required to be offered in the Offer.

14. *Use of National Vessel Documentation Center Database*. Offeror expressly acknowledges that NMFS shall use the records of the National Vessel Documentation Center to determine the owner of record for a federally documented Reduction Privilege Vessel and the appropriate State records to determine the owner of record of a non-federally documented Reduction Privilege Vessel.

15. *Offeror to Ensure Accurate Records*. Offeror shall, to the best of its ability, ensure that the records of the databases relevant to sections 13 and 14 of this contract are true, accurate, and complete.

16. *Submissions are Irrevocable*. The parties hereto expressly acknowledge as the essence hereof that the Offeror voluntarily submits to NMFS this firm and irrevocable offer. The Offeror expressly acknowledges that it hereby waives any privilege or right to withdraw, change, modify, alter, rescind, or cancel any portion of the Reduction Contract and that the receipt date and time which NMFS marks on the Reduction Contract constitutes the date and time of the offer's submission.

17. *Offer Rejection*. NMFS shall reject an offer that NMFS deems is in any way unresponsive or not in conformance with the Reduction Contract, and the applicable law or regulations unless the Offeror corrects the defect and NMFS, in its sole discretion, accepts the correction.

18. *Notarized Offeror Signature(s) Required*. NMFS shall deem as non-responsive and reject an offer whose Offer Submission Form does not contain the notarized signatures of all persons required to sign the form on behalf of the Offeror.

19. *Offer Rejections Constitute Final Agency Action*. NMFS's offer rejections are conclusive and constitute final agency action as of the rejection date.

20. *Effect of Offer Submission*. Submitting an irrevocable offer conforming to the requirements stated herein entitles the Offeror to have NMFS accept the offer if NMFS, in its sole discretion, deems that the offer is fully responsive and complies with the Act, the final rule and any other rule promulgated pursuant to the Act.

21. *Offeror Retains Use*. After submitting an offer, the Offeror shall continue to hold, own, or retain unimpaired every aspect of any and all LLP License(s) and or vessels set forth on an Offer included as Reduction Fishing Interests, until such time as: NMFS notifies the Offeror that the Reduction Plan is not in compliance with the Act or other applicable law and will not be approved by NMFS; notifies the Offeror that the referendum was unsuccessful; NMFS tenders the reduction payment and the Offeror complies with its obligations under the Reduction Contract; or NMFS otherwise excuses the Offeror's performance.

22. *Acceptance by Referendum*. NMFS shall formally notify the Offeror in writing whether the referendum is successful, which written notice shall inform Offeror that the condition subsequent has been satisfied. Therefore, Offeror expressly acknowledges that all parties must perform under the Reduction Contract and the Reduction Contract is enforceable against, and binding on, the Reduction Contract parties in accordance with the terms and conditions herein.

23. *Reduction Contract Subject to Federal Law*. The Reduction Contract is subject to Federal law.

24. *Notice to Creditors*. Upon NMFS' offer acceptance notice to the Offeror, Offeror agrees to notify all parties with secured interests in the Reduction Fishing Interests that the Offeror has entered into the Reduction Contract.

25. *Referendum*. Offeror acknowledges that the outcome of the referendum of the Reduction Plan is an occurrence over which NMFS has no control.

26. *Unsuccessful Referendum Excuses Performance*. An unsuccessful referendum excuses all parties hereto from every obligation to perform under the Reduction Contract. In such event, NMFS need not tender reduction payment and the Offeror need not

surrender and relinquish or allow the revocation or restriction of any element of the Reduction Fishing Interest specified in the Reduction Contract. An unsuccessful referendum shall cause the Reduction Contract to have no further force or effect.

27. *Offeror Responsibilities upon Successful Referendum.* Upon NMFS' formal notification to the Offeror that the referendum was successful and that NMFS had accepted the Reduction Contract, Offeror shall immediately become ready to surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests.

28. *Written Payment Instructions.* After a successful referendum, NMFS shall tender reduction payment by requesting the Offeror to provide to NMFS, and the Offeror shall subsequently so provide, written payment instructions for NMFS' disbursement of the reduction payment to the Offeror or to the Offeror's order.

29. *Request for Written Payment Instructions Constitutes Tender.* NMFS' request to the Offeror for written payment instructions constitutes reduction payment tender, as specified in 50 CFR 600.1011.

30. *Offeror Responsibilities upon Tender.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall immediately surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests. The Offeror must then return the original of its Groundfish Reduction Permit and Reduction Permit(s) to NMFS. Concurrently with NMFS' reduction payment tender, the Offeror shall forever cease all fishing for any species with the Reduction Privilege Vessel and immediately retrieve all fishing gear, irrespective of ownership, previously deployed from the Reduction Privilege Vessel. Offeror agrees to authorize the United States Coast Guard to cancel the fishery endorsement in the Reduction Privilege Vessel.

31. *Reduction Privilege Vessel Lacking Federal Documentation.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall immediately scrap any vessel which the Offeror specified as a Reduction Privilege Vessel and which is documented solely under state law or otherwise lacks documentation under Federal law. The Offeror shall scrap such vessel at the Offeror's expense. The Offeror shall allow NMFS, its agents, or its appointees reasonable opportunity to observe and confirm such scrapping. The Offeror shall conclude such scrapping within a reasonable time.

32. *Future Harvest Privilege and Reduction Fishing History Extinguished.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall surrender and relinquish and consent to the revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate), of any claim in any way related to any fishing privilege derived, in whole or in part, from the use or holdership of the Groundfish Reduction Permits and the Reduction Permit(s), from the use or ownership of the Reduction Privilege Vessel (subject to and in accordance with the provisions of section 8 of this contract), and from any documented harvest fishing history arising under or associated with the same which could ever qualify the Offeror for any future limited access fishing license, fishing permit, and other harvest authorization of any kind.

33. *Post Tender Use of Federally Documented Reduction Privilege Vessel.* After NMFS' reduction payment tender to the Offeror, the Offeror may continue to use a federally documented Reduction Privilege Vessel for any lawful purpose except ''fishing'' as defined under the Magnuson-Stevens Act and may transfer—subject to all restrictions in the Reduction Contract, other applicable regulations, and the applicable law—the vessel to a new owner. The Offeror or any subsequent owner shall only operate the Reduction Privilege Vessel under the United States flag and shall not operate such vessel under the authority of a foreign country. In the event the Offeror fails to abide by such restrictions, the Offeror expressly acknowledges and hereby agrees to allow NMFS to pursue any and all remedies available to it, including, but not limited to, recovering the reduction payment and seizing the Reduction Privilege Vessel and scrapping it at the Offeror's expense.

34. *NMFS' Actions upon Tender.* Contemporaneously with NMFS' reduction payment tender to the Offeror, and without regard to the Offeror's refusal or failure to perform any of its Reduction Contract duties and obligations, NMFS shall: Permanently revoke the Offeror's Groundfish Reduction Permit and Reduction Permit(s); notify the National Vessel Documentation Center to permanently revoke the Reduction Privilege Vessel's fishery trade endorsement; notify the U.S. Maritime Administration to make the Reduction Privilege Vessel permanently ineligible for the approval of requests to place the vessel under foreign registry or operate the vessel under a foreign country's authority; record in the appropriate NMFS records that the Reduction Fishing History represented by any documented harvest fishing history accrued on, under, or as a result of the operation of the Reduction Privilege Vessel and/or Reduction Fishing Vessel (subject to and in accordance with the provisions of section 8 of this contract), the Groundfish Reduction Permit, and the Reduction Permit(s) which could ever qualify the Offeror for any future limited access fishing license, fishing permit, or other harvesting privilege of any kind shall never again be available to

anyone for any fisheries purpose; and implement any other restrictions the applicable law or regulations impose.

35. *Material Disputes to be Identified*. Members of the public shall, up until NMFS receives the Offeror's written payment instructions, be able to advise NMFS in writing of any material dispute with regard to any aspect of any accepted Reduction Contract. Such a material dispute shall neither relieve the Offeror of any Reduction Contract duties or obligations nor affect NMFS' right to enforce performance of the Reduction Contract terms and conditions.

36. *Reduction Payment Disbursement*. Once NMFS receives the Offeror's written payment instructions and certification of compliance with the Reduction Contract, NMFS shall as soon as practicable disburse the reduction payment to the Offeror. Reduction payment disbursement shall be in strict accordance with the Offeror's written payment instructions. Unless the Offeror's written payment instructions direct NMFS to the contrary, NMFS shall disburse the whole of the reduction payment to the Offeror. If the qualifying Offeror offers with a co-Offeror, both the qualifying Offeror and the co-Offeror must approve and sign the written payment instructions.

37. *Reduction Payment Withheld for Scrapping or for Other Reasons*. In the event that a Reduction Privilege Vessel which is not under Federal documentation must be scrapped, NMFS shall withhold from reduction payment disbursement an amount sufficient to scrap such vessel. NMFS shall withhold such sum until the vessel is completely scrapped before disbursing any amount withheld. NMFS may confirm, if NMFS so chooses, that the vessel has been scrapped before disbursing any amount withheld. If NMFS has reason to believe the Offeror has failed to comply with any of the Reduction Contract terms and conditions, NMFS shall also withhold reduction payment disbursement until such time as the Offeror performs in accordance with the Reduction Contract terms and conditions.

38. *Offeror Assistance with Restriction*. The Offeror shall, upon NMFS' request, furnish such additional documents, undertakings, assurances, or take such other actions as may be reasonably required to enable NMFS' revocation, restriction, invalidation, withdrawal, or extinguishment by other means (as NMFS deems appropriate) of all components of the Reduction Contract's Reduction Fishing Interest in accordance with the requirements of the Reduction Contract terms and conditions, applicable regulations and the applicable law.

39. *Recordation of Restrictions*. Upon the Reduction Fishing Privilege's revocation, the Offeror shall do everything reasonably necessary to ensure that such revocation is recorded on the Reduction Privilege Vessel's Federal documentation (which the National Vessel Documentation Center maintains in accordance with Federal maritime law and regulations) in such manner as is acceptable to NMFS and as shall prevent the Reduction Privilege Vessel, regardless of its subsequent ownership, from ever again being eligible for a fishery trade endorsement or ever again fishing. The term ''fishing'' includes the full range of activities defined in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

40. *Reduction Element Omission*. In the event NMFS accepts the offer and the Offeror has failed, for any reason, to specify in the Reduction Contract any Groundfish Reduction Permit, non-Groundfish Reduction Permit(s), Reduction Privilege Vessel, Reduction Fishing Vessel, Reduction Fishing History, or any other element of the Reduction Fishing Interest which the Offeror should under Reduction Contract, applicable regulations and the applicable law have specified in Reduction Contract, such omitted element shall nevertheless be deemed to be included in the Reduction Contract and to be subject to the Reduction Contract's terms and conditions; and all Reduction Contract terms and conditions which should have applied to such omitted element had it not be omitted shall apply as if such element had not been omitted. Upon the Offeror discovering any such omission, the Offeror shall immediately and fully advise NMFS of such omission. Upon either NMFS or the Offeror discovering any such omission, the Offeror shall act in accordance with the Reduction Contract, applicable regulations and the applicable law.

41. *Remedy for Breach*. Because money damages are not a sufficient remedy for the Offeror breaching any one or more of the Reduction Contract terms and conditions, the Offeror explicitly agrees to and hereby authorizes specific performance of the Reduction Contract, in addition to any money damages, as a remedy for such breach. In the event of such breach, NMFS shall take any reasonable action, including requiring and enforcing specific performance of the Reduction Contract, NMFS deems necessary to carry out the Reduction Contract, applicable regulations and the applicable law.

42. *Waiver of Data Confidentiality*. The Offeror consents to the public release of any information provided in connection with the Reduction Contract or pursuant to Reduction Plan requirements, including any information provided in the Reduction Contract or by any other means associated with, or necessary for evaluation of, the Offeror's Reduction Contract if NMFS finds that the release of such information is necessary to achieve the Reduction Plan's authorized purpose. The Offeror hereby explicitly waives any claim of confidentiality otherwise afforded to catch, or harvest data and fishing histories otherwise protected from release

under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881 a(b)) or any other law. In the event of such information release, the Offeror hereby forever fully and unconditionally releases and holds harmless the United States and its officers, agents, employees, representatives, of and from any and all claims, demands, debts, damages, duties, causes of action, actions and suits whatsoever, in law or equity, on account of any act, failure to act or event arising from, out of, or in any way related to, the release of any information associated with the Reduction Program.

43. *Oral Agreement Invalid*. The Reduction Contract, any addendums to section 46 of this contract, and enclosures of photocopies of licenses and permits required under section 46 of this contract, contain the final terms and conditions of the agreement between the Offeror and NMFS and represent the entire and exclusive agreement between them. NMFS and the Offeror forever waive all right to sue, or otherwise counterclaim against each other, based on any claim of past, present, or future oral agreement between them.

44. *Severable Provisions*. The Reduction Contract provisions are severable; and, in the event that any portion of the Reduction Contract is held to be void, invalid, non-binding, or otherwise unenforceable, the remaining portion thereof shall remain fully valid, binding, and enforceable against the Offeror and NMFS.

45. *Disputes*. Any and all disputes involving the Reduction Contract, and any other Reduction Plan aspect affecting them shall in all respects be governed by the Federal laws of the United States; and the Offeror and all other parties claiming under the Offeror irrevocably submit themselves to the jurisdiction of the Federal courts of the United States and/or to any other Federal administrative body which the applicable law authorizes to adjudicate such disputes.

46. *Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification*.

a. *Completion and Submission*. The Offeror must fully, faithfully, and accurately complete this section 46 of this contract and thereafter submit the full and complete Reduction Contract to NMFS in accordance with the Reduction Contract. If completing this section requires inserting more information than the places provided for the insertion of such information allows, the Offeror should attach an addendum to the Reduction Contract that: Includes and identifies the additional information, states that the addendum is a part of the Reduction Fishing Interests Identification portion of the Reduction Contract, states (as a means of identifying the Reduction Contract to which the addendum relates) the NMFS license number designated on the Reduction Contract's Groundfish Reduction Permit, and is signed by all persons who signed the Reduction Contract as the Offeror.

b. *Offeror Information*.

(1) *Offeror name(s)*. Insert in the table provided under this section 46.b(1) of this contract the name(s) of the qualifying Offeror and of the co-Offeror (if there is a co-Offeror), and check the appropriate box for each name listed.

Each name the Offeror inserts must be the full and exact legal name of record of each person, partnership, corporation or other business entity identified on the offer. If any Reduction Fishing Interest element is co-owned by more than one person, partnership, corporation or other business entity, the Offeror must insert each co-owner's name.

In each case, the Offeror is the holder of record, at the time of Offeror's execution of this Reduction Contract, of the Groundfish Reduction Permit and the Reduction Permit(s). A co-Offeror is not allowed for either the Groundfish Reduction Permit or the Reduction Permit(s). If the Offeror is also the owner of record, at the time of offering, of the Reduction Privilege Vessel, the qualifying Offeror is the sole Offeror. If, however, the owner of record, at the time of execution of this Reduction Contract, of the Reduction Privilege Vessel is not exactly the same as the Offeror, then the owner of record is the co-Offeror; and the Offeror and the co-Offeror jointly offer together as the Offeror.

OFFEROR NAME(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column to name each co-Offeror. If not, use only one row for Offeror and one row for any co-Offeror	Check appropriate box for each name listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(2) *Offeror address(s) of record.* Insert in the table provided under this section 46.b(2) of this contract the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact address(s) of record, and check the appropriate box for each address listed.

OFFEROR ADDRESS(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., address (1) is for name (1), address (2) is for name (2), address (3) is for name (3), etc.	Check appropriate box for each address listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(3) *Offeror business telephone number(s).* Insert in the table provided under this section 46.b(3) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact business telephone number(s), and check the appropriate box for each number listed.

OFFEROR BUSINESS TELEPHONE NUMBER(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for the telephone number of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., telephone number (1) is for name (1), telephone number (2) is for name (2), telephone number (3) is for name (3), etc.	Check appropriate box for each telephone number listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(4) *Offeror electronic mail address(s) (if available).* Insert in the table printed under this section 46.b(4) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact electronic mail (e-mail) address(s), and check the appropriate box for each address.

OFFEROR E-MAIL ADDRESS(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for the e-mail address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name in section 46.b(1) of this contract, i.e., e-mail (1) is for name (1), e-mail (2) is for name (2), e-mail (3) is for name (3), etc	Check appropriate box for each e-mail address listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

c. *LLP license number for Groundfish Reduction Permit*. Insert in the place this section 46.c provides the full and exact license number which NMFS designated on the LLP license which the Offeror specifies as the Groundfish Reduction Permit. Attach with the Reduction Contract an exact photocopy of such license.

LLP LICENSE NUMBER(S) AND FISHERY(S) OF Of LLP LICENSE(S) SPECIFIED AS GROUNDFISH REDUCTION PERMIT(S)	
License number(s)	Fishery(s)
(1)	
(2)	
(3)	
(4)	
(5)	

d. *License number(s) for Reduction Permit(s)*. Insert in the place this section 46.d provides the fishery(s) involved in, and the full and exact license number(s) with NMFS designated on the license(s) which the Offeror specifies in the Reduction Contract as the Reduction Permit(s). Enclose with the Reduction Contract an exact photocopy of each such license.

LLP LICENSE NUMBER(S) AND FISHERY OF LICENSE(S) SPECIFIED AS REDUCTION PERMITS	
License number(s)	Fishery(s)
(1)	
(2)	
(3)	
(4)	
(5)	

e. *Reduction Fishing History*. For all Reduction Fishing History insert in the place provided in the table under this section 46.e the chronological and other information with each column heading therein requires. The information required does not include any actual landing data. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS based on the fishing history of a lost or destroyed vessel plus a replacement vessel must insert information for both vessels and meet the requirements of the framework regulations, final rule and any other regulations promulgated pursuant to the Act. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS in any part based on acquisition of fishing history from another party must insert information regarding such catch history.

NAMES(S) AND OFFICIAL NUMBER OF REDUCTION PRIVILEGE VESSEL AND NAME(S) AND OFFICIAL NUMBER(S) OF ANY VESSEL FROM WHICH FISHING HISTORY WAS ACQUIRED	FOR EACH REDUCTION PRIVILEGE VESSEL IN 1ST COLUMN PROVIDE FROM TO DATE OF EACH FISHING HISTORY OFFEROR POSSESSES	FOR EACH FISHING HISTORY IN 2ND COLUMN	
		License No. of each Groundfish Reduction Permit and Reduction Permit(s) associated with each vessel involved	If Reduction Privilege Vessel acquired fishing history from another party, provide name of party, manner in which acquired, and date acquired
(1)			
(2)			
(3)			
(4)			
(5)			

f. *Reduction Privilege Vessel*. Insert the full and exact name and official number which the National Vessel Documentation Center designated for the Reduction Privilege Vessel which the Offeror or the co-Offeror (if there is a co-Offeror) specifies in the Reduction Contract, and check the box appropriate for the vessel's ownership of record.

Enclose with the Reduction Contract an exact photocopy of such vessel's official certificate of documentation.

REDUCTION PRIVILEGE VESSEL		Check appropriate ownership box below	
Official name	Official No.	Offeror	Co-Offeror (if any)

g. *Offer Amount*. Insert in the place this section 46.g provides the Offeror's full and exact offer amount, both in words and in numbers.

OFFER AMOUNT [U.S. DOLLARS]	
In words	In numbers

h. *Reduction Contract Signature*. In compliance with the Reduction Contract, applicable regulations and the applicable law, the Offeror submits the Reduction Contract as the Offeror's irrevocable offer to NMFS for the permanent surrender and relinquishment and revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate) of the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Fishing Privilege, and the Reduction Fishing History—all as identified in the Reduction Contract or as required under applicable regulations, or the applicable law.

The Offeror expressly acknowledges that NMFS' acceptance of the Offeror's offer hereunder and NMFS' tender, following a successful referendum, of a reduction payment in the same amount specified in section 46.g of this contract (less any sum withheld for scrapping any Reduction Privilege Vessel lacking Federal documentation or for any other purpose) to the Offeror shall, among other things, render the Reduction Privilege Vessel permanently ineligible or any fishing worldwide, including, but not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under United States flag, and shall impose or create other legal and contractual restrictions, impediments, limitations, obligations, or other provisions which restrict, revoke, withdraw, invalidate, or extinguish by other means (as NMFS deems appropriate) the complete Reduction Fishing Interest and any other fishery privileges or claims associated with the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Privilege Vessel, and the Reduction Fishing History—all as more fully set forth in the Reduction Contract, applicable regulations, and the applicable law.

By completing and signing the Reduction Contract, the Offeror expressly acknowledges that the Offeror has fully and completely read the entire Reduction Contract. The Offeror expressly states, declares, affirms, attests, warrants, and represents to NMFS that the Offeror is fully able to enter into the Reduction Contract and that the Offeror legally holds, owns, or retains, and is fully able under the Reduction Contract provisions to offer and dispose of, the full Reduction Fishing Interest which the Reduction Contract specifies and the applicable regulations, and the applicable law requires that any person or entity completing the Reduction Contract and/or signing the Reduction Contract on behalf of another person or entity, expressly attests, warrants, and represents to NMFS that such completing and/or signing person or entity has the express and written permission or other grant of authority to bind such other person or entity to the Reduction Contract's terms and conditions. The Offeror expressly attests, warrants, and represents to NMFS that every co-owner of the Offeror necessary to constitute the Offeror's full and complete execution of the Reduction Contract has signed the Reduction Contract. The Offeror expressly attests, warrants, and represents to NMFS that the Offeror: Fully understands the consequences of submitting the completed Reduction Contract of which it is a party to NMFS; pledges to abide by the terms and conditions of the Reduction Contract; and is aware of, understands, and consents to, any and all remedies available to NMFS for the Offeror's breach of the Reduction Contract or submission of an offer which fails to conform with the Reduction Contract, final rule, applicable regulations and the applicable law. The Offeror expressly attests, warrants, and represents to NMFS that all information which the Offeror inserted in the Reduction Contract is true, accurate, complete, and fully in accordance with the Reduction Contract, final rule, other applicable regulations and the applicable law.

In witness whereof, the Offeror has, in the place provided below, executed the Reduction Contract either as an Offeror offering alone or as an Offeror and co-Offeror (if there is a co-Offeror) jointly offering together, in accordance with the requirements specified above, and on the date written below. The Reduction Contract is effective as of the date NMFS accepts the Offeror's offer by signing the Reduction Contract.

The Offeror and co-Offeror (if there is a co-Offeror) must each sign the Reduction Contract exactly as instructed herein. Each co-owner (if there is a co-owner) of each Offeror and co-Offeror (if there is a co-Offeror) must also sign the Reduction Contract exactly as instructed herein. A notary public must, for each person or entity signing on behalf of the Offeror, complete and sign the acknowledgment and certification provision associated with each such person or entity's signature.

I. *Offeror and co-Offeror's (if there is a co-Offeror) signature(s) and notary's acknowledgment(s) and certification(s).*

OFFEROR'S SIGNATURE AND NOTARY'S ACKNOWLEDGMENT AND CERTIFICATION If Offeror or co-Offeror consists of more than one owner, use one row of column 1 for each co-owner's signature. If not, use only one row for Offeror and one row for co-Offeror (if any). Always use same Offeror row order as in Offeror Name in the table under section 46.b(1) of this contract (i.e., signature (1) is for name (1), signature (2) is for name (2) signature (3) is for name (3), etc.)			
OFFEROR SIGNATURE (1) Sign. (2) Print: the following: (a) signer's name, (b) signer's title (if signing for corporation or other business entity), and (c) signing date	Check appropriate column for each signature in 1st column		*NOTARY SIGNATURE* (1) Sign. (2) Print: the following: (a) name, (b) signing date, (3) date commission expires, and (4) State and county. Each notary signature attests to the following: "I certify that I know or have satisfactory evidence that the person who signed in the 1st column of this same row is the person who appeared before me and: (1) acknowledged his/her signature; (2) on oath, stated that he/she was authorized to sign; and (3) acknowledged that he/she did so freely and voluntarily."
	Qualifying Offeror	Co-Offeror (if any)	
(1)			
(2)			
(3)			

II. *United States of America's signature.* United States of America, Acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division.

Dated: _____

By: _____

Leo C. Erwin, Chief,

Financial Services Division, National Marine Fisheries Service.

[71 FR 57701, Sept. 29, 2006]

§600.1106 Longline catcher processor subsector Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish species fee payment and collection system.

(a) *Purpose.* As authorized by Public Law 108 447, this section's purpose is to:

(1) In accordance with §600.1012, establish:

(i) The borrower's obligation to repay a reduction loan, and

(ii) The loan's principal amount, interest rate, and repayment term; and

(2) In accordance with §§600.1013 through 600.1016, implement an industry fee system for the reduction fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in §600.1000 and §600.1105 expressly apply to this section. In addition, the following definition applies to this section:

Reduction fishery means the longline catcher processor subsector of the BSAI non-pollock groundfish fishery that §679.2 of this chapter defined as groundfish area/species endorsements.

(c) *Reduction loan amount.* The reduction loan's original principal amount is $35,000,000.

(d) *Interest accrual from inception.* Interest began accruing on the reduction loan from May 29, 2007, the date on which NMFS disbursed such loan.

(e) *Interest rate.* The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year 2007 plus 2 percent.

(f) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from May 29, 2007, but fees shall continue indefinitely for as long as necessary to fully repay the loan.

(g) *Reduction loan repayment.* (1) The borrower shall, in accordance with §600.1012, repay the reduction loan;

(2) For the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, subsector members are deemed to be both the fish buyer and fish seller. In

this case, all requirements and penalties of § 600.1013 that are applicable to both a fish seller and a fish buyer shall equally apply to parties performing both functions;

(3) Subsector members in the reduction fishery shall pay and collect the fee amount in accordance with § 600.1105;

(4) Subsector members in the reduction fishery shall, in accordance with § 600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to such fishery; except the requirements specified under paragraph (c) of this section concerning the deposit principal disbursement shall be made to NMFS no later than fifteen (15) calendar days following the end of each calendar month; and the requirements specified under paragraph (e) of this section concerning annual reports which shall be submitted to NMFS by February 1 of each calendar year; and

(5) The reduction loan is, in all other respects, subject to the provisions of §§ 600.1012 through 600.1017.

[72 FR 54222, Sept. 24, 2007]

§ 600.1107 Southeast Alaska Purse Seine Salmon Fishery capacity reduction program, including fee payment and collection system.

(a) *Purpose*. This section implements the fishing capacity reduction program for the Southeast Alaska purse seine salmon fishery enacted by Section 209 of Public Law 108–447 and amended by Section 121 of Public Law 109–479, with appropriations authorized by Section 121 of Public Law 109–479 and Public Law 110–161. The intent of the program is to permanently reduce, through an industry-financed permit buyback, the most harvesting capacity in the Reduction Fishery at the least cost, increase harvesting productivity for post-reduction Permit Holders and improve flexibility in the conservation and management of the fishery. Fishery participants will finance this program through a federal loan that will be repaid over 40 years through a fee collection system. The intent of the fee collection system is to establish the post-reduction Permit Holders' obligation to repay the Reduction Loan's principal and accrued interest over the repayment term, and to ensure repayment of the loan.

(b) *Definitions*. Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L of this part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Acceptance means SRA acceptance of a bid.

Act means Section 209 of Title II of Division B of Public Law 108–447, Consolidated Appropriations Act of 2005, as amended by Section 121 of Public Law 109–447, Magnuson-Stevens Reauthorization Act of 2006.

Authorized party means the individuals authorized by the Permit Holder on the application form to execute and submit Bids, protests and other documents and/or notices on behalf of the Permit Holder.

Bid means a bidder's irrevocable offer to relinquish a permit.

Bid amount means the dollar amount submitted by a bidder.

Bidder means a permit holder who submits a bid.

Commercial Fisheries Entry Commission (CFEC) means the Alaska state commission mandated to conserve and maintain the economic health of Alaska's commercial fisheries by limiting the number of participating fishers, by issuing permits and vessel licenses to qualified individuals in both limited and unlimited fisheries, and by providing due process hearings and appeals.

CFEC documents means any documents issued by the CFEC in connection with the Southeast Alaska purse seine salmon fishery.

Conditional notice means the CFEC form that any Bidder must sign and agree to abide by upon submission of a Bid Agreement (Appendix B to § 600.1107).

Conditional relinquishment means the CFEC form that any Permit Holder, agreeing to relinquish a permit, must sign and agree to abide by upon SRA acceptance of the bid (Appendix C to § 600.1107).

Fishery means the Southeast Alaska administrative area as defined under Title 5 Alaska Administrative Code Section 33.100 for salmon with purse seine gear.

Magnuson-Stevens Act means the Magnuson-Stevens Fishery Conservation and Management Act codified at 16 U.S.C. 1801 *et seq.*

Permit (Southeast Salmon Purse Seine Entry Permit) means a valid entry permit issued by CFEC to operate in the Southeast Alaska purse seine salmon fishery.

Permit holder means an individual who at the time of bidding is the holder of record of a permit.

Reduction fishery means the Southeast Alaska Purse Seine Salmon Fishery.

Reduction loan means the loan used to purchase the relinquished permits pursuant to the approved Reduction Plan.

Reduction loan amount means the Reduction Loan's original principal amount up to $23,476,500.

Reduction plan means the aggregate of all Bids, Relinquishment Contracts, Conditional Notices, Conditional Relinquishments, and supporting documents and rationale, submitted to the Secretary for approval.

Relinquishment contract means the contract that any Permit Holder agreeing to relinquish a permit pursuant to Alaska Statute (A.S. 16.43.150(i)) must sign and agree to abide by upon acceptance of the Bid, and before payment of the bid amount (Appendix A to § 600.1107).

Secretary means the Secretary of Commerce or his/her designee.

Southeast Revitalization Association (SRA) means the qualified fishery association authorized to develop and implement this capacity reduction program under Alaska Statute 16.40.250 and Federal law.

(c) *Enrollment in the capacity reduction program*—(1) *Distribution*. The SRA shall mail a copy of the following four documents via certified mail to each Permit Holder: Bid; Fleet Consolidation Relinquishment Contract (Relinquishment Contract); Conditional Notice to CFEC and Request by Permit Holder; and (Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit. Such mailing shall include a closing date after which the SRA will not accept new bids.

(2) *Application*. Any Permit Holder, regardless of whether having received the mailing described in paragraph (c)(1) of this section, may participate in the Capacity Reduction Program by submitting all of the following documents to the SRA no later than the bid closing date:

(i) A fully executed Bid consistent with Appendix A to this section;

(ii) A photocopy of the permit evidencing the applicant's qualification as a participant in the fishery;

(iii) A fully executed Relinquishment Contract: Southeast Alaska Salmon Purse Seine Permit Holders consistent with the appendix B to this section;

(iv) A fully executed Conditional Notice to CFEC and Request by Permit Holder consistent with the appendix C to this section; and

(v) A fully executed Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit consistent with the appendix D to this section.

(A) The submitted Bid shall include the following information: Name, address, telephone number, social security number, and (if available) electronic mail address of the submitting Permit Holder, permit number, and whether any authorized party holds a security interest in the permit. Each application must be submitted to the SRA, c/o Elgee, Rehfeld, Mertz, LLC, Professional Plaza Building B, 9309 Glacier Highway, Suite B–200, Juneau, Alaska 99801. The initial determination that an application conforms to the prescribed requirements is made by this independent accounting firm and not the SRA.

(B) The SRA or the independent accounting firm will notify the Permit Holder if the Bid is non-conforming and, in such cases, the Permit Holder may submit a revised, conforming Bid within the prescribed period (*i.e.*, until the bid closing date).

(3) *Enrollment period*. Applications that meet all requirements will be accepted until the bid selection process is completed but no later than the bid closing date specified by the SRA. The SRA will have a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process.

(4) *Effective date*. The effective date of any Bid shall be when the SRA has

completed the selection process and signed the Bid.

(5) *Notice*. The SRA will notify each Accepted Bidder, via certified mail, of the effective date of the Bid Agreement.

(6) *Conflicts*. Where terms and conditions in the Bid, Relinquishment Contract, Conditional Notice, and Conditional Relinquishment conflict with this regulation, the terms and conditions in the regulation are controlling.

(d) *Bid selection process*. The fishing capacity removed by the Reduction Plan shall be represented by the total number of valid CFEC permits, whether active or latent, that are voluntarily offered by Permit Holders and selected by the SRA up to an aggregate amount of $23,476,500. Due to a rescission of funds, the underlying appropriations for this Reduction Program were reduced from $250,000 to $234,765, resulting in a loan ceiling of $23,476,500.

(1) *Overview*. The Selection Process shall begin upon the receipt by the SRA of the first application and shall continue until: The bid closing date specified by the SRA (paragraph (c)(1) of this section); or the ranking of the next lowest bid would cause the total program costs to exceed $23,476,500. The SRA will have a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process. When either one of these events is reached, the Selection Process shall be completed.

(i) During the selection process, the SRA in consultation with the CFEC shall examine each submitted Bid for consistency and the necessary elements, including the validity of the permit and whether any authorized party holds a security interest in the permit.

(ii) [Reserved]

(2) *Bids*. By submitting the Bid, the bidder expressly acknowledges that he makes an irrevocable offer to relinquish to CFEC a permit for a specific price, and once having submitted the Bid, the bidder is not entitled to withdraw or in any way amend the Bid. The permit will be relinquished for the price set forth in the Bid contingent on such Bid being accepted by the SRA at the closing of the Selection Process. Any attempted withdrawal by a bidder shall be invalid, and the Bid shall remain a binding, irrevocable offer, unaffected by the attempted withdrawal. Any bid that is submitted by a Permit Holder but is not accepted by the SRA shall be deemed terminated and both the Permit Holder and the SRA will have no further obligation with respect to the Bid.

(i) If a Permit Holder holds more than one permit, the Permit Holder must submit a separate Bid for each permit that he/she offers to relinquish.

(ii) By submitting a Bid, the Permit Holder warrants and represents that he/she has read and understands the terms of the Program Regulations, Bid, Relinquishment Contract, Conditional Notice and Conditional Relinquishment, and has had the opportunity to seek independent legal counsel regarding such documents and the consequences of submitting the Bid Agreement.

(3) *Ranking*. The SRA shall rank all conforming bids by using a reverse auction in which the SRA ranks the Bid with the lowest dollar amount and successively ranks each additional Bid with the next lowest dollar amount until there are no more Bids or the ranking of the next lowest bid would cause the total program cost to exceed $23,476,500. In the event of a tie with bids which results in the tied bids exceeding $23,476,500, the SRA will select the tied bid first received, if known. If the receipt time cannot be determined, neither bid will be accepted.

(4) *Acceptance and post-acceptance restriction of renewals and transfers*. Upon expiration of the bid closing date, the SRA shall determine whether the number of ranked bids it is willing to accept is sufficient to achieve a substantial reduction in harvest capacity and increased economic efficiencies for those Permit Holders remaining in the fishery. If the SRA makes such a determination and thereafter accepts bids, the SRA shall send CFEC the Conditional Notice form restricting renewal and transfer of each permit for which a bid was accepted. The Bid, Relinquishment Contract, Conditional Notice and Conditional Relinquishment are terminated for any rejected bid and the applicant is no longer bound by the terms of these documents.

(e) *Plan submission and approval*—(1) *Submitting the reduction plan.* Within 30 days of concluding the selection process, the SRA shall submit the Reduction Plan, consisting of the aggregate of all Bid Agreements, Relinquishment Contracts, Conditional Notices and Conditional Relinquishments, together with supporting documents and rationale, to NMFS for final approval on behalf of the Secretary. The Reduction Plan shall include a listing of accepted bids arranged by bid amount from lowest to highest bid, attended by a statement from the SRA that all other bids received were higher than the largest dollar amount of the last bid accepted.

(2) *Required findings.* In order to approve a Reduction Plan, the Assistant Administrator of NMFS, on behalf of the Secretary, must find that: The Reduction Plan is consistent with the amended Consolidated Appropriations Act of 2005 and applicable sections of the Magnuson-Stevens Act, particularly that it is cost-effective; the Reduction Plan will result in the maximum sustained reduction in fishing capacity at the least cost; and the Reduction Plan will increase harvesting productivity for post-reduction Permit Holders participating in the fishery.

(3) *The referendum.* If NMFS approves the Reduction Plan and subsequent to the publication of a final rule resulting from this rule, NMFS shall conduct a referendum to determine the industry's willingness to repay a fishing capacity reduction loan to purchase the permits identified in the Reduction Plan. NMFS shall publish a notice in the FEDERAL REGISTER requesting votes by Permit Holders on whether to accept or reject the Reduction Plan for implementation. The notice shall state the starting and ending dates and times of the voting period, which shall be not less than twenty one (21) nor more than thirty (30) calendar days from the date of such notice.

(i) Such notice shall state the name and address of record of each eligible voter, as well as the basis for having determined the eligibility of those voters. This shall constitute notice and opportunity to respond about adding eligible voters, deleting ineligible voters, and/or correcting any voter's name and address of record, and will provide a 15 day period to make these changes. If, in NMFS' discretion, the comments received in response to such notice warrants it, or for other good cause, NMFS may modify such list by publishing another notice in the FEDERAL REGISTER. NMFS shall issue ballots to eligible voters, tally votes, and notify voters whether the referendum was successful or unsuccessful in approving the Reduction Plan consistent with the provisions of § 600.1010.

(ii) A successful referendum by a majority of the Permit Holders in the Reduction Fishery shall bind all parties and complete the reduction process. NMFS shall publish a notice in the FEDERAL REGISTER advising the public that the referendum was successful. Thereafter the Reduction Program shall be implemented.

(iii) The provisions of § 600.1010 and § 600.1017(a)(1)–(4) shall apply to any referendum on the Reduction Plan of this section to the extent that they do not conflict with this section or with subpart M of this part.

(f) *Implementation*—(1) *Reduction payments.* Within 60 days of a successful referendum, the CFEC will provide notice to NMFS of the permits retired from the Reduction Fishery. Upon receiving such notification, NMFS will then tender the accepted bid amounts to the Permit Holders. Reduction payments may not exceed $23,476,500 and if the SRA accepts a total number of bids in an aggregate amount less than $23,476,500, any remaining funds would be available for reduction payments as part of a later, separate Reduction Plan conforming to these regulations. Upon NMFS tendering the reduction program's payments to the selected Permit Holders, each such Permit Holder must permanently stop all fishing with the relinquished permit(s).

(2) *Repayment term.* As authorized by the Act, the Reduction Loan shall be amortized over a forty (40) year term. The Reduction Loan's original principal amount may not exceed $23,476,500, but may be less if the ultimate reduction cost is less. The final Reduction Loan periodic payment amount will be determined by NMFS' analysis of the ability of the post-reduction fishery to service debt. The provisions of §§ 600.1012–600.1017 shall

apply to any reduction loan, fee payment and collection under this section to the extent they do not conflict with this section or with subpart M of this part.

(3) *Loan repayment.* Permit Holders operating in the fishery shall be obligated to pay the fee in accordance with this section. In the event that payments made under the Reduction Plan are insufficient to pay the Reduction Loan within the 40-year term, NMFS shall extend the term of the repayment until the Reduction Loan is paid in full.

(i) *Interest.* The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus two percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. Interest will begin accruing on the Reduction Loan from the date on which NMFS disburses such loan. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be two percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed and will not vary over the remainder of the reduction loan's 40-year term. The Reduction Loan will be subject to a level debt amortization. There is no prepayment penalty.

(ii) *Fees.* Post-reduction Permit Holders operating in the fishery shall be obligated to pay the fee in accordance with paragraph (f) of this section. The amount of such fee will be calculated by NMFS on an annual basis as the principal and interest payment amount necessary to amortize the loan over a 40-year term. The fee shall be expressed as a percentage of the ex-vessel value of all salmon harvested and landed in the fishery. In the event that payments made under the Reduction Plan are insufficient to repay the Reduction Loan within the 40-year term, NMFS shall extend the term of the repayment until the Reduction Loan is paid in full.

(A) Fees must be assessed and collected on all salmon harvested in the fishery. Although the fee could be up to three percent of the ex-vessel price of all post-reduction landings, the fee will be less than three percent if NMFS projects that a lesser rate can amortize the Reduction Loan over the 40-year term. To verify that the fees collected do not exceed three percent of the fishery revenues, NMFS will compare the annual total of principal and interest due with the latest available annual revenues in the fishery to ensure that it is equal to or less than three percent of the total ex-vessel production revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or postponed, the fee will remain at the previous year's amount until such time as new calculations are made and communicated to the post-reduction fishery participants.

(B) If the fishery does not open during a year, interest will continue to accrue on the principal balance even though no fee revenue will be generated. When this happens, if the fee is not already at the maximum three percent, NMFS shall increase the fee to the maximum three percent, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until the principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

(iii) *Collection.* The buyer who first purchases the salmon landed in the fishery shall be responsible for collecting and submitting the repayment fees to NMFS monthly. The fees shall be submitted to NMFS no later than fifteen (15) calendar days following the end of each calendar month.

(iv) *Recordkeeping and reporting.* The dealer who first purchases the salmon landed in the fishery shall be responsible for compliance with the applicable recordkeeping and reporting requirements.

(A) All requirements and penalties set forth in the provisions of §§ 600.1013 (Fee payment and collection), 600.1014 (Fee collection deposits, disbursements, records, and reports), 600.1015 (Late charges), and 600.1017 (Prohibitions and penalties) shall apply to any

dealer who purchases salmon in the fishery, and to any fee collection under this section, to the extent they do not conflict with this section or with subpart M of this part.

(B) [Reserved]

(g) *Specific performance under the relinquishment contract.* The parties to the Relinquishment Contract have agreed that the opportunity to develop and submit a capacity reduction program for the fishery under the terms of the Act is both unique and finite. The failure of a Permit Holder, whose bid was accepted, to perform the obligations under the Relinquishment Contract will result in irreparable damage to the SRA and all the other Permit Holders. Accordingly, the parties to the Relinquishment Contract expressly acknowledge that money damages are an inadequate means of redress and agree, that upon failure of the Permit Holder to fulfill his/her obligations under the Relinquishment Contract, that specific performance of those obligations may be obtained by suit in equity brought by the SRA in any court of competent jurisdiction without obligation to arbitrate such action.

(h) *Enforcement for failure to pay fees.* The provisions and requirements of § 600.1016 (Enforcement) shall also apply to fish sellers and fish buyers subject to this fishery.

(i) *Prohibitions and penalties.* Fish buyers are prohibited from purchasing fish from fish sellers who do not pay the required landing fees. Fish sellers are prohibited from selling to fish buyers who do not pay the required landing fees.

APPENDIX A TO § 600.1107—BID

This Bid (Bid) is entered between the individual named in section III, 11(a) of the Agreement and the Southeast Revitalization Association (SRA).

I. DEFINITIONS

Unless otherwise defined, the following terms have the following meanings for the purpose of this Agreement.

Acceptance means SRA acceptance of a Bid.

Act means Section 209 of Title II of Division B of Public Law 108–447, Consolidated Appropriations Act of 2005; as amended by Section 121 of Public Law 109–447, Magnuson-Stevens (MSA) Reauthorization Act of 2006.

Bid means a bidder's irrevocable offer to relinquish a permit.

Bid amount means the dollar amount submitted by a bidder.

Bidder means a permit holder who submits a bid.

Conditional notice means the Commercial Fisheries Entry Commission (CFEC) form that any Bidder must sign and agree to abide by upon submission of a Bid Agreement.

Conditional relinquishment means the CFEC form that any Permit Holder, agreeing to relinquish a permit, must sign and agree to abide by upon SRA acceptance of the bid.

Fishery means the Southeast Alaska administrative area as defined under Title 5 Alaska Administrative Code Section 33.100 for salmon with purse seine gear.

Permit means a valid entry permit issued by CFEC to operate in the Southeast Alaska purse seine salmon fishery.

Permit holder means an individual who at the time of bidding is the holder of record of a permit.

Reduction plan means the aggregate of all Bids, Relinquishment Contracts (Appendix B), Commercial Fisheries Entry Commission (''CFEC'') Conditional Notice and Conditional Relinquishment (Appendices C & D), and supporting documents and rationale; submitted to the Secretary for approval.

Referendum means the voting procedure to determine the Permit Holder's willingness to repay a fishing capacity reduction loan to purchase the permits identified in the Plan.

Relinquishment contract means the contract that any bidder agreeing to relinquish a permit pursuant to Alaska Statute (A.S. 16.43.150(i) must sign and agree to abide by upon acceptance of the Bid, and before payment of the bid amount.

Secretary means the Secretary of Commerce or his/her designee.

Southeast Revitalization Association (SRA) means the qualified fishery association authorized to develop and implement this capacity reduction program under Alaska Statute 16.40.250 and Federal law.

II. RECITALS

Whereas Alaska Statute 16.40.250 and the Act authorize a fishing capacity reduction program for the fishery;

Whereas, within 30 days of concluding the selection process, the SRA shall submit the Reduction Plan, together with supporting documents and rationale, to NMFS for final approval on behalf of the Secretary;

Whereas, the reduction Plan's express objective is to reduce fishing capacity by permanently revoking permits thereby promoting economic efficiency, improving flexibility in the conservation and management of the fishery and obtain the maximum reduction in permits at the least cost;

Whereas, the SRA can implement the Reduction Plan only after giving notice to all Permit Holders and subsequent approval of the reduction Plan by referendum.

Whereas, the Agreement submitted by the bidder and the SRA is an integral element of the Reduction Plan.

Now, therefore, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the SRA and bidder agree as follows:

III. TERMS AND CONDITIONS

1. *Form*. By completing and submitting this Bid to the SRA the bidder hereby offers to permanently relinquish, and have the CFEC revoke, the permit. The SRA signing the Bid and subsequent NMFS payment to bidder in the exact bid amount set forth in section III, 11(f) of the Bid is full and complete consideration.

2. *Irrevocable*. The bidder expressly acknowledges that by submitting the Bid he/she makes an irrevocable offer to relinquish the permit and once having submitted the Bid is not entitled to withdraw or in any manner amend the Bid. The receipt date that the SRA marks on the Bid constitutes the date of the bidder's submittal.

3. *Warranty*. The bidder warrants and represents that he/she is the holder of record of the permit, according to the CFEC records, and that he/she has read and understands the terms of the Program Regulations, Bid, Relinquishment Contract, Conditional Notice and the Conditional Relinquishment and has had the opportunity to seek independent legal counsel regarding such documents and the consequences of submitting the Bid.

4. *Validity*. The SRA, in consultation with the CFEC, shall examine each Bid for completeness and consistency. The SRA shall notify the bidder if the Bid is non-conforming. In such cases, the bidder may submit a revised, conforming Bid within the prescribed period (*i.e.*, until the bid closing date).

5. *Ranking*. The SRA shall rank the bid amount entered in section III, 11(f) of this Bid by using a reverse auction in which the SRA ranks the Bid with the lowest dollar amount and successively ranks each additional Bid with the next lowest dollar amount until there are no more Bids or the ranking of the next lowest Bid would exceed the total program cost. In the event of a tie with bids which results in the tied bids exceeding $23,476,500, the SRA will select the tied bid first received.

6. *Acceptance and Rejection*. If the Bid is accepted, the SRA shall formally notify the bidder in writing. If the SRA rejects the Bid, the SRA will formally notify the bidder in writing and the Bid shall terminate without further obligation.

7. *Restriction of Transfer of permit:* Upon acceptance, the SRA will send the CFEC the Conditional Notice, restricting transfer of the permit until such time as: The SRA notifies the bidder that the Plan is not in compliance with the Act and will not be approved; or NMFS notifies the bidder the referendum was unsuccessful.

8. *Payment*. Within 60 days from the close of the voting period of a successful referendum, the CFEC will provide notice to NMFS of the permits retired from the Reduction Fishery. Upon receiving such notice, NMFS will then tender the accepted bid amounts to the Permit Holders.

9. *Specific Performance*. The failure of a bidder whose Bid was accepted to comply with the terms of this Bid will result in irreparable damage to the SRA and its members because the Bid was part of the basis for the Plan submitted to the Secretary for approval. Accordingly, the SRA and bidder expressly acknowledge that money damages are an inadequate means of redress and agree that specific performance of those obligations may be obtained by suit in equity brought by the SRA in any court of competent jurisdiction without obligation to arbitrate such action.

10. *Submission*. This Bid must be submitted within the prescribed period to the SRA, c/o Elgee, Rehfeld, Mertz, LLC, Professional Plaza Building B, 9309 Glacier Highway, Suite B–200, Juneau, AK 99801.

11. *Complete Bid Information:* To fully and accurately complete this Bid, the bidder must fully complete the following questions and provide an exact photocopy of the permit. The Bidder must further sign this form, Appendices B, C, and D to § 600.1107, and acknowledge the signature before a notary public.

(a) BIDDER'S NAME. This must be the full and exact legal name of record of the person bidding. Insert the name of the bidder.

(b) BIDDER'S ADDRESS OF RECORD. Insert the full and exact address of record for the bidder.

(c) BIDDER'S TELEPHONE NUMBER. Insert the full and exact telephone number of the bidder.

(d) BIDDER'S ELECTRONIC MAIL ADDRESS (if available). Insert the full and exact e-mail address of the bidder.

(e) PERMIT. Insert the full and exact permit number(s) of the bidder. Enclose with this Bid an exact photocopy of the permit.

(f) BID AMOUNT. Insert, in U.S. dollars, the bid's full and exact amount, both in words and numbers.

In words	In numbers
	$

(g) SECURITY INTERESTS. Insert the name of any authorized third party that may hold a security interest in the permit.

(h) SOCIAL SECURITY NUMBER. Insert the full and exact social security number of the bidder.

(i) BID SIGNATURE. In compliance with applicable law and this Bid, the bidder submits the above bid amount as an offer to the SRA for the permanent relinquishment of his/her permit. By completing the sections above and signing below, the bidder acknowledges that the bidder has completely reviewed this Bid and attachments. The bidder warrants that the bidder is fully able to enter into the Relinquishment Contract. The bidder expressly warrants and attests that all information included herein is accurate.

Signature	
Printed Name	
Date of Signature	

State of: _____ County/Borough of: _____

I certify that _____ is the person who appeared before me and said person acknowledged that he/she signed this Bid and on oath stated that he/she was authorized to execute such document and acknowledged it to be the free and voluntary act of him/her for the uses and purposes mentioned in such document.

Notary Public's Signature: _____Dated: _____

My Commission Expires: _____

12. SRA SIGNATURE. By signing below, the SRA acknowledges acceptance of this Bid, including the bidder's bid amount.

Signature	
Printed Name	
Date of Signature	

APPENDIX B TO §600.1107—RELINQUISHMENT CONTRACT: SOUTHEAST ALASKA SALMON PURSE SEINE PERMIT HOLDERS

This Relinquishment Contract (''Contract'') and agreement is entered into between the Southeast Revitalization Association (''SRA'') and the bidder named in Section 11(a) of the Bid. The contract is effective when the bidder signs the Bid and this contract and, thereby, agrees to relinquish his/her permit, issued by the Alaska Commercial Fisheries Entry Commission (''CFEC'') for the Southeast Alaska salmon purse seine fishery (''fishery'').

Whereas Alaska Statute 16.40.250 and Federal law authorize a fishing capacity reduction program for the fishery;

Whereas, upon accepting and signing the Bid, the SRA shall submit a Reduction Plan to NMFS;

Whereas, the Reduction Plan's express objective is to reduce fishing capacity by permanently revoking permits thereby promoting economic efficiency, improving flexibility in the conservation and management of the fishery and obtain the maximum reduction in permits at the least cost;

Whereas, this contract is subject to the terms and conditions set forth herein, including the CFEC forms marked as Appendices C and D to §600.1107;

Now, therefore, for valuable consideration and the covenants hereinafter set forth, the parties hereto agree as follows:

1. The foregoing, including the Bid and specifically the definitions under section 1, are expressly incorporated herein by this reference.

2. Under AS 16.43.150(i), the Bidder agrees to permanently relinquish and have the CFEC revoke the permit.

3. The Bidder represents that, as of the date of submitting the contract, he or she is the holder of record of the permit according to the CFEC official permit records.

4. Upon notification by the SRA to the Bidder that the SRA accepted the bid; the SRA will submit to the CFEC the Permit Holder's executed notice form (Appendix C to § 600.1107) and executed relinquishment form (Appendix D to § 600.1107).

5. In the event an authorized third party holds a security interest in the permit, NMFS will not make payment until receiving notice of written consent by the third party to the SRA and the CFEC on a form provided by the CFEC.

6. NMFS' payment to the accepted bidder in the exact amount of the accepted bid amount is full and complete consideration for the CFEC revoking the permit.

7. The bidder shall, upon the SRA or the CFEC request, furnish such additional documents, information, or take such other actions as may be reasonably required to enable the CFEC to implement relinquishment of the permit.

8. The bidder consents to the public release of any information provided in connection with the contract or program requirements after completion of the plan.

9. The contract contains the final terms and conditions of this agreement between the parties and represents the entire and exclusive agreement between them.

10. The contract terms are severable, and, in the event that any portion of the contract is held to be unenforceable, the remaining portion shall remain fully enforceable against the parties.

11. Any and all disputes involving the contract shall be governed by laws of the State of Alaska. The bidder expressly acknowledges that by submitting the Bid, he/she makes an irrevocable offer to relinquish the permit, and once having submitted the Bid, is not entitled to withdraw or in any way amend the Bid.

12. The failure of a bidder to perform his/her obligations under the Bid will result in irreparable damage to the SRA and its members upon submittal of the Plan to the Secretary for approval. Accordingly, the SRA and the bidder expressly acknowledge that money damages are an inadequate means of redress and agree that upon failure of the bidder to fulfill his/her obligations under the Bid that specific performance of those obligations may be obtained by suit in equity brought by the SRA in any court of competent jurisdiction without obligation to arbitrate such action.

BIDDER'S SIGNATURE AND NOTARY'S ACKNOWLEDGEMENT AND CERTIFICATION

Bidder signature	Notary signature
(1) Sign (2) Print the following: (a) signer's name (b) signing date (c) state and city/borough	(1) Sign (2) Print the following: (a) name (b) signing date (3) date commission expires, and State and city/borough. Each notary signature attests to the following: "I certify that I know or have satisfactory evidence that the person who is signed in the 1st column of this same row is the person who appeared before me and: (1) Acknowledged his/her signature; (2) on oath, stated that he/she was authorized to sign; and (3) acknowledged that he/she did so freely and voluntarily."
(1) (2)(a) (2)(b) (2)(c)	(1) (2)(a) (2)(b) (3)

II. SOUTHEAST REVITALIZATION ASSOCIATION SIGNATURE SOUTHEAST REVITALIZATION ASSOCIATION

Dated: _____

By: _____

APPENDIX C TO § 600.1107—CONDITIONAL NOTICE TO CFEC AND REQUEST BY PERMIT HOLDER

In support of my Bid to the Southeast Revitalization Association (SRA), I have executed this Conditional Notice and request and authorize the Southeast Revitalization Association (SRA) to submit this executed document to the Alaska Commercial Fisheries Entry Commission (CFEC) in the event that the SRA accepts my bid to permanently relinquish my Southeast Salmon Purse Seine Entry Permit under AS 16.43.150(i).

I hereby notify the CFEC that the SRA has accepted my Bid to permanently relinquish my Southeast Salmon Purse Seine Entry Permit #_____.

I request the CFEC: (1) not to renew my above-identified entry permit; and (2) not to authorize any transfer of my entry permit.

DATED this _____ day of _____ , 2011.

_____

(Permit Holder/Bidder)

SUBSCRIBED AND SWORN TO before me this _____ day of _____ , 2011.

_____

Notary Public, State of _____

My commission expires: _____

APPENDIX D TO §600.1107—CONDITIONAL RELINQUISHMENT OF SOUTHEAST SALMON PURSE SEINE ENTRY PERMIT

[AS 16.43.150(I)]

Upon satisfaction of the conditions that the Southeast Revitalization Association (SRA) accepts my bid and that NMFS agrees to pay my full bid amount to me, the SRA may submit this executed Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit to the Commercial Fisheries Entry Commission.

I fully understand this relinquishment of my permanent entry permit #_____ under AS 16.43.150(i) is permanent, and I will not be able to reinstate the permit.

DATED this _____ day of _____ , 2011.

_____

(Permit Holder/Bidder)

SUBSCRIBED AND SWORN TO before me this _____ day of _____ , 2011.

_____

Notary Public, State of _____

My commission expires: _____

[76 FR 61990, Oct. 6, 2011]

§600.1108 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.

(a) *Purpose*. This section implements the capacity reduction program that Title II, section 219(e) of Public Law 108–447 established for the longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery.

(b) *Definitions*. Unless otherwise defined in this section, the terms defined in §600.1000 of subpart L and §600.1105 of subpart M of this part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Reduction fishery means the Hook & Line, Catcher Processor (Longline Subsector); sometimes referred to as the ''H&LCP Subsector) portion of the BSAI Pacific cod ITAC (in metric tons) set by the North Pacific Fishery Management Council (NPFMC) in December of each year multiplied by 2,205 (i.e., the rounded number of pounds in a metric ton)or the Longline Subsector of the BSAI non-pollock groundfish fishery that §679.2 of this chapter defined as groundfish area/species endorsement.

(c) *Capacity Reduction Program*. As a result of the completion of the Selection Process, written notification from the FLCC to NMFS identifying the selected offeror, and submission of the reduction plan, the capacity reduction program is implemented as follows:

(1) *Loan repayment*—(i) *Term*. As authorized by section 219(B)(2) of the Appropriations Act, the capacity reduction loan (the Reduction Loan) shall be amortized over a thirty (30) year term. The Reduction Loan's original principal amount may not exceed the amount approved by the subsector. The subsector has currently approved a loan of two million seven hundred thousand dollars ($2,700,000). Subsector Members acknowledge that in the event payments made under the Reduction Plan are insufficient to repay the actual loan, the term of repayment shall be extended by NMFS until the loan is paid in full. Repayment calculations and records will be kept separately for each program.

(ii) *Interest*. The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus 2 percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be 2 percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed, and will not vary over the remainder of the reduction loan's 30-year term. The Reduction loan will be subject to a level debt amortization. There is no prepayment penalty.

(iii) *Fees*. The Reduction Loan shall be repaid by fees collected from the

Longline Subsector. The fee amount will be based upon: The principal and interest due over the next twelve months divided by the product of the Longline Subsector. In the event that the Longline Subsector portion for the ensuing year is not available, the Longline Subsector portion forecast from the preceding year will be used to calculate the fee.

(A) The fee will be expressed in cents per pound rounded up to the next one-tenth of a cent. For example: If the principal and interest due equal $2,900,000 and the Longline Subsector portion equals 100,000 metric tons, then the fee per round weight pound of Pacific cod will equal 1.4 cents per pound. [2,900,000/(100,000 × 2,205) = .01315]. The fee will be assessed and collected on Pacific cod to the extent possible and if not, will be assessed and collected as provided for in paragraph (c)(1)(iii)(B) of this section.

(B) Fees must be assessed and collected on Pacific cod used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel production value of all post-reduction Longline Subsector landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a standardized additional fee will be assessed. The additional fee shall be one cent per pound round weight, which is calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.

(C) To verify that the fees collected do not exceed 5 percent of the fishery revenues, the annual total of principal and interest due will be compared to the latest available annual Longline Subsector revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or for any other reason NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such a time that new calculations are made and communicated to the post-reduction fishery participants.

(D) It is possible that the fishery may not open during some years and no Longline Subsector portion of the ITAC is granted. Consequently, the fishery will not produce fee revenue with which to service the reduction loan during those years. However, interest will continue to accrue on the principal balance. When this happens, if the fee rate is not already at the maximum 5 percent, NMFS will increase the fishery's fee rate to the maximum 5 percent of revenue for Pacific cod, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

(iv) *Reduction loan*. NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs in subpart L of this part. The reduction loan shall be subject to the provisions of § 600.1012, except that: the subsector members' obligation to repay the reduction loan shall be discharged by the owner of the Longline Subsector license regardless of which vessel catches fish under this license and regardless of who processes the fish in the reduction fishery in accordance with § 600.1013. Longline Subsector license owners in the reduction fishery shall be obligated to collect the fee in accordance with § 600.1013.

(v) *Collection*. The LLP License holders of vessels harvesting in the post-capacity reduction plan Longline Subsector shall be responsible for self-collecting the repayment fees owed by the LLP License holder. Fees shall be submitted to NMFS monthly and shall be due no later than fifteen (15) calendar days following the end of each calendar month.

(vi) *Recordkeeping and reporting*. The holder of the LLP Licenses on which vessels harvesting in the post-capacity reduction plan Longline Subsector is designated shall be responsible for compliance with the applicable recordkeeping and reporting requirements.

(2) *Agreement with Secretary*. The Selected Offeror shall complete and deliver to the FLCC for inclusion in the Reduction Plan submitted to NMFS, designee for the Secretary, a completed and fully executed Reduction Contract. The LLP License set forth on the Selected Offer shall be included as Reduction Fishing Interests in such Reduction Contract.

(d) *Decisions of the Auditor and the FLCC*. Time was of the essence in developing and implementing a Reduction Plan and, accordingly, the Offeror is limited to, and bound by, the decisions of the Auditor and the FLCC.

(1) The Auditor's examination of submitted applications, Offers, Prequalification Offers and Rankings was solely ministerial in nature. That is, the Auditor verified whether the documents submitted by Subsector Members were, on their face, consistent with each other and the Database, in compliance with the requirements set forth in the Reduction Agreement, and signed by an Authorized Party. The Auditor presumed the validity of all signatures on documents submitted. The Auditor made no substantive decisions as to compliance (e.g., whether an interim LLP License satisfies the requirements of the Act, or whether a discrepancy in the name appearing on LLP Licenses and other documents was material).

(2) [Reserved]

(e) *Specific performance*. The parties to the Reduction Agreement have agreed that the opportunity to develop and submit a capacity reduction program for the Longline Subsector under the terms of the Appropriations Act is both unique and finite and that failure of the Selected Offeror to perform the obligations provided by the Reduction Agreement will result in irreparable damage to the FLCC and the Subsector Members. Accordingly, the parties to the Reduction Agreement expressly acknowledge that money damages are an inadequate means of redress and agree that upon the failure of the Selected Offeror to fulfill their obligations under the Reduction Agreement that specific performance of those obligations may be obtained by suit in equity brought by the FLCC in any court of competent jurisdiction without obligation to arbitrate such action.

(f) *Miscellaneous*— (1) *Termination*. The Reduction Agreement may be terminated at any time prior to approval of the Reduction Plan by NMFS, on behalf of the Secretary, by written notice from 50 percent of Subsector Members.

(2) *Choice of law/venue*. The Reduction Agreement shall be construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law provisions. The parties submit to the exclusive personal jurisdiction of the United States District Court located in Seattle, Washington, with respect to any litigation arising out of or relating to the Reduction Agreement or out of the performance of services hereunder.

(3) *Incorporation*. All executed counterparts of the Reduction Agreement, Application Forms and Offers constitute the agreement between the parties with respect to the subject matter of the Reduction Agreement and are incorporated into the Reduction Agreement as if fully written.

(4) *Counterparts*. The Reduction Agreement may be executed in multiple counterparts and will be effective as to signatories on the Effective Date. The Reduction Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute the same agreement, whether or not all parties execute each counterpart.

(i) The facsimile signature of any party to the Reduction Agreement shall constitute the duly authorized, irrevocable execution and delivery of the Reduction Agreement as fully as if the Reduction Agreement contained the original ink signatures of the party or parties supplying a facsimile signature.

(ii) [Reserved]

(g) *Amendment*. All Subsector Members acknowledge that the Reduction Agreement, the Reduction Contract, and the Reduction Plan may be subject to amendment to conform to the requirements for approval of the Reduction Plan by NMFS on behalf of the Secretary. The Auditor shall distribute

to each Subsector Member in electronic format the amended form of the Reduction Agreement, the Reduction Contract, and the Reduction Plan, which amended documents in the form distributed by the Auditor and identified by the Auditor by date and version, the version of each such document then in effect at the time of any dispute arising or action taken shall be deemed binding upon the parties with respect to such dispute and/or action.

(h) *Warranties.* The Offeror must expressly warrant and represent in the Reduction Agreement that:

(1) The Offeror has had an opportunity to consult with an attorney or other advisors with respect to the Reduction Agreement, the Reduction Contract, and the Act and the ramifications of the ratification of the Reduction Plan contemplated therein;

(2) The Offeror has full understanding and appreciation of the ramifications of executing and delivering the Reduction Agreement and, free from coercion of any kind by the FLCC or any of its members, officers, agents and/or employees, executes and delivers the Reduction Agreement as the free and voluntary act of the Offeror;

(3) The execution and delivery of the Reduction Agreement, does not and will not conflict with any provisions of the governing documents of the Offeror;

(4) The person executing the Reduction Agreement has been duly authorized by the Offeror to execute and deliver the Reduction Agreement and to undertake and perform the actions contemplated herein; and

(5) The Offeror has taken all actions necessary for the Reduction Agreement to constitute a valid and binding obligation, enforceable in accordance with its terms.

(i) *Approval of the Reduction Plan.* Acceptance of the Offer is at the sole discretion of NMFS on behalf of the Secretary of Commerce. To be approved by NMFS, on behalf of the Secretary, any Reduction Plan developed and submitted in accordance with this section and subpart M of this part must be found by the Assistant Administrator of NMFS, to:

(1) Be consistent with the requirements of section 219(e) of the FY 2005 Appropriations Act (Pub. L. 108–447);

(2) Be consistent with the requirements of section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a)) except for the requirement that a Council or Governor of a State request such a program (as set out in section 312(b)(1)) and for the requirements of section 312(b)(4);

(3) Contain provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by the Longline Subsector and that it provide for the assessment of such fees;

(4) Not require a bidding or auction process;

(5) Result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and

(6) Permit vessels in the Longline Subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.

(j) *Referendum.* The following provisions apply to the Reduction Plan of this section to the extent that they do not conflict with subpart L of this part including §§ 600.1009, 600.1010, 600.1013, and 600.1014 or 16 U.S.C. 1861a; except where the referendum is successful if a majority of all permit holders within the fishery vote in favor of the Reduction Program is accordance with 18 U.S.C. 1861a(d)(1)(B).

(k)(1) *Fee payment and collection system.* Upon successful completion of the Referendum discussed above as authorized by Public Law 108–447 and in accordance with 16 U.S.C. 1861a and § 600.1012 this fee collection system establishes:

(i) The subsector members' obligation to repay the reduction loan, and

(ii) The loan's principal amount, interest rate, and repayment term; and

(iii) In accordance with §§ 600.1013 through 600.1016, implements an industry fee system for the reduction fishery.

(2) *Reduction loan amount.* The reduction loan's original principal amount is $2,700,000.

(3) *Interest accrual from inception.* Interest begins accruing on the reduction loan from the date which NMFS disburses such loan.

(4) *Interest rate.* The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year in which loan is disbursed plus 2 percent.

(5) *Repayment terms.* For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from the date NMFS disburses the loan. However, fee collections shall continue indefinitely until the loan is fully repaid.

(6) *Reduction loan repayment.* The subsector members shall repay the reduction loan in accordance with § 600.1012. Both fish buyers and fish sellers are considered subsector members for purposes of fee collection, deposit, disbursement, and accounting in accordance with § 600.1013.

(i) Subsector members in the reduction fishery shall collect and pay the fee amount in accordance with § 600.1105;

(ii) Subsector members in the reduction fishery shall deposit and disburse, as well as keep records for and submit reports about, the applicable fees in accordance with § 600.1014, except the requirements under paragraphs (c) and (e) of this section. All collected fee revenue a fish buyer collects to repay the loan identified in paragraph (c) of this section shall be made to NMFS no later than fifteen (15) calendar days following the end of each calendar month. The annual reports identified in paragraph (e) of this section shall be submitted to NMFS by February 1 of each calendar year.

(iii) The reduction loan is, in all other respects, subject to the provisions of §§ 600.1012 through 600.1017.

(l) *Enforcement for failure to pay fees.* The provisions and requirements of § 600.1016 (Enforcement) shall also apply to fish sellers and fish buyers subject to this fishery.

[77 FR 58779, Sept. 24, 2012]

EFFECTIVE DATE NOTE: At 77 FR 58779, Sept. 24, 2012, § 600.1108 was added, effective Oct. 24, 2012.

Subpart N—Shark Finning

SOURCE: 67 FR 6200, Feb. 11, 2002, unless otherwise noted. Redesignated at 69 FR 53361, Sept. 1, 2004.

§ 600.1200 Purpose and scope.

The regulations in this subpart govern ''shark finning'' (the removal of shark fins and discarding of the carcass), the possession of shark fins, and the landing into U.S. ports of shark fins without corresponding carcasses under the authority of the Magnuson-Stevens Act. They implement the Shark Finning Prohibition Act of 2000.

§ 600.1201 Relation to other laws.

(a) The relation of this subpart to other laws is set forth in §§ 600.514 and 600.705 and in paragraphs (b) and (c) of this section.

(b) Regulations pertaining to shark conservation and management for certain shark fisheries are also set forth in this subpart and in parts 635 (for Federal Atlantic Ocean, Gulf of Mexico, and Caribbean shark fisheries), 648 (for spiny dogfish fisheries), and 660 (for fisheries off West Coast states and in the western Pacific) of this chapter governing those fisheries.

(c) Nothing in this regulation supercedes more restrictive state laws or regulations regarding shark finning in state waters.

(d) A person who owns or operates a vessel that has been issued an Atlantic Federal commercial shark limited access permit or a spiny dogfish permit is subject to the reporting and recordkeeping requirements found at parts 635 and 648 of this chapter, respectively.

§ 600.1202 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, the terms used in this subpart have the following meanings:

Land or *landing* means offloading fish, or causing fish to be offloaded, from a fishing vessel, either to another vessel or to a shoreside location or facility, or arriving in port, or at a dock, berth, beach, seawall, or ramp to begin offloading fish.

Shark finning means taking a shark, removing a fin or fins (whether or not

including the tail), and returning the remainder of the shark to the sea.

(b) If there is any difference between a definition in this section and in § 600.10, the definition in this section is the operative definition for the purposes of this subpart.

§ 600.1203 Prohibitions.

(a) In addition to the prohibitions in §§ 600.505 and 600.725, it is unlawful for any person to do, or attempt to do, any of the following:

(1) Engage in shark finning, as provided in § 600.1204(a) and (i).

(2) Possess shark fins without the corresponding carcasses while on board a U.S. fishing vessel, as provided in § 600.1204(b) and (j).

(3) Land shark fins without the corresponding carcasses, as provided in § 600.1204(c) and (k).

(4) Fail to have all shark fins and carcasses from a U.S. or foreign fishing vessel landed at one time and weighed at the time of the landing, as provided in § 600.1204(d).

(5) Possess, purchase, offer to sell, or sell shark fins taken, landed, or possessed in violation of this section, as provided in § 600.1204(e) and (l).

(6) When requested, fail to allow an authorized officer or any employee of NMFS designated by a Regional Administrator access to and/or inspection or copying of any records pertaining to the landing, sale, purchase, or other disposition of shark fins and/or shark carcasses, as provided in § 600.1204(f).

(7) Fail to have shark fins and carcasses recorded as specified in § 635.30(c)(3) of this chapter.

(8) Fail to have all shark carcasses and fins landed and weighed at the same time if landed in an Atlantic coastal port, and to have all weights recorded on the weighout slips specified in § 635.5(a)(2) of this chapter.

(9) Fail to maintain a shark in the form specified in §§ 600.1204(h) and 635.30(c) of this chapter.

(b)(1) For purposes of this section, it is a rebuttable presumption that shark fins landed by a U.S. or foreign fishing vessel were taken, held, or landed in violation of this section if the total weight of the shark fins landed exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel.

(2) For purposes of this section, it is a rebuttable presumption that shark fins possessed by a U.S. fishing vessel were taken and held in violation of this section if the total weight of the shark fins on board, or landed, exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel.

[67 FR 6200, Feb. 11, 2002. Redesignated at 69 FR 53361, Sept. 1, 2004, as amended at 73 FR 40707, July 15, 2008]

§ 600.1204 Shark finning; possession at sea and landing of shark fins.

(a)(1) No person aboard a U.S. fishing vessel shall engage in shark finning in waters seaward of the inner boundary of the U.S. EEZ.

(2) No person aboard a foreign fishing vessel shall engage in shark finning in waters shoreward of the outer boundary of the U.S. EEZ.

(b) No person aboard a U.S. fishing vessel shall possess on board shark fins harvested seaward of the inner boundary of the U.S. EEZ without the corresponding carcass(es), as may be determined by the weight of the shark fins in accordance with § 600.1203(b)(2), except that sharks may be dressed at sea.

(c) No person aboard a U.S. or foreign fishing vessel (including any cargo vessel that received shark fins from a fishing vessel at sea) shall land shark fins harvested in waters seaward of the inner boundary of the U.S. EEZ without corresponding shark carcasses, as may be determined by the weight of the shark fins in accordance with § 600.1203(b)(1).

(d) Except as provided in paragraphs (g) and (h) of this section, a person who operates a U.S. or foreign fishing vessel and who lands shark fins harvested in waters seaward of the inner boundary of the U.S. EEZ shall land all fins and corresponding carcasses from the vessel at the same point of landing and shall have all fins and carcasses weighed at that time.

(e) A person may not purchase, offer to sell, or sell shark fins taken, landed, or possessed in violation of this section.

(f) Upon request, a person who owns or operates a vessel or a dealer shall allow an authorized officer or any employee of NMFS designated by a Regional Administrator access to, and/or inspection or copying of, any records pertaining to the landing, sale, purchase, or other disposition of shark fins and/or shark carcasses.

(g) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit and who lands shark in an Atlantic coastal port must have all fins weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing. Such weights must be recorded on the ''weighout slips'' specified in § 635.5(a)(2) of this chapter.

(h) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit and who lands shark in or from the U.S. EEZ in an Atlantic coastal port must comply with regulations found at § 635.30(c) of this chapter.

(i) No person aboard a vessel that has been issued a Federal Atlantic commercial shark permit shall engage in shark finning.

(j) No person aboard a vessel that has been issued a Federal Atlantic commercial shark permit shall possess on board shark fins without the fins being naturally attached to the corresponding carcass(es), although sharks may be dressed at sea.

(k) No person aboard a vessel that has been issued a Federal Atlantic commercial shark permit shall land shark fins without the fins being naturally attached to the corresponding carcass(es).

(l) A dealer may not purchase shark fins, from an owner or operator of a fishing vessel issued a Federal Atlantic commercial shark permit who lands shark in an Atlantic coastal port, unless such fins were naturally attached to the corresponding carcass at the time of landing and their combined wet weight is less than 5 percent of the dressed weight of the corresponding carcass(es).

[67 FR 6200, Feb. 11, 2002. Redesignated at 69 FR 53361, Sept. 1, 2004, as amended at 73 FR 40707, July 15, 2008; 75 FR 30524, June 1, 2010]

Subpart O—Limited Access Privilege Programs

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

SOURCE: 73 FR 75973, Dec. 15, 2008, unless otherwise noted.

§§ 600.1300–600.1309 [Reserved]

§ 600.1310 New England and Gulf of Mexico Individual Fishing Quota Referenda.

(a) *Purpose and scope.* This section establishes procedures and guidelines for referenda to be conducted on Individual Fishing Quota (IFQ) program proposals developed by the New England Fishery Management Council (NEFMC) and the Gulf of Mexico Fishery Management Council (GMFMC). These procedures and guidelines also apply to IFQ program proposals developed by NMFS for fisheries under the jurisdiction of the NEFMC or GMFMC, except for certain provisions that only apply to a fishery management council. This section provides guidance on developing voter eligibility and vote weighting, and establishes general procedures to ensure referenda are conducted in a fair and equitable manner.

(b) *Initiating IFQ referenda.* (1) The NEFMC and the GMFMC shall not submit, and the Secretary shall not approve, an FMP or FMP amendment that would create an IFQ program until the IFQ program proposal, as ultimately developed, has been approved by a referendum of eligible voters. Paragraph (h) of this section provides criteria for determining the outcome of IFQ referenda.

(2) To initiate a referendum on a proposed IFQ program:

(i) The relevant Council must have held public hearings on the FMP or FMP amendment in which the IFQ program is proposed;

(ii) The relevant Council must have considered public comments on the proposed IFQ program;

(iii) The relevant Council must have selected preferred alternatives for the proposed IFQ program;

(iv) The chair of the Council with jurisdiction over such proposed IFQ fishery must request a referendum on the proposed IFQ program in a letter to the

appropriate NMFS Regional Administrator;

(v) The letter requesting initiation of a referendum must recommend voter eligibility criteria that are consistent with the applicable requirements of paragraph (c)(1) of this section and may also include recommended criteria for vote weighting. The letter must provide the rationale supporting the Council's recommendation, as well as such additional information and analyses as needed, consistent with applicable law and provisions of this section. If a Council recommends vote weighting criteria, the letter should fully describe the rationale for and the expected effects of such weighting on the referendum;

(vi) NEFMC referenda initiation letters must: recommend criteria that are consistent with paragraph (c)(2)(iii) of this section for NMFS to use in determining the eligibility of other fishery participants to vote in the referendum; include the minimum percentage of a crew member's total income that must have been earned during the eligibility periods in the proposed IFQ fishery as discussed in paragraph (c)(2)(ii) of this section; and include criteria for ''referendum eligible vessels'' as described in paragraph (c)(2)(i) of this section; and

(vii) GMFMC letters initiating referenda of multispecies permit holders in the Gulf of Mexico must include recommended criteria to be used in identifying those permit holders who have substantially fished the species to be included in the proposed IFQ program, along with alternatives to the recommendation, and supporting analyses. Guidelines for developing such recommendations are provided at paragraph (c)(3) of this section.

(3) Following a referendum that has failed to approve the IFQ proposal, any request from a Council for a new referendum in the same fishery must include an explanation of the substantive changes to the proposed IFQ program or the changes of circumstances in the fishery that would warrant initiation of an additional referendum.

(c) *Referenda voter eligibility*—(1) *Permit holders and other fishery participants.* (i) To be eligible to vote in IFQ referenda, permit holders and other fishery participants must meet voter eligibility criteria.

(ii) Holders of multispecies permits in the Gulf of Mexico must have substantially fished the species proposed to be included in the IFQ program to be eligible to vote in a referendum on the proposed program.

(iii) When developing eligibility criteria for permit holders in an IFQ program referendum, the relevant Council or Secretary must consider, but is not limited to considering:

(A) The full range of entities likely to be eligible to receive initial quota allocation under the proposed IFQ program;

(B) Current and historical harvest and participation in the fishery; and

(C) Other factors as may be determined by the Council with jurisdiction over the fishery for which an IFQ program is proposed to be relevant to the fishery and to the proposed IFQ program.

(2) *Crew member eligibility in NEFMC IFQ referenda.* (i) For the purposes of this section, ''referendum-eligible vessel'' means a vessel, the permit holder or owner of which has been determined to be eligible to vote in the referendum on the basis of such vessel's history or other characteristics.

(ii) To be eligible to vote in an NEFMC IFQ referendum, crew members must meet the following requirements:

(A) The crew member must have worked aboard a referendum-eligible vessel at sea, during the qualifying period(s), while the vessel was engaged in fishing;

(B) If requested, the crew member must produce documentary proof of employment or service as a crew member and income during the qualifying periods. Documents that may be required include, but are not limited to, signed crew contracts, records of payment, settlement sheets, income tax records, a signed statement from the permit holder, and other documentary evidence of the period of employment and the vessel upon which the crew member worked;

(C) During the qualifying period(s), the crew member must have derived a percentage of his/her total income from

the fishery under the proposed IFQ program that is equal to or greater than the percentage determined to be significant relative to the economic value and employment practices of the fishery; and

(D) Any additional eligibility criteria promulgated by the NMFS.

(iii) When developing criteria for determining whether other fishery participants, including crew members, may participate in a NEFMC IFQ referendum, the Council or Secretary must consider, but is not limited to considering:

(A) The full range of entities likely to be eligible to receive initial quota under the proposed IFQ program;

(B) A crew member's current and historical participation in the fishery aboard a referendum-eligible vessel;

(C) The economic value of the proposed IFQ fishery, employment practices in the proposed IFQ fishery, and other economic and social factors that would bear on a determination of what percentage of a crew member's total income from the fishery should be considered significant for the purposes of this section;

(D) The availability of documentary proof of employment and income to validate eligibility; and

(E) Any other factors as may be determined by the Council to be relevant to the fishery and the proposed IFQ program.

(3) *GMFMC's substantially fished criterion*. When developing criteria for identifying those multispecies permit holders who have substantially fished the species to be included in the IFQ program proposal, the Council or Secretary must consider, but is not limited to considering:

(i) Current and historical harvest and participation in the fishery;

(ii) The economic value of and employment practices in the fishery; and

(iii) Any other factors determined by the Council with jurisdiction over the fishery for which an IFQ program is proposed to be relevant to the fishery and the proposed IFQ program.

(d) Council-recommended criteria under paragraph (c) of this section may include, but are not limited to, levels of participation or reliance on the fishery as represented by landings, sales, expenditures, or other considerations. A Council may also apply the same criteria for weighting eligible referendum votes.

(e) *Actions by NMFS: Review of Council referendum criteria and Secretarial IFQ plans*. (1) NMFS shall determine whether Council recommended referendum criteria will provide for a fair and equitable referendum and will be consistent with national standards and other provisions of the Magnuson-Stevens Act, and other applicable legal standards. The Secretary's considerations shall include, but shall not be limited to:

(i) Whether the criteria are rationally connected to or further the objectives of the proposed IFQ program;

(ii) Whether the criteria are designed in such a way to prevent any person or single entity from obtaining an excessive share of voting privileges;

(iii) Whether the criteria are reasonable relative to the availability of documentary evidence and the possibility of validating a participant's eligibility; and

(iv) Whether the referendum can be administered and executed in a fair and equitable manner, in a reasonable time, and without subjecting industry members, the Council, or NMFS to administrative burdens, costs or other requirements that would be considered onerous.

(2) If NMFS determines that referendum criteria would not provide for a fair and equitable referendum; would not be consistent with national standards and other provisions of the Magnuson-Stevens Act, and other applicable legal standards; or, in the case of a referendum request subsequent to a failed referendum in the same fishery, that the Council has not substantively amended the IFQ proposal or circumstances have not changed sufficiently to warrant initiation of a new referendum, NMFS shall inform the Council of the Agency's decision to deny the referendum request and of the reasons for the decision.

(3) If NMFS determines that referendum criteria would provide for a fair and equitable referendum and would be consistent with national standards and other provisions of the Magnuson-Stevens Act, and other applicable legal standards; then NMFS

shall conduct the referendum in accordance with procedures and guidelines provided in paragraph (f) of this section.

(4) In accordance with paragraphs (c)(2) and (3) of this section, NMFS may initiate a referendum and promulgate referendum criteria for any IFQ program proposal advanced through a Secretarial fishery management plan (FMP) or FMP amendment under the authority of section 304(c) of the Magnuson-Stevens Act for a New England or Gulf of Mexico fishery. Such criteria must provide for a fair and equitable referendum and NMFS shall conduct the referendum in accordance with procedures and guidelines provided in paragraph (f) of this section.

(f) *Conducting IFQ referenda.* (1) NMFS shall promulgate specific referenda procedural requirements, voter eligibility requirements, and any vote weighting criteria through appropriate rulemaking.

(i) *Proposed rule.* A proposed rule shall seek public comment on the specific schedule, procedures, and other requirements for the referendum process.

(A) For NEFMC IFQ program referenda, the proposed rule shall establish procedures for documenting or certifying that other fishery participants, including crew members, meet the proposed voter eligibility criteria.

(B) For GMFMC IFQ program referenda for multispecies permit holders, the proposed rule shall include criteria to be used in identifying those permit holders who have substantially fished the species that are the subject of the proposed IFQ program.

(ii) *Final rule.* (A) If NMFS decides to proceed with the referendum after reviewing public comments, NMFS shall publish implementing regulations through a final rule in the FEDERAL REGISTER as soon as practicable after the Council determines the IFQ program proposal and supporting analyses are complete and ready for Secretarial review. Otherwise, NMFS shall publish a notice in the FEDERAL REGISTER to inform the Council and the public of its decision not to conduct the referendum, as proposed, including reasons for the Agency's decision.

(B) Upon implementation of the referendum through a final rule, NMFS shall provide eligible voters referenda ballots and shall make available information about the schedule, procedures, and eligibility requirements for the referendum process and the proposed IFQ program.

(2) NMFS shall notify the public in the region of the subject fishery of the referendum eligibility criteria.

(3) Individuals who wish to vote as other fishery participants in a NEFMC IFQ referendum, based on criteria established by the NEFMC under (c)(2), must contact NMFS and produce all required documentation and certifications to receive a ballot. NMFS shall provide sufficient time in the referendum process to allow for crew members to request, receive, and submit referendum ballots.

(g) *Referenda ballots.* (1) Ballots shall be composed such that voters will indicate approval or disapproval of the preferred IFQ program proposal.

(2) NMFS may require voters to self-certify on referenda ballots that they meet voter eligibility criteria. To be considered valid, ballots must be signed by the eligible voter.

(3) Referenda ballots shall be numbered serially or otherwise designed to guard against submission of duplicate ballots.

(4) If votes are weighted, the value of weighted votes shall be indicated on the ballot. The weighted vote must be cast as a single unit. Its value may not be split. The full value must be applied to the selection made on the ballot.

(5) NMFS shall allow at least 30 days for eligible voters to receive and return their ballots and shall specify a deadline by which ballots must be received. Ballots received after the deadline shall not be considered valid.

(h) *Determining the outcome of an IFQ referendum.* (1) NMFS shall tally and announce the results of the referendum within 90 days of the deadline by which completed ballots must be received. NMFS may declare a referendum invalid if the Agency can demonstrate the referendum was not conducted in accordance with the procedures established in the final rule implementing the referendum.

(2) A NEFMC IFQ program referendum shall be considered approved only if more than ⅔ of the votes submitted on valid ballots are in favor of the referendum question.

(3) A GMFMC IFQ program referendum shall be considered approved only if a majority of the votes submitted on valid ballots are in favor of the referendum question.

(i) *Council actions.* (1) If NMFS notifies a Council that an IFQ program proposal has been approved through a referendum, then the Council may submit the associated FMP or FMP amendment for Secretarial review and implementation.

(2) Any changes that would modify an IFQ program proposal that was reviewed by referenda voters may invalidate the results of the referendum and require the modified program proposal to be approved through a new referendum before it can be submitted to the Secretary for review and implementation.

(3) If NMFS notifies a Council that an IFQ referendum has failed, then the Council may modify its IFQ program proposal and request a new referendum pursuant to paragraph (b) of this section.

Subpart P—Marine Recreational Fisheries of the United States

SOURCE: 73 FR 79717, Dec. 30, 2008, unless otherwise noted.

§ 600.1400 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings. For purposes of this subpart, if applicable, the terms used in this subpart supersede those used in § 600.10.

Anadromous species means the following:

American shad: *Alosa sapidissima*
Blueback herring: *Alosa aestivalus*
Alewife: *Alosa pseudoharengus*
Hickory shad: *Alosa mediocris*
Alabama shad: *Alosa alabamae*
Striped bass: *Morone saxatilis*
Rainbow smelt: *Osmerus mordax*
Atlantic salmon: *Salmo salar*
Chinook, or king, salmon: *Oncorhynchus tshawytscha*
Coho, or silver, salmon: *Oncorhynchus kisutch*
Pink salmon: *Oncorhynchus gorbuscha*
Sockeye salmon: *Oncorhynchus nerka*
Chum salmon: *Oncorhynchus keta*
Steelhead: *Oncorhynchus mykiss*
Coastal cutthroat trout: *Oncorhynchus clarki clarki*
Eulachon or candlefish: *Thaleichthys pacificus*
Dolly varden: *Salvelinus malma*
Sheefish or inconnu: *Stenodus leucichthys*
Atlantic sturgeon: *Acipenser oxyrhynchus oxyrhynchus*
Shortnose sturgeon: *Acipenser brevirostrum*
Gulf sturgeon: *Acipenser oxyrhynchus desotoi*
White sturgeon: *Acipenser transmontanus*
Green sturgeon: *Acipenser medirostris*

Angler means a person who is angling (see 50 CFR 600.10) in tidal waters.

Authorized officer has the same meaning as in 50 CFR 600.10.

Combination license means either:

(1) A single state fishing license that permits fishing in fresh waters and tidal waters at one price; or

(2) A single state license that permits a group of fishing and hunting activities, including fishing in tidal waters, at a price that is less than the sum of the cost of the individual licenses.

Commercial fishing has the same meaning as in 16 U.S.C. 1802.

Continental shelf fishery resources has the same meaning as in 16 U.S.C. 1802.

Exempted state means a state that has been designated as an exempted state by NMFS pursuant to § 600.1415.

For-hire fishing vessel means a vessel on which passengers are carried to engage in angling or spear fishing, from whom a consideration is contributed as a condition of such carriage, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person having an interest in the vessel.

Indigenous people means persons who are documented members of a federally recognized tribe or Alaskan Native Corporation or persons who reside in the western Pacific who are descended from the aboriginal people indigenous to the region who conducted commercial or subsistence fishing using traditional fishing methods, including angling.

Spearfishing means fishing for, attempting to fish for, catching or attempting to catch fish in tidal waters

by any person with a spear or a powerhead (see 50 CFR 600.10).

State has the same meaning as in 16 U.S.C. 1802.

Tidal waters means waters that lie below mean high water and seaward of the first upstream obstruction or barrier to tidal action and that are subject to the ebb and flow of the astronomical tides under ordinary conditions.

[77 FR 42191, July 18, 2012]

§ 600.1405 Angler registration.

(a) Effective January 1, 2010, the requirements of this section apply to any person who does any of the following:

(1) Engages in angling or spearfishing for:

(i) Fish in the EEZ;

(ii) Anadromous species in any tidal waters; or

(iii) Continental Shelf fishery resources beyond the EEZ.

(2) Operates a for-hire fishing vessel in the EEZ.

(3) Operates a for-hire fishing vessel that engages in angling or spearfishing for:

(i) Anadromous species in any tidal waters; or

(ii) Continental shelf fishery resources beyond the EEZ.

(4) Possesses equipment used for angling or spearfishing and also possesses:

(i) Fish in the EEZ;

(ii) Anadromous species in any tidal waters; or

(iii) Continental shelf fishery resources beyond the EEZ.

(b) No person may engage in the activities listed in paragraph (a) of this section unless that person:

(1) Has registered annually with NMFS in accordance with § 600.1410 of this part;

(2) Holds a valid fishing license issued by, or is registered by, an exempted state;

(3) Is a resident of an exempted state, but is not required to hold a fishing license, or to be registered to fish, under the laws of that state;

(4) Holds a permit issued by NMFS for for-hire fishing under 50 CFR 622.4(a)(1), 635.4(b), 648.4(a), or 660.707(a)(1);

(5) Is under the age of 16;

(6) Is angling aboard a for-hire fishing vessel that is in compliance with NMFS and state for-hire vessel permit, license or registration requirements;

(7) Holds a commercial fishing license or permit issued by NMFS or a state and is lawfully fishing or in possession of fish taken under the terms and conditions of such license or permit;

(8) Holds an HMS Angling permit under 50 CFR 635.4(c) or a MHI Noncommercial Bottomfish permit under 50 CFR 665.203(a)(2);

(9) Holds a subsistence fishing license or permit issued by NMFS or a state and is lawfully fishing or in possession of fish taken under the terms and conditions of such license or permit; or

(10) Is angling or spearfishing for, or operating a for-hire fishing vessel that engages in fishing for, anadromous species or Continental Shelf fishery resources, in waters under the control of a foreign nation.

(c) Any angler or spear fisher or operator of a for-hire vessel must, on request of an authorized officer, produce the NMFS registration number and certificate or evidence that such person or for-hire vessel operator is exempt from the registration requirement pursuant to § 600.1405(b)(2) through § 600.1405(b)(10).

[73 FR 79717, Dec. 30, 2008, as amended at 77 FR 42191, July 18, 2012]

§ 600.1410 Registry process.

(a) A person may register through the NMFS web site at *www.nmfs.noaa.gov* or by calling a toll-free telephone number available by contacting NMFS or at the NMFS website.

(b) Individuals must submit their name; address; telephone number; date of birth; region(s) of the country in which they intend to fish in the upcoming year; and additional information necessary for the issuance or administration of the registration.

(c) To register a for-hire fishing vessel, the vessel owner or operator must submit vessel owner name, address, date of birth, and telephone number;

vessel operator (if different) name, address, date of birth and telephone number; vessel name; vessel's state registration or U.S. Coast Guard documentation number; home port or principal area of operation; and additional information necessary for the issuance or administration of the registration.

(d) NMFS will issue a registration number and certificate to registrants. A registration number and certificate will be valid for one year from the date on which it is issued.

(e) It shall be unlawful for any person to submit false, inaccurate or misleading information in connection with any registration request.

(f) *Fees*. Effective January 1, 2011, persons registering with NMFS must pay an annual fee. The annual schedule for such fees will be published in the FEDERAL REGISTER. Indigenous people engaging in angling or spear fishing must register, but are not required to pay a fee.

§ 600.1415 Procedures for designating exempted states-general provisions.

(a) States with an exempted state designation must:

(1) Submit state angler and for-hire vessel license holder data to NMFS for inclusion in a national or regional registry database; or

(2) Participate in regional surveys of recreational catch and effort and make the data from those surveys available to NMFS.

(b) Process for getting an exempted state designation:

(1) To apply for exempted state designation, a state must submit:

(i) A complete description of the data it intends to submit to NMFS;

(ii) An assessment of how the data conforms to the requirements of §§ 600.1416 or 600. 1417;

(iii) A description of the database in which the data exists and will be transmitted; and

(iv) The proposed process, schedule and frequency of submission of the data.

(2) If NMFS determines the submitted material meets the requirements of §§ 600.1416 or 600.1417, NMFS will initiate negotiations with the state on a Memorandum of Agreement. The Memorandum of Agreement must include the terms and conditions of the data-sharing program. The Memorandum of Agreement and state designation may be limited to data-sharing related to only anglers or only for-hire fishing vessels.

(3) Following execution of a Memorandum of Agreement, NMFS will publish a notice of the exempted state designation in the FEDERAL REGISTER.

§ 600.1416 Requirements for exempted state designation based on submission of state license holder data.

(a) A state must annually update and submit to NMFS, in a format consistent with NMFS guidelines, the name, address and, to the extent available in the state's database, telephone number and date of birth, of all persons and for-hire vessel operators, and the name and state registration number or U.S. Coast Guard documentation number of for-hire vessels that are licensed to fish, or are registered as fishing, in the EEZ, in the tidal waters of the state, or for anadromous species. The Memorandum of Agreement developed in accordance with § 600.1415(b)(2) will specify the timetable for a state to compile and submit complete information telephone numbers and dates of birth for its license holders/registrants. The waters of the state for which such license-holder data must be submitted will be specified in the Memorandum of Agreement.

(b) A state is eligible to be designated as an exempted state even if its licensing program excludes anglers who are:

(1) Under 17 years of age;

(2) Over age 59 (see § 600.1416(d)(1));

(3) Customers on licensed for-hire vessels;

(4) Customers on state-licensed fishing piers, provided that the pier license holder provides to the state complete angler contact information or angler effort information for users of the pier;

(5) On active military duty while on furlough; or

(6) Disabled or a disabled Veteran as defined by the state.

(7) Fishing on days designated as ''free fishing days'' by states. ''*Free fishing days*'' means fishing promotion programs by which states allow new anglers to fish for a specified day without a license or registration.

(c) Unless the state can demonstrate that a given category of anglers is so small it has no significant probability of biasing estimates of fishing effort if these anglers are not included in a representative sample, a state may not be designated as an exempted state if its licensing or registration program excludes anglers in any category other than those listed in paragraph (b) of this section.

(d) Required enhancements to exempted state license-holder data. An exempted state must submit the following angler identification data by Jan. 1, 2012, or within two years of the effective date of the Memorandum of Agreement, whichever is later, and thereafter in accordance with the Memorandum of Agreement. States that provide NMFS with notice that they are required to enact legislation or to enter into formal memoranda of agreement or contracts with other state agencies to comply with this requirement must submit the data within three years of the effective date of the Memorandum of Agreement:

(1) Name, address and telephone number, updated annually, of excluded anglers over age 59, unless the state can demonstrate that the number of anglers excluded from the license or registration requirement based on having a date of birth before June 1, 1940 is so small it has no significant probability of biasing estimates of fishing effort if these anglers are not included in a representative sample;

(2) Name, address and telephone number, updated annually, of holders of state lifetime and multi-year licenses;

(3) Name, address and telephone number of state combination license holders who fished in tidal waters in the prior year, or who intend to fish in tidal waters. The Memorandum of Agreement will define the boundaries of the state's tidal waters for this purpose.

[73 FR 79717, Dec. 30, 2008, as amended at 77 FR 42191, July 18, 2012]

§ 600.1417 Requirements for exempted state designation based on submission of recreational survey data.

(a) To be designated as an exempted state based on the state's participation in a regional survey of marine and anadromous recreational fishing catch and effort, a state may submit to NMFS a proposal that fully describes the state's participation in a qualifying regional survey, and the survey's sample design, data collection and availability.

(b) A qualifying regional survey must:

(1) Include all of the states within each region as follows:

(i) Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida (Atlantic coast);

(ii) Florida (Gulf of Mexico coast), Alabama, Mississippi, Louisiana, and Texas;

(iii) Puerto Rico;

(iv) U.S. Virgin Islands;

(v) California, Oregon and Washington;

(vi) Alaska;

(vii) Hawaii; or

(viii) American Samoa, Guam and the Commonwealth of the Northern Mariana Islands.

(2) Utilize angler registry data, or direct field counts to obtain angler effort, or other appropriate statistical means to obtain fishing effort;

(3) Utilize angler registry data to identify individuals to be surveyed by telephone, mail or Internet if such regional survey includes a telephone survey component; and

(4) Meet NMFS survey design and data collection standards.

[73 FR 79717, Dec. 30, 2008, as amended at 77 FR 42192, July 18, 2012]

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

Subpart A—General Provisions

Sec.

622.1 Purpose and scope.
622.2 Definitions and acronyms.
622.3 Relation to other laws and regulations.
622.4 Permits and fees.
622.5 Recordkeeping and reporting.
622.6 Vessel and gear identification.
622.7 Prohibitions.
622.8 At-sea observer coverage.
622.9 Vessel monitoring systems (VMSs).

622.10 Conservation measures for protected resources.

Subpart B—Effort Limitations

622.15 Wreckfish individual transferable quota (ITQ) system.
622.16 Red snapper individual transferable quota (ITQ) system.
622.17 South Atlantic golden crab controlled access.
622.18 South Atlantic snapper-grouper limited access.
622.19 South Atlantic rock shrimp limited access.
622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

Subpart C—Management Measures

622.30 Fishing years.
622.31 Prohibited gear and methods.
622.32 Prohibited and limited-harvest species.
622.33 Caribbean EEZ seasonal and/or area closures.
622.34 Gulf EEZ seasonal and/or area closures.
622.35 Atlantic EEZ seasonal and/or area closures.
622.36 Seasonal harvest limitations.
622.37 Size limits.
622.38 Landing fish intact.
622.39 Bag and possession limits.
622.40 Limitations on traps and pots.
622.41 Species specific limitations.
622.42 Quotas.
622.43 Closures.
622.44 Commercial trip limits.
622.45 Restrictions on sale/purchase.
622.46 Prevention of gear conflicts.
622.47 Gulf groundfish trawl fishery.
622.48 Adjustment of management measures.
622.49 Annual catch limits (ACLs) and accountability measures (AMs).
622.50 Caribbean spiny lobster import prohibitions.

APPENDIX A TO PART 622—SPECIES TABLES
APPENDIX B TO PART 622—GULF AREAS
APPENDIX C TO PART 622—FISH LENGTH MEASUREMENTS
APPENDIX D TO PART 622—SPECIFICATIONS FOR CERTIFIED BRDS
APPENDIX E TO PART 622—CARIBBEAN ISLAND/ISLAND GROUP MANAGEMENT AREAS
APPENDIX F TO PART 622—SPECIFICATIONS FOR SEA TURTLE MITIGATION GEAR AND SEA TURTLE HANDLING AND RELEASE REQUIREMENTS

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

SOURCE: 61 FR 34934, July 3, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 622 appear at 70 FR 73389, Dec. 12, 2005 and 73 FR 411, Jan. 3, 2008.

Subpart A—General Provisions

§ 622.1 Purpose and scope.

(a) The purpose of this part is to implement the FMPs prepared under the Magnuson-Stevens Act by the CFMC, GMFMC, and/or SAFMC listed in Table 1 of this section. This part also governs importation of Caribbean spiny lobster into Puerto Rico or the U.S. Virgin Islands.

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, South Atlantic, or Atlantic EEZ, unless otherwise specified, as indicated in Table 1 of this section. For the FMPs noted in the following table, conservation and management extends to adjoining state waters for the purposes of data collection and monitoring. This part also governs importation of Caribbean spiny lobster into Puerto Rico or the U.S. Virgin Islands.

TABLE 1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
FMP for Coastal Migratory Pelagic Resources	GMFMC/SAFMC	Gulf [1], Mid-Atlantic [1] and South Atlantic [1],
FMP for Coral and Coral Reefs of the Gulf of Mexico	GMFMC	Gulf.
FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region.	SAFMC	South Atlantic[5].
FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Dolphin and Wahoo Fishery off the Atlantic States	SAFMC	Atlantic.
FMP for the Golden Crab Fishery of the South Atlantic Region	SAFMC	South Atlantic
FMP for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for Pelagic Sargassum Habitat of the South Atlantic Region	SAFMC	South Atlantic
FMP for the Red Drum Fishery of the Gulf of Mexico	GMFMC	Gulf [1],
FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.

TABLE 1—FMPS IMPLEMENTED UNDER PART 622—Continued

FMP title	Responsible fishery management council(s)	Geographical area
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf[1,3,4].
FMP for the Shrimp Fishery of the Gulf of Mexico	GMFMC	Gulf[1].
FMP for the Shrimp Fishery of the South Atlantic Region	SAFMC	South Atlantic.
FMP for the Snapper-Grouper Fishery of the South Atlantic Region	SAFMC	South Atlantic[1,2].
FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.
[2] Black sea bass and scup are not managed by the FMP or regulated by this part north of 35°15.9′ N. lat., the latitude of Cape Hatteras Light, NC.
[3] Regulated area includes adjoining state waters for Gulf red snapper harvested or possessed by a person aboard a vessel for which a Gulf red snapper IFQ vessel account has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.
[4] Regulated area includes adjoining state waters for Gulf groupers and tilefishes harvested or possessed by a person aboard a vessel for which an IFQ vessel account for Gulf groupers and tilefishes has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.
[5] Octocorals are managed by the FMP or regulated by this part only in the EEZ off North Carolina, South Carolina, and Georgia.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 65483, Dec. 13, 1996; 63 FR 10565, Mar. 4, 1998; 67 FR 22362, May 3, 2002; 68 FR 57378, Oct. 3, 2003; 69 FR 30240, May 27, 2004; 71 FR 67457, Nov. 22, 2006; 73 FR 58061, Oct. 6, 2008; 74 FR 1151, Jan. 12, 2009; 74 FR 44741, Aug. 31, 2009; 76 FR 82051, 82066, Dec. 29, 2011; 76 FR 82186, Dec. 30, 2011; 77 FR 4493, Jan. 30, 2012; 77 FR 15925, Mar. 16, 2012; 77 FR 23633, Apr. 20, 2012]

§ 622.2 Definitions and acronyms.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, and the acronyms in § 600.15 of this chapter, the terms and acronyms used in this part have the following meanings:

Accountability measure means a management control implemented such that overfishing is prevented, where possible, and mitigated if it occurs.

Actual ex-vessel price means the total monetary sale amount a fisherman receives per pound of fish for IFQ landings from a registered IFQ dealer before any deductions are made for transferred (leased) allocation and goods and services (e.g. bait, ice, fuel, repairs, machinery replacement, etc.).

Allowable chemical means a substance, generally used to immobilize marine life so that it can be captured alive, that, when introduced into the water, does not take Gulf and South Atlantic prohibited coral and is allowed by Florida for the harvest of tropical fish (e.g., quinaldine, quinaldine compounds, or similar substances).

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina,* plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral.

NOTE: An erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina,* with attached substrate exceeding 1 inch (2.54 cm) is considered to be live rock and not allowable octocoral.

Annual catch limit (ACL) means the level of catch that serves as the basis for invoking accountability measures.

Annual catch target (ACT) means an amount of annual catch of a stock or stock complex that is the management target of the fishery, and accounts for management uncertainty in controlling the actual catch at or below the ACL.

Aquacultured live rock means live rock that is harvested under a Federal aquacultured live rock permit, as required under § 622.4(a)(3)(iii).

Atlantic means the North Atlantic, Mid-Atlantic, and South Atlantic.

Authorized statistical reporting agent means:

(1) Any person so designated by the SRD; or

(2) Any person so designated by the head of any Federal or State agency that has entered into an agreement with the Assistant Administrator to collect fishery data.

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

from and retrieved on the reel electrically or hydraulically.

Bandit gear means a rod and reel that remain attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

Bottom longline means a longline that is deployed, or in combination with gear aboard the vessel, e.g., weights or anchors, is capable of being deployed to maintain contact with the ocean bottom.

BRD means bycatch reduction device.

Buoy gear means fishing gear that fishes vertically in the water column that consists of a single drop line suspended from a float, from which no more than 10 hooks can be connected between the buoy and the terminal end, and the terminal end contains a weight that is no more than 10 lb (4.5 kg). The drop line can be rope (hemp, manila, cotton or other natural fibers; nylon, polypropylene, spectra or other synthetic material) or monofilament, but must not be cable or wire. The gear is free-floating and not connected to other gear or the vessel. The drop line must be no greater than 2 times the depth of the water being fished. All hooks must be attached to the drop line no more than 30 ft (9.1 m) from the weighted terminal end. These hooks may be attached directly to the drop line; attached as snoods (defined as an offshoot line that is directly spliced, tied or otherwise connected to the drop line), where each snood has a single terminal hook; or as gangions (defined as an offshoot line connected to the drop line with some type of detachable clip), where each gangion has a single terminal hook.

Carapace length means the straight-line distance from the orbital notch inside the orbital spine, in a line parallel to the lateral rostral sulcus, to the posterior margin of the cephalothorax. (See Figure 1 in appendix C of this part.)

Caribbean means the Caribbean Sea and Atlantic Ocean seaward of Puerto Rico, the U.S. Virgin Islands, and possessions of the United States in the Caribbean Sea.

Caribbean coral reef resource means one or more of the species, or a part thereof, listed in Table 1 in Appendix A of this part, whether living or dead.

Caribbean prohibited coral means, in the Caribbean; a gorgonian, that is, a Caribbean coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea; a live rock; or a stony coral, that is, a Caribbean coral reef resource of the Class Hydrozoa (fire corals and hydrocorals) or of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals); or a part thereof.

Caribbean queen conch or queen conch means the species, *Strombus gigas*, or a part thereof.

Caribbean reef fish means one or more of the species, or a part thereof, listed in Table 2 in Appendix A of this part.

Caribbean spiny lobster or *spiny lobster* means the species *Panulirus argus*, or a part thereof.

CFMC means the Caribbean Fishery Management Council.

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew. However, a charter vessel that has a charter vessel permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid Certificate of Inspection (COI) issued by the USCG to carry passengers for hire will not be considered to be operating as a charter vessel provided—

(1) It is not carrying a passenger who pays a fee; and

(2) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-

hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

Circle hook means a fishing hook designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.

Coastal migratory pelagic fish means a whole fish, or a part thereof, of one or more of the following species:

(1) Cobia, *Rachycentron canadum*.

(2) King mackerel, *Scomberomorus cavalla*.

(3) Spanish mackerel, *Scomberomorus maculatus*.

Coral area means marine habitat in the Gulf or South Atlantic EEZ where coral growth abounds, including patch reefs, outer bank reefs, deep water banks, and hard bottoms.

Dealer, in addition to the definition specified in § 600.10 of this chapter, means the person who first receives rock shrimp harvested from the EEZ or dolphin or wahoo harvested from the Atlantic EEZ upon transfer ashore.

Deep-water grouper (DWG) means, in the Gulf, yellowedge grouper, warsaw grouper, snowy grouper, and speckled hind. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, scamp are also included as DWG as specified in § 622.20(a)(7).

Deep-water snapper-grouper (DWSG) means, in the South Atlantic, yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, speckled hind, blueline tilefish, queen snapper, and silk snapper.

Dehooking device means a device intended to remove a hook embedded in a fish to release the fish with minimum damage.

Dolphin means a whole fish, or a part there of, of the species *Coryphaena equiselis* or *C. hippurus*.

Drift gillnet, for the purposes of this part, means a gillnet, other than a long gillnet or a run-around gillnet, that is unattached to the ocean bottom, regardless of whether attached to a vessel.

Fish trap means—

(1) In the Caribbean EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish.

(2) In the Gulf EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish, except a trap historically used in the directed fishery for crustaceans (that is, blue crab, stone crab, and spiny lobster).

(3) In the South Atlantic EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking fish, except a sea bass pot, a golden crab trap, or a crustacean trap (that is, a type of trap historically used in the directed fishery for blue crab, stone crab, red crab, jonah crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, stone crab, red crab, jonah crab, and spiny lobster).

Fork length means the straight-line distance from the tip of the head (snout) to the rear center edge of the tail (caudal fin). (See Figure 2 in appendix C of this part.)

Golden crab means the species *Chaceon fenneri*, or a part thereof.

Golden crab trap means any trap used or possessed in association with a directed fishery for golden crab in the South Atlantic EEZ, including any trap that contains a golden crab in or from the South Atlantic EEZ or any trap on board a vessel that possesses golden crab in or from the South Atlantic EEZ.

GMFMC means the Gulf of Mexico Fishery Management Council.

Gulf means the Gulf of Mexico. The line of demarcation between the Atlantic Ocean and the Gulf of Mexico is specified in § 600.105(c) of this chapter.

Gulf reef fish means one or more of the species, or a part thereof, listed in Table 3 in appendix A of this part.

Gulf and South Atlantic prohibited coral means, in the Gulf and South Atlantic, one or more of the following, or a part thereof:

(1) Coral belonging to the Class Hydrozoa (fire corals and hydrocorals).

(2) Coral belonging to the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

(3) A seafan, *Gorgonia flabellum* or *G. ventalina*.

(4) Coral in a coral reef, except for allowable octocoral.

(5) Coral in an HAPC, including allowable octocoral.

Handline means a line with attached hook(s) that is tended directly by hand.

HAPC means habitat area of particular concern.

Headboat means a vessel that holds a valid Certificate of Inspection (COI) issued by the USCG to carry more than six passengers for hire.

(1) A headboat with a commercial vessel permit, as required under § 622.4(a)(2), is considered to be operating as a headboat when it carries a passenger who pays a fee or—

(i) In the case of persons aboard fishing for or possessing South Atlantic snapper-grouper, when there are more persons aboard than the number of crew specified in the vessel's COI; or

(ii) In the case of persons aboard fishing for or possessing coastal migratory pelagic fish, when there are more than three persons aboard, including operator and crew.

(2) However a vessel that has a headboat permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid COI issued by the USCG to carry passengers for hire will not be considered to be operating as a headboat provided—

(i) It is not carrying a passenger who pays a fee; and

(ii) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

Headrope length means the distance, measured along the forwardmost webbing of a trawl net, between the points at which the upper lip (top edge) of the mouth of the net are attached to sleds, doors, or other devices that spread the net.

Hook-and-line gear means automatic reel, bandit gear, buoy gear, handline, longline, and rod and reel.

Import means, for the purpose of §§ 622.1(b) and 622.50 only,—

(1) To land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, Puerto Rico or the U.S. Virgin Islands, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States; but

(2) Does not include any activity described in paragraph (1) of this definition with respect to fish caught in the U.S. exclusive economic zone by a vessel of the United States.

IFQ means individual fishing quota.

Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

Long gillnet means a gillnet that has a float line that is more than 1,000 yd (914 m) in length.

Longline means a line that is deployed horizontally to which gangions and hooks are attached. A longline may be a bottom longline, i.e., designed for use on the bottom, or a pelagic longline, i.e., designed for use off the bottom. The longline hauler may be manually, electrically, or hydraulically operated.

MAFMC means the Mid-Atlantic Fishery Management Council.

Mid-Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter, to the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter.

Migratory group, for king mackerel, Spanish mackerel, and cobia, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King mackerel, Spanish mackerel, and cobia are divided into migratory groups—the boundaries between these groups are as follows:

(1) *King mackerel*—(i) *Summer separation*. From April 1 through October 31, the boundary separating the Gulf and

Atlantic migratory groups of king mackerel is 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary to the outer limit of the EEZ.

(ii) *Winter separation.* From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 29°25′ N. lat., which is a line directly east from the Volusia/Flagler County, FL, boundary to the outer limit of the EEZ.

(2) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary to the outer limit of the EEZ.

(3) *Cobia.* The boundary separating the Gulf and Atlantic migratory groups of cobia is the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in § 600.105(c) of this chapter.

MPA means marine protected area.

North Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the United States and Canada to the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter.

Off Florida means the waters in the Gulf and South Atlantic from 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary, to 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Off Georgia means the waters in the South Atlantic from a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary to 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary.

Official sunrise or *official sunset* means the time of sunrise or sunset as determined for the date and location in *The Nautical Almanac,* prepared by the U.S. Naval Observatory.

Off Louisiana, Mississippi, and Alabama means the waters in the Gulf other than off Florida and off Texas.

Off North Carolina means the waters in the South Atlantic from 36°34′55″ N. lat., which is a line directly east from the Virginia/North Carolina boundary, to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long.

Off South Carolina means the waters in the South Atlantic from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78′32′32.6″ W. long., to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

Off Texas means the waters in the Gulf west of a rhumb line from 29°32.1′ N. lat., 93°47.7′ W. long. to 26°11.4′ N. lat., 92°53′ W. long., which line is an extension of the boundary between Louisiana and Texas.

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

Pelagic sargassum means the species *Sargassum natans* or *S. fluitans,* or a part thereof.

Penaeid shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus.*

(2) Pink shrimp, *Farfantepenaeus duorarum.*

(3) White shrimp, *Litopenaeus setiferus.*

Penaeid shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of penaeid shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, that fires a projectile upon contact.

Processor means a person who processes fish or fish products, or parts thereof, for commercial use or consumption.

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

Red drum, also called redfish, means *Sciaenops ocellatus,* or a part thereof.

Red snapper means *Lutjanus campechanus*, or a part thereof, one of the Gulf reef fish species.

Regional Administrator (RA), for the purposes of this part, means the Administrator, Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or a designee.

Rod and reel means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

Run-around gillnet means a gillnet, other than a long gillnet, that, when used, encloses an area of water.

SAFMC means the South Atlantic Fishery Management Council.

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

Science and Research Director (SRD), for the purposes of this part, means the Science and Research Director, Southeast Fisheries Science Center, NMFS (see Table 1 of § 600.502 of this chapter).

Sea bass pot means a trap has six rectangular sides and does not exceed 25 inches (63.5 cm) in height, width, or depth.

Shallow-water grouper (SWG) means, in the Gulf, gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper. Other shallow-water grouper (Other SWG) means, in the Gulf, SWG excluding gag and red grouper (*i.e.*, black grouper, scamp, yellowfin grouper, and yellowmouth grouper). In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, speckled hind and warsaw grouper are also included as Other SWG as specified in § 622.20(a)(6).

Shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus*.

(2) White shrimp, *Litopenaeus setiferus*.

(3) Pink shrimp, *Farfantepenaeus duorarum*.

(4) Royal red shrimp, *Hymenopenaeus robustus*.

(5) Rock shrimp, *Sicyonia brevirostris*.

Shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Smalltooth sawfish means the species *Pristis pectinata*, or a part thereof.

SMZ means special management zone.

Smalltooth sawfish means the species Pristis pectinata, or a part thereof.

South Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter, to the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in § 600.105(c) of this chapter.

South Atlantic shallow-water grouper (SASWG) means, in the South Atlantic, gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney.

South Atlantic snapper-grouper means one or more of the species, or a part thereof, listed in Table 4 in appendix A of this part.

Stab net means a gillnet, other than a long gillnet, or trammel net whose weight line sinks to the bottom and submerges the float line.

Total length (TL), for the purposes of this part, means the straight-line distance from the tip of the snout to the tip of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side. The mouth of the fish may be closed and/or the tail may be squeezed together to give the greatest overall measurement. (See Figure 2 in appendix C of this part.)

Toxic chemical means any substance, other than an allowable chemical, that, when introduced into the water, can stun, immobilize, or take marine life.

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

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth,

beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

Try net, also called test net, means a net pulled for brief periods by a shrimp trawler to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses).

Venting device means a device intended to deflate the abdominal cavity of a fish to release the fish with minimum damage.

Wahoo means the species *Acanthocybium solandri*, or a part thereof, in the Atlantic.

Wild live rock means live rock other than aquacultured live rock.

Wreckfish means the species *Polyprion americanus,* or a part thereof, one of the South Atlantic snapper-grouper species.

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 622.3 Relation to other laws and regulations.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) through (f) of this section.

(b) Except for regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock, this part is intended to apply within the EEZ portions of applicable National Marine Sanctuaries and National Parks, unless the regulations governing such sanctuaries or parks prohibit their application. Regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock do not apply within the EEZ portions of the following National Marine Sanctuaries and National Parks:

(1) Florida Keys National Marine Sanctuary (15 CFR part 922, subpart P).

(2) Gray's Reef National Marine Sanctuary (15 CFR part 922, subpart I).

(3) Monitor National Marine Sanctuary (15 CFR part 922, subpart F).

(4) Everglades National Park (36 CFR 7.45).

(5) Biscayne National Park (16 U.S.C. 410gg).

(6) Fort Jefferson National Monument (36 CFR 7.27).

(c) For allowable octocoral, if a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the South Atlantic EEZ must comply with the more restrictive state regulation.

(d) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and 600.740 of this chapter, respectively.

(e) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 600.745 of this chapter.

(f) Regulations pertaining to additional prohibitions on importation of spiny lobster into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands are set forth in part 640 of this chapter.

[61 FR 34934, July 3, 1996, as amended at 71 FR 28284, May 16, 2006; 74 FR 1151, Jan. 12, 2009; 74 FR 58911, Nov. 16, 2009; 76 FR 82051, Dec. 29, 2011]

§ 622.4 Permits and fees.

(a) *Permits required.* To conduct activities in fisheries governed in this part, valid permits, licenses, and endorsements are required as follows:

(1) *Charter vessel/headboat permits.* (i) For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess, in or from the EEZ, species in any of the following species groups, a valid charter vessel/headboat permit for that species group must have been issued to the vessel and must be on board—

(A) Gulf coastal migratory pelagic fish.

(B) South Atlantic coastal migratory pelagic fish.

(C) Gulf reef fish.

(D) South Atlantic snapper-grouper.

(E) Atlantic dolphin and wahoo. (See paragraph (a)(5) of this section for the requirements for operator permits in the dolphin and wahoo fishery.)

(ii) See paragraph (r) of this section regarding a limited access system for charter vessel/headboat permits for Gulf reef fish and Gulf coastal migratory pelagic fish.

(iii) A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits. See the definitions of ''Charter vessel'' and ''Headboat'' in § 622.2 for an explanation of when vessels are considered to be operating as a charter vessel or headboat, respectively.

(iv) If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested.

(2) *Commercial vessel permits, licenses, and endorsements*—(i) [Reserved]

(ii) *Gillnets for king mackerel in the southern Florida west coast subzone.* For a person aboard a vessel to use a run-around gillnet for king mackerel in the southern Florida west coast subzone (see § 622.42(c)(1)(i)(A)(*3*)), a commercial vessel permit for king mackerel and a king mackerel gillnet permit must have been issued to the vessel and must be on board. See paragraph (o) of this section regarding a limited access system applicable to king mackerel gillnet permits and restrictions on transferability of king mackerel gillnet permits.

(iii) *King mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king mackerel, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the three calendar years preceding the application. See paragraph (q) of this section regarding a limited access system applicable to commercial vessel permits for king mackerel, transfers of permits under the limited access system, and limited exceptions to the earned income or gross sales requirement for a permit.

(iv) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Spanish mackerel, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application.

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(2)(ix) of this section regarding an IFQ vessel account required to fish for, possess, or land Gulf red snapper or Gulf groupers and tilefishes and paragraph (a)(2)(xiv) of this section regarding an additional bottom longline endorsement required to fish for Gulf reef fish with bottom longline gear in a portion of the eastern Gulf. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and

limited exceptions to the earned income requirement for a permit.

(A) *Option to consolidate commercial vessel permits for Gulf reef fish.* A person who has been issued multiple commercial vessel permits for Gulf reef fish and wants to consolidate some or all of those permits, and the landings histories associated with those permits, into one permit must submit a completed permit consolidation application to the RA. The permits consolidated must be valid, non-expired permits and must be issued to the same entity. The application form and instructions are available online at sero.nmfs.noaa.gov. After consolidation, such a person would have a single permit, and the permits that were consolidated into that permit will be permanently terminated.

(B) [Reserved]

(vi) *South Atlantic snapper-grouper.* For a person aboard a vessel to be eligible for exemption from the bag limits for South Atlantic snapper-grouper in or from the South Atlantic EEZ, to sell South Atlantic snapper-grouper in or from the South Atlantic EEZ, to engage in the directed fishery for tilefish in the South Atlantic EEZ, to use a longline to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, or to use a sea bass pot in the South Atlantic EEZ between 35°15.19′ N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), a commercial vessel permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. A vessel with longline gear and more than 200 lb (90.7 kg) of tilefish on board is considered to be in the directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 lb (90.7 kg) of tilefish on board harvested such tilefish in the EEZ. See § 622.18 for limitations on the use, transfer, and renewal of a commercial vessel permit for South Atlantic snapper-grouper.

(vii) *Wreckfish.* For a person aboard a vessel to be eligible for exemption from the bag limit for wreckfish in or from the South Atlantic EEZ, to fish under a quota for wreckfish in or from the South Atlantic EEZ, or to sell wreckfish in or from the South Atlantic EEZ, a commercial vessel permit for wreckfish and a commercial permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. To obtain a commercial vessel permit for wreckfish, the applicant must be a wreckfish shareholder; and either the shareholder must be the vessel owner or the owner or operator must be an employee, contractor, or agent of the shareholder. (See § 622.15 for information on wreckfish shareholders.)

(viii) *South Atlantic rock shrimp.* (A) Until January 27, 2010, the permit requirements specified in paragraphs (a)(2)(viii)(A)(*1*) and (*2*) of this section apply.

(*1*) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ or possess rock shrimp in or from the South Atlantic EEZ, a commercial vessel permit for rock shrimp must be issued to the vessel and must be on board. (See paragraph (a)(5) of this section for the requirements for operator permits for the South Atlantic rock shrimp fishery.)

(*2*) In addition, for a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board. See § 622.19 for limitations on the issuance, transfer, renewal, and reissuance of a limited access endorsement for South Atlantic rock shrimp.

(B) During January 2010, and prior to January 26, 2010, a currently valid (not expired) commercial vessel permit for rock shrimp with an expiration date after January 27, 2010, that does not have a limited access endorsement for South Atlantic rock shrimp will be replaced by the RA with a Commercial Vessel Permit for Rock Shrimp (Carolinas Zone), and a currently valid (not expired) commercial vessel permit for rock shrimp with an expiration date after January 27, 2010, that has a limited access endorsement for South Atlantic rock shrimp will be replaced by the RA with a Commercial Vessel Permit for Rock Shrimp (South Atlantic

EEZ). However, a person with an expired limited access endorsement for South Atlantic rock shrimp who desires a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) must apply for such a permit before the date 1 year after the expiration date of the expired limited access endorsement for South Atlantic rock shrimp.

(C) On and after January 27, 2010, the permit requirements specified in paragraphs (a)(2)(viii)(C)(*1*) and (*2*) of this section apply.

(*1*) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off North Carolina or off South Carolina or possess rock shrimp in or from the South Atlantic EEZ off those states, a Commercial Vessel Permit for Rock Shrimp (Carolinas Zone) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) must be issued to the vessel and must be on board.

(*2*) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off those states, a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) must be issued to the vessel and must be on board. A Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) is a limited access permit. See § 622.19(b) for limitations on the issuance, transfer or renewal of a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ).

(D) The provisions of paragraph (f) of this section notwithstanding, neither a commercial vessel permit for rock shrimp nor a limited access endorsement for South Atlantic rock shrimp remains valid on or after January 27, 2010.

(ix) *Gulf IFQ vessel accounts*. For a person aboard a vessel, for which a commercial vessel permit for Gulf reef fish has been issued, to fish for, possess, or land Gulf red snapper or Gulf groupers (including DWG and SWG, as specified in § 622.20(a)) or tilefishes (including goldface tilefish, blueline tilefish, and tilefish), regardless of where harvested or possessed, a Gulf IFQ vessel account for the applicable species or species groups must have been established. As a condition of the IFQ vessel account, a person aboard such vessel must comply with the requirements of § 622.16 when fishing for red snapper or § 622.20 when fishing for groupers or tilefishes regardless of where the fish are harvested or possessed. An owner of a vessel with a commercial vessel permit for Gulf reef fish, who has established an IFQ account for the applicable species, as specified in § 622.16(a)(3)(i) or § 622.20(a)(3)(i), online via the NMFS IFQ website *ifq.sero.nmfs.noaa.gov*, may establish a vessel account through that IFQ account for that permitted vessel. If such owner does not have an online IFQ account, the owner must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ website and establish an online IFQ account. There is no fee to set-up an IFQ account or a vessel account. Only one vessel account may be established per vessel under each IFQ program. An owner with multiple vessels may establish multiple vessel accounts under each IFQ account. The purpose of the vessel account is to hold IFQ allocation that is required to land the applicable IFQ species. A vessel account must hold sufficient IFQ allocation in the appropriate share category, at least equal to the pounds in gutted weight of the red snapper or groupers and tilefishes on board, from the time of advance notice of landing through landing (except for any overage allowed as specified in § 622.16(c)(1)(ii) for red snapper and § 622.20(c)(1)(ii) for groupers and tilefishes). The vessel account remains valid as long as the vessel permit remains valid; the vessel has not been sold or transferred; and the vessel owner is in compliance with all Gulf reef fish and IFQ reporting requirements, has paid all applicable IFQ fees, and is not subject to sanctions under 15 CFR part 904. The vessel account is not transferable to another vessel. The provisions of this paragraph do not apply to fishing for or possession of Gulf groupers and tilefishes under the bag limit specified in § 622.39 (b)(1)(ii) or Gulf red snapper under the bag limit specified in § 622.39 (b)(1)(iii). See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system and § 622.20 regarding other provisions pertinent to the IFQ system for Gulf groupers and tilefishes.

(x) *South Atlantic golden crab*. For a person aboard a vessel to fish for golden crab in the South Atlantic EEZ, possess golden crab in or from the South Atlantic EEZ, off-load golden crab from the South Atlantic EEZ, or sell golden crab in or from the South Atlantic EEZ, a commercial vessel permit for golden crab must be issued to the vessel and must be on board. It is a rebuttable presumption that a golden crab on board a vessel in the South Atlantic or off-loaded from a vessel in a port adjoining the South Atlantic was harvested from the South Atlantic EEZ. See § 622.17 for limitations on the use, transfer, and renewal of a commercial vessel permit for golden crab.

(xi) *Gulf shrimp fisheries*—(A) *Gulf shrimp permit*. For a person aboard a vessel to fish for shrimp in the Gulf EEZ or possess shrimp in or from the Gulf EEZ, a commercial vessel permit for Gulf shrimp must have been issued to the vessel and must be on board. See paragraph (s) of this section regarding a moratorium on commercial vessel permits for Gulf shrimp and the associated provisions. See the following paragraph, (a)(2)(xi)(B) of this section, regarding an additional endorsement requirement related to royal red shrimp.

(B) *Gulf royal red shrimp endorsement*. Effective March 26, 2007, for a person aboard a vessel to fish for royal red shrimp in the Gulf EEZ or possess royal red shrimp in or from the Gulf EEZ, a commercial vessel permit for Gulf shrimp with a Gulf royal red shrimp endorsement must be issued to the vessel and must be on board.

(xii) *Atlantic dolphin and wahoo*. (A) For a person aboard a vessel to be eligible for exemption from the bag and possession limits for dolphin or wahoo in or from the Atlantic EEZ or to sell such dolphin or wahoo, a commercial vessel permit for Atlantic dolphin and wahoo must be issued to the vessel and must be on board, except as provided in paragraph (a)(2)(xii)(B) of this section. (See paragraph (a)(5) of this section for the requirements for operator permits in the Atlantic dolphin and wahoo fishery).

(B) The provisions of paragraph (a)(2)(xii)(A) of this section notwithstanding, a fishing vessel, except a vessel operating as a charter vessel or headboat, that does not have a commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery, is exempt from the bag and possession limits for dolphin and wahoo and may sell dolphin and wahoo, subject to the trip and geographical limits specified in § 622.44(f)(2). (A charter vessel/headboat permit is not a commercial vessel permit.)

(xiii) *South Atlantic penaeid shrimp*. For a person aboard a trawler to fish for penaeid shrimp in the South Atlantic EEZ or possess penaeid shrimp in or from the South Atlantic EEZ, a valid commercial vessel permit for South Atlantic penaeid shrimp must have been issued to the vessel and must be on board.

(xiv) *Eastern Gulf reef fish bottom longline endorsement*. For a person aboard a vessel, for which a valid commercial vessel permit for Gulf reef fish has been issued, to use a bottom longline for Gulf reef fish in the Gulf EEZ east of 85°30′ W. long., a valid eastern Gulf reef fish bottom longline endorsement must have been issued to the vessel and must be on board. A permit or endorsement that has expired is not valid. This endorsement must be renewed annually and may only be renewed if the associated vessel has a valid commercial vessel permit for Gulf reef fish or if the endorsement and associated permit are being concurrently renewed. The RA will not reissue this endorsement if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(A) *Initial eligibility*. To be eligible for an initial eastern Gulf reef fish bottom longline endorsement a person must have been issued and must possess a valid or renewable commercial vessel permit for Gulf reef fish that has bottom longline landings of Gulf reef fish averaging at least 40,000 lb (18,144 kg), gutted weight, annually during the period 1999 through 2007. In addition, for a commercial reef fish permit with reef fish longline landings after February 7, 2007, and with reef fish trap or longline landings during 1999 through February 7, 2007, such reef fish trap landings may

be applied toward satisfaction of the eligibility requirement for an initial eastern Gulf reef fish bottom longline endorsement. All applicable reef fish landings associated with a current reef fish permit for the applicable landings history, including those reported by a person(s) who held the license prior to the current license owner, will be attributed to the current license owner. However, landings accumulated via permit stacking are not creditable for the purpose of determining eligibility for an initial eastern Gulf reef fish bottom longline endorsement. Only legal landings reported in compliance with applicable state and Federal regulations will be accepted.

(B) *Initial issuance*. On or about May 26, 2010 the RA will mail each eligible permittee an eastern Gulf reef fish bottom longline endorsement via certified mail, return receipt requested, to the permittee's address of record as listed in NMFS' permit files. An eligible permittee who does not receive an endorsement from the RA, must contact the RA no later than June 25, 2010 to clarify his/her endorsement status. A permittee who is denied an endorsement based on the RA's initial determination of eligibility and who disagrees with that determination may appeal to the RA.

(C) *Procedure for appealing longline endorsement eligibility and/or landings information*. The only items subject to appeal are initial eligibility for an eastern Gulf reef fish bottom longline endorsement based on ownership of a qualifying reef fish permit, the accuracy of the amount of landings, and correct assignment of landings to the permittee. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than August 24, 2010, and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the appeals, and advise the appellant of the final decision.

(*1*) *Eligibility appeals*. NMFS' records of reef fish permits are the sole basis for determining ownership of such permits. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(*2*) *Landings appeals*. Appeals regarding landings data for 1999 through 2007 will be based on NMFS' logbook records. If NMFS' logbooks are not available, the RA may use state landings records or data for the period 1999 through 2007 that were submitted in compliance with applicable Federal and state regulations on or before December 31, 2008.

(D) *Transferability*. An owner of a vessel with a valid eastern Gulf reef fish bottom longline endorsement may transfer that endorsement to an owner of a vessel that has a valid commercial vessel permit for Gulf reef fish.

(E) *Fees*. There is no fee for initial issuance of an eastern Gulf reef fish bottom longline endorsement. A fee is charged for each renewal, transfer, or replacement of such endorsement. The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application for renewal, transfer, or replacement.

(xv) *South Atlantic black sea bass pot endorsement*. For a person aboard a vessel, for which a valid commercial vessel permit for South Atlantic snapper-grouper unlimited has been issued, to use a black sea bass pot in the South Atlantic EEZ, a valid South Atlantic black sea bass pot endorsement must have been issued to the vessel and must be on board. A permit or endorsement that has expired is not valid. NMFS will renew this endorsement automatically when renewing the commercial vessel permit for South Atlantic snapper-grouper unlimited associated with the vessel. The RA will not reissue this endorsement if the endorsement or the commercial vessel permit for South Atlantic snapper-grouper unlimited is revoked or if the RA does not receive a complete application for renewal of the commercial vessel permit for South Atlantic snapper-grouper unlimited

within 1 year after the permit's expiration date.

(A) *Initial eligibility*. To be eligible for an initial South Atlantic black sea bass pot endorsement, a person must have been issued and must possess a valid or renewable commercial vessel permit for South Atlantic snapper-grouper that has black sea bass landings using black sea bass pot gear averaging at least 2,500 lb (1,134 kg), round weight, annually during the period January 1, 1999 through December 31, 2010. Excluded from this eligibility, are trip-limited permits (South Atlantic snapper-grouper permits that have a 225-lb (102.1-kg) limit of snapper-grouper) and valid or renewable commercial vessel permits for South Atlantic snapper-grouper unlimited that have no reported landings of black sea bass using black sea bass pots from January 1, 2008, through December 31, 2010. NMFS will attribute all applicable black sea bass landings associated with a current snapper-grouper permit for the applicable landings history, including those reported by a person(s) who held the permit prior to the current permit owner, to the current permit owner. Only legal landings reported in compliance with applicable state and Federal regulations are acceptable.

(B) *Initial issuance*. On or about June 1, 2012, the RA will mail each eligible permittee a black sea bass pot endorsement via certified mail, return receipt requested, to the permittee's address of record as listed in NMFS' permit files. An eligible permittee who does not receive an endorsement from the RA, must contact the RA no later than July 1, 2012, to clarify his/her endorsement status. A permittee denied an endorsement based on the RA's initial determination of eligibility and who disagrees with that determination may appeal to the RA.

(C) *Procedure for appealing black sea bass pot endorsement eligibility and/or landings information*. The only items subject to appeal are initial eligibility for a black sea bass pot endorsement based on ownership of a qualifying snapper-grouper permit, the accuracy of the amount of landings, and correct assignment of landings to the permittee. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than October 1, 2012, and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the appeals, and advise the appellant of the final NMFS decision.

(*1*) *Eligibility appeals*. NMFS' records of snapper-grouper permits are the sole basis for determining ownership of such permits. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, for example, as a result of ownership changes from individual to corporate or vice versa, must document his/her continuity of ownership.

(*2*) *Landings appeals*. Determinations of appeals regarding landings data for 1999 through 2010 will be based on NMFS' logbook records. If NMFS' logbooks are not available, the RA may use state landings records or data for the period 1999 through 2010 that were submitted in compliance with applicable Federal and state regulations on or before December 31, 2011.

(D) [Reserved]

(E) *Fees*. No fee applies to initial issuance of a black sea bass pot endorsement. NMFS charges a fee for each renewal or replacement of such endorsement and calculates the amount of each fee in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The handbook is available from the RA. The appropriate fee must accompany each application for renewal or replacement.

(3) *Coral permits*—(i) *Allowable chemical*. For an individual to take or possess fish or other marine organisms with an allowable chemical in a coral area, other than fish or other marine organisms that are landed in Florida, a Federal allowable chemical permit must have been issued to the individual. Such permit must be available when the permitted activity is being conducted and when such fish or other marine organisms are possessed, through landing ashore.

(ii) *Allowable octocoral*. For an individual to take or possess allowable

octocoral in the South Atlantic EEZ, other than allowable octocoral that is landed in Florida, a Federal allowable octocoral permit must have been issued to the individual. Such permit must be available for inspection when the permitted activity is being conducted and when allowable octocoral is possessed, through landing ashore.

(iii) *Aquacultured live rock*. For a person to take or possess aquacultured live rock in the Gulf or South Atlantic EEZ, a Federal aquacultured live rock permit must have been issued for the specific harvest site. Such permit, or a copy, must be on board a vessel depositing or possessing material on an aquacultured live rock site or harvesting or possessing live rock from an aquacultured live rock site.

(iv) *Prohibited coral*. A Federal permit may be issued to take or possess Gulf and South Atlantic prohibited coral or Caribbean prohibited coral only as scientific research activity, exempted fishing, or exempted educational activity. See § 600.745 of this chapter for the procedures and limitations for such activities and fishing.

(v) *Florida permits*. Appropriate Florida permits and endorsements are required for the following activities, without regard to whether they involve activities in the EEZ or Florida's waters:

(A) Landing in Florida fish or other marine organisms taken with an allowable chemical in a coral area.

(B) Landing allowable octocoral in Florida.

(C) Landing live rock in Florida.

(4) *Dealer permits, endorsements, and conditions* —(i) *Permits*. For a dealer to receive Gulf reef fish harvested from the Gulf EEZ; golden crab, South Atlantic snapper-grouper, rock shrimp, or wreckfish harvested from the South Atlantic EEZ; or dolphin or wahoo harvested from the Atlantic EEZ; a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, rock shrimp, wreckfish, or Atlantic dolphin and wahoo, respectively, must be issued to the dealer.

(ii) *Gulf IFQ dealer endorsements*. In addition to the requirement for a dealer permit for Gulf reef fish as specified in paragraph (a)(4)(i) of this section, for a dealer to receive red snapper subject to the Gulf red snapper IFQ program, as specified in § 622.16(a)(1), or groupers and tilefishes subject to the IFQ program for Gulf groupers and tilefishes, as specified in § 622.20(a)(1), or for a person aboard a vessel with a Gulf IFQ vessel account to sell such red snapper or groupers and tilefishes directly to an entity other than a dealer, such persons must also have a Gulf IFQ dealer endorsement. A dealer with a Gulf reef fish permit can download a Gulf IFQ dealer endorsement from the NMFS IFQ website at ifq.sero.nmfs.noaa.gov. If such persons do not have an IFQ online account, they must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ website and establish an IFQ online account. There is no fee for obtaining this endorsement. The endorsement remains valid as long as the Gulf reef fish dealer permit remains valid and the dealer is in compliance with all Gulf reef fish and IFQ reporting requirements, has paid all IFQ fees required under paragraph (c)(2) of this section, and is not subject to any sanctions under 15 CFR part 904. The endorsement is not transferable. See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system and § 622.20 regarding other provisions pertinent to the IFQ system for Gulf groupers and tilefishes.

(iii) *State license and facility requirements*. To obtain a dealer permit or endorsement, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(5) *Operator permits*. (i) The following persons are required to have operator permits:

(A) An operator of a vessel that has or is required to have a Commercial Vessel Permit for Rock Shrimp (Carolinas Zone) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ).

(B) An operator of a vessel that has or is required to have a charter vessel/headboat or commercial permit for Atlantic dolphin and wahoo issued under this section.

(ii) A person required to have an operator permit under paragraph (a)(5)(i)

of this section must carry on board such permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).

(iii) An owner of a vessel that is required to have a permitted operator under paragraph (a)(5)(i) of this section must ensure that at least one person with a valid operator permit is aboard while the vessel is at sea or offloading.

(iv) An owner of a vessel that is required to have a permitted operator under paragraph (a)(5)(i) of this section and the operator of such vessel are responsible for ensuring that a person whose operator permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 is not aboard that vessel.

(b) *Applications for permits.* Application forms for all permits are available from the RA. Completed application forms and all required supporting documents must be submitted to the RA at least 30 days prior to the date on which the applicant desires to have the permit made effective. All vessel permits are mailed to owners, whether the applicant is an owner or an operator.

(1) *Coral permits.* (i) The applicant for a coral permit must be the individual who will be conducting the activity that requires the permit. In the case of a corporation or partnership that will be conducting live rock aquaculture activity, the applicant must be the principal shareholder or a general partner.

(ii) An applicant must provide the following:

(A) Name, address, telephone number, and other identifying information of the applicant.

(B) Name and address of any affiliated company, institution, or organization.

(C) Information concerning vessels, harvesting gear/methods, or fishing areas, as specified on the application form.

(D) Any other information that may be necessary for the issuance or administration of the permit.

(E) If applying for an aquacultured live rock permit, identification of each vessel that will be depositing material on or harvesting aquacultured live rock from the proposed aquacultured live rock site, specification of the port of landing of aquacultured live rock, and a site evaluation report prepared pursuant to generally accepted industry standards that—

(*1*) Provides accurate coordinates of the proposed harvesting site so that it can be located using LORAN or Global Positioning System equipment;

(*2*) Shows the site on a chart in sufficient detail to determine its size and allow for site inspection;

(*3*) Discusses possible hazards to safe navigation or hindrance to vessel traffic, traditional fishing operations, or other public access that may result from aquacultured live rock at the site;

(*4*) Describes the naturally occurring bottom habitat at the site; and

(*5*) Specifies the type and origin of material to be deposited on the site and how it will be distinguishable from the naturally occurring substrate.

(2) *Dealer permits.* (i) The application for a dealer permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner).

(ii) An applicant must provide the following:

(A) A copy of each state wholesaler's license held by the dealer.

(B) Name, address, telephone number, date the business was formed, and other identifying information of the business.

(C) The address of each physical facility at a fixed location where the business receives fish.

(D) Name, address, telephone number, other identifying information, and official capacity in the business of the applicant.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(3) *Vessel permits.* (i) The application for a commercial vessel permit, other than for wreckfish, or for a charter vessel/headboat permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) or operator of the vessel. A commercial vessel permit that is issued based on the earned income qualification of an operator is valid only when

that person is the operator of the vessel. The applicant for a commercial vessel permit for wreckfish must be a wreckfish shareholder.

(ii) An applicant must provide the following:

(A) A copy of the vessel's valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(B) Vessel name and official number.

(C) Name, address, telephone number, and other identifying information of the vessel owner and of the applicant, if other than the owner.

(D) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(F) If applying for a commercial vessel permit, documentation, as specified in the instructions accompanying each application form, showing that applicable eligibility requirements of paragraph (a)(2) of this section have been met.

(G) If a sea bass pot will be used, the number, dimensions, and estimated cubic volume of the pots that will be used and the applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

(4) *Operator permits.* An applicant for an operator permit must provide the following:

(i) Name, address, telephone number, and other identifying information specified on the application.

(ii) Two recent (no more than 1-yr old), color, passport-size photographs.

(iii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(c) *Change in application information.* The owner or operator of a vessel with a permit, a person with a coral permit, a person with an operator permit, or a dealer with a permit must notify the RA within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.*Unless specified otherwise, a fee is charged for each application for a permit, license, or endorsement submitted under this section, for each request for transfer or replacement of such permit, license, or endorsement, and for each sea bass pot identification tag required under § 622.6(b)(1)(i)(B). The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application, request for transfer or replacement, or request for sea bass pot identification tags.

(e) *Initial issuance.* (1) The RA will issue an initial permit at any time to an applicant if the application is complete and the specific requirements for the requested permit have been met. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or, in the case of a vessel or dealer permit, the vessel or dealership is sold.

(g) *Transfer*—(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit or endorsement issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s)

of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(b) for a commercial vessel permit for South Atlantic snapper-grouper, in § 622.19(b) for a commercial vessel permit for South Atlantic rock shrimp, or in § 622.4(a)(2)(xiv)(D) for an eastern Gulf reef fish bottom longline endorsement. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section and other applicable sections of this part. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers. In those cases where a permit, license, or endorsement is transferable, the seller must sign the back of the permit, license, or endorsement and have the signed transfer document notarized.

(2) *Operator permits.* An operator permit is not transferable.

(h) *Renewal*—(1) *Vessel permits, licenses, and endorsements and dealer permits.* Unless specified otherwise, a vessel owner or dealer who has been issued a permit, license, or endorsement under this section must renew such permit, license, or endorsement on an annual basis. The RA will mail a vessel owner or dealer whose permit, license, or endorsement is expiring an application for renewal approximately 2 months prior to the expiration date. A vessel owner or dealer who does not receive a renewal application from the RA by 45 days prior to the expiration date of the permit, license, or endorsement must contact the RA and request a renewal application. The applicant must submit a completed renewal application form and all required supporting documents to the RA prior to the applicable deadline for renewal of the permit, license, or endorsement and at least 30 days prior to the date on which the applicant desires to have the permit made effective. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(2) *Operator permits.* An operator permit required by this section is issued for a period not longer than 3 years. A permit not renewed immediately upon its expiration would expire at the end of the operator's birth month that is between 2 and 3 years after issuance. For renewal, a new application must be submitted in accordance with paragraph (b)(4) of this section.

(i) *Display.* A vessel permit, license, or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. A Gulf IFQ dealer endorsement must accompany each vehicle that is used to pick up Gulf IFQ red snapper and/or Gulf IFQ groupers and tilefishes. The operator of a vessel must present the vessel permit, license, or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer. An operator of a vessel in a fishery in which an operator permit is required must present his/her operator permit and one other form of personal identification that includes a picture (driver's license, passport, etc.) for inspection upon the request of an authorized officer.

(j) *Sanctions and denials.* (1) A permit, license, or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit, license, or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(2) A person whose operator permit is suspended, revoked, or modified may not be aboard any fishing vessel subject to Federal fishing regulations in any capacity, if so sanctioned by

NOAA, while the vessel's owner and operator are responsible for compliance with this measure. A list of operators whose permits are revoked or suspended may be obtained from the RA.

(k) *Alteration*. A permit, license, or endorsement that is altered, erased, or mutilated is invalid.

(l) *Replacement*. A replacement permit, license, or endorsement may be issued. An application for a replacement permit, license, or endorsement is not considered a new application. An application for a replacement operator permit must include two new photographs, as specified in paragraph (b)(4)(ii) of this section.

(m) *Limited access system for commercial vessel permits for Gulf reef fish*. (1) No applications for additional commercial vessel permits for Gulf reef fish will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (m)(2) through (5) of this section, and are subject to the requirement for timely renewal in paragraph (m)(6) of this section. An application for renewal or transfer of a commercial vessel permit for Gulf reef fish will not be considered complete until proof of purchase, installation, activation, and operational status of an approved VMS for the vessel receiving the permit has been verified by NMFS VMS personnel.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity.

(3) An owner whose earned income qualified for the commercial vessel permit for Gulf reef fish may transfer the permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for Gulf reef fish for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income requirement not later than the first full calendar year after the permit transfer takes place.

(4) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may transfer the permit to the income qualifying operator when such operator becomes an owner of a vessel.

(5) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RA with an application for the changed permit.

(6) A commercial vessel permit for Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RA within 1 year of the expiration date of the permit.

(n) [Reserved]

(o) *Limited access system for king mackerel gillnet permits applicable in the southern Florida west coast subzone*. Except for applications for renewals of king mackerel gillnet permits, no applications for king mackerel gillnet permits will be accepted. Application forms for permit renewal are available from the RA.

(1) An owner of a vessel with a king mackerel gillnet permit issued under this limited access system may transfer that permit upon a change of ownership of a permitted vessel with such permit from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. Such permit also may be transferred to another vessel owned by the same entity.

(2) A king mackerel gillnet permit that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RA within one year after the expiration date of the permit.

(1)–(6) [Reserved]

(q) *Limited access system for commercial vessel permits for king mackerel.* (1) No applications for additional commercial vessel permits for king mackerel will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (q)(2) through (q)(5) of this section, and are subject to the requirement for timely renewal in paragraph (q)(6) of this section.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for king mackerel issued under this limited access system to another vessel owned by the same entity.

(3) An owner whose percentage of earned income or gross sales qualified him/her for the commercial vessel permit for king mackerel issued under this limited access system may request that NMFS transfer that permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for king mackerel for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the percentage of earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income or gross sales requirement not later than the first full calendar year after the permit transfer takes place.

(4) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may request that NMFS transfer the permit to the income-qualifying operator when such operator becomes an owner of a vessel.

(5) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income or gross sales requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RA with an application for the changed permit.

(6) NMFS will not reissue a commercial vessel permit for king mackerel if the permit is revoked or if the RA does not receive an application for renewal within one year of the permit's expiration date.

(r) *Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish and Gulf reef fish.* No applications for additional charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish will be accepted. Existing permits may be renewed, are subject to the restrictions on transfer in paragraph (r)(1) of this section, and are subject to the renewal requirements in paragraph (r)(2) of this section.

(1) *Transfer of permits*—(i) *Permits without a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that does not have a historical captain endorsement is fully transferable, with or without sale of the permitted vessel, except that no transfer is allowed to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred. An application to transfer a permit to an inspected vessel must include a copy of that vessel's current USCG Certificate of Inspection (COI). A vessel without a valid COI will be considered an uninspected vessel with an authorized passenger capacity restricted to six or fewer passengers.

(ii) *Permits with a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that has a historical captain endorsement may only be transferred to a vessel operated by the historical captain, cannot be transferred to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred, and is not otherwise transferable.

(iii) *Procedure for permit transfer.* To request that the RA transfer a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the owner of the vessel who is transferring the permit and the owner of the vessel that is to receive the transferred permit must complete the transfer information on the reverse side of the permit and return the permit and a completed application for transfer to the RA. See paragraph (g)(1) of this section for additional transfer-related requirements applicable to all permits issued under this section.

(2) *Renewal.* (i) Renewal of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish is contingent upon the permitted vessel and/or captain, as appropriate, being included in an active survey frame for, and, if selected to report, providing the information required in one of the approved fishing data surveys. Surveys include, but are not limited to—

(A) NMFS' Marine Recreational Fishing Vessel Directory Telephone Survey (conducted by the Gulf States Marine Fisheries Commission);

(B) NMFS' Southeast Headboat Survey (as required by § 622.5(b)(1);

(C) Texas Parks and Wildlife Marine Recreational Fishing Survey; or

(D) A data collection system that replaces one or more of the surveys in paragraph (r)(2)(i)(A),(B), or (C) of this section.

(ii) A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

(3) *Requirement to display a vessel decal.* Upon renewal or transfer of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the RA will issue the owner of the permitted vessel a vessel decal for the applicable permitted fishery or fisheries. The vessel decal must be displayed on the port side of the deckhouse or hull and must be maintained so that it is clearly visible.

(s) *Moratorium on commercial vessel permits for Gulf shrimp.* The provisions of this paragraph (s) are applicable through October 26, 2016.

(1) *Date moratorium permits are required.* Beginning March 26, 2007, the only valid commercial vessel permits for Gulf shrimp are those issued under the moratorium criteria in this paragraph (s).

(2) *Initial eligibility for a moratorium permit.* Initial eligibility for a commercial vessel moratorium permit for Gulf shrimp is limited to a person who

(i) Owns a vessel that was issued a Federal commercial vessel permit for Gulf shrimp on or before December 6, 2003; or

(ii) On or before December 6, 2003, owned a vessel that was issued a Federal commercial vessel permit for Gulf shrimp and, prior to September 26, 2006, owns a vessel with a Federal commercial permit for Gulf shrimp that is equipped for offshore shrimp fishing, is at least 5 net tons (4.54 metric tons), is documented by the Coast Guard, and is the vessel for which the commercial vessel moratorium permit is being applied.

(3) *Application deadline and procedures.* An applicant who desires a commercial vessel moratorium permit for Gulf shrimp must submit an application to the RA postmarked or hand delivered not later than October 26, 2007. After that date, no applications for additional commercial vessel moratorium permits for Gulf shrimp will be accepted. Application forms are available from the RA. Failure to apply in a timely manner will preclude permit issuance even when the applicant otherwise meets the permit eligibility criteria.

(4) *Determination of eligibility*. NMFS' permit records are the sole basis for determining eligibility based on permit history. An applicant who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(5) *Incomplete applications*. If an application that is postmarked or hand-delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's notification, the application will be considered abandoned.

(6) *Notification of ineligibility*. If the applicant does not meet the applicable eligibility requirements of paragraph (s)(2) of this section, the RA will notify the applicant, in writing, of such determination and the reasons for it.

(7) *Permit transferability*. Commercial vessel moratorium permits for Gulf shrimp are fully transferable, with or without the sale of the vessel. To request that the RA transfer a commercial vessel moratorium permit for Gulf shrimp, the owner of a vessel that is to receive the transferred permit must complete the transfer information on the reverse of the permit and return the permit and a completed application for transfer to the RA. Transfer documents must be notarized as specified in paragraph (g)(1) of this section.

(8) *Renewal*. (i) Renewal of a commercial vessel moratorium permit for Gulf shrimp is contingent upon compliance with the recordkeeping and reporting requirements for Gulf shrimp specified in § 622.5(a)(1)(iii).

(ii) A commercial vessel moratorium permit for Gulf shrimp that is not renewed will be terminated and will not be reissued during the moratorium. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

[61 FR 34937, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 622.5 Recordkeeping and reporting.

Participants in fisheries governed in this part are required to keep records and report as follows.

(a) *Commercial vessel owners and operators*—(1) *Requirements by species*—(i) *Coastal migratory pelagic fish*. The owner or operator of a vessel that fishes for or lands coastal migratory pelagic fish for sale in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ or adjoining state waters, or whose vessel is issued a commercial permit for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv), who is selected to report by the SRD, must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(ii) *Gulf reef fish*. The owner or operator of a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), or whose vessel fishes for or lands reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(iii) *Gulf shrimp*—(A) *General reporting requirement*. The owner or operator of a vessel that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(B) *Electronic logbook reporting*. The owner or operator of a vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued and who is selected by the SRD must participate in the NMFS-sponsored electronic logbook reporting program as directed by the SRD. In addition, such owner or operator must provide information regarding the size and number of shrimp trawls deployed and the type of BRD

and turtle excluder device used, as directed by the SRD. Compliance with the reporting requirements of this paragraph (a)(1)(iii)(B) is required for permit renewal.

(C) *Vessel and Gear Characterization Form*. All owners or operators of vessels applying for or renewing a commercial vessel moratorium permit for Gulf shrimp must complete an annual Gulf Shrimp Vessel and Gear Characterization Form. The form will be provided by NMFS at the time of permit application and renewal. Compliance with this reporting requirement is required for permit issuance and renewal.

(D) *Landings report*. The owner or operator of a vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued must annually report the permitted vessel's total annual landings of shrimp and value, by species, on a form provided by the SRD. Compliance with this reporting requirement is required for permit renewal.

(iv) *South Atlantic snapper-grouper*—(A) *General reporting requirements*. The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), or whose vessel fishes for or lands South Atlantic snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(B) *Electronic logbook/video monitoring reporting*. The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), who is selected to report by the SRD must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD. Compliance with the reporting requirements of this paragraph (a)(1)(iv)(B) is required for permit renewal.

(C) *Wreckfish reporting*. The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must—

(*1*) Maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(*2*) Make available to an authorized officer upon request all records of commercial offloadings, purchases, or sales of wreckfish.

(v) *South Atlantic golden crab*. The owner or operator of a vessel for which a commercial permit for golden crab has been issued, as required under § 622.4(a)(2)(x), who is selected to report by the SRD must maintain a fishing record on a form available from the SRD.

(vi) *Atlantic dolphin and wahoo*. The owner or operator of a vessel for which a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.4 (a)(2)(xii), or whose vessel fishes for or lands Atlantic dolphin or wahoo in or from state waters adjoining the Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(vii) *South Atlantic shrimp*. The owner or operator of a vessel that fishes for shrimp in the South Atlantic EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(2) *Reporting deadlines*. (i) Completed fishing records required by paragraphs (a)(1)(i), (ii), (iv), (vi), and (vii) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(ii) Reporting forms required in paragraph (a)(1)(v) of this section must be submitted to the SRD postmarked not later than 30 days after sale of the golden crab offloaded from a trip. If no

fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Charter vessel/headboat owners and operators*—(1) *Coastal migratory pelagic fish, reef fish, snapper-grouper, and Atlantic dolphin and wahoo*—(i) *General reporting requirement.* The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, South Atlantic coastal migratory pelagic fish, Gulf reef fish, South Atlantic snapper-grouper, or Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, snapper-grouper, or Atlantic dolphin or wahoo in or from state waters adjoining the applicable Gulf, South Atlantic, or Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(ii) *Electronic logbook/video monitoring reporting.* The owner or operator of a vessel for which a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(1), who is selected to report by the SRD must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD. Compliance with the reporting requirements of this paragraph (b)(1)(ii) is required for permit renewal.

(2) *Reporting deadlines*—(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1)(i) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Completed fishing records required by paragraph (b)(1)(ii) of this section for charter vessels may be required weekly or daily, as directed by the SRD. Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Completed fishing records required by paragraph (b)(1)(i) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Completed fishing records required by paragraph (b)(1)(ii) of this section for headboats may be required weekly or daily, as directed by the SRD. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Dealers*—(1) *Coastal migratory pelagic fish.* (i) A person who purchases coastal migratory pelagic fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters who is selected to report by the SRD must submit information on forms provided by the SRD. This information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no coastal migratory pelagic fish were received during a calendar month, a report so stating must be submitted on one of the forms, in accordance with the instructions on the form, and must be postmarked not later than 5 days after the end of the month. The information to be reported is as follows:

(A) Dealer's or processor's name and address.

(B) County where fish were landed.

(C) Total poundage of each species received during that month, or other requested interval.

(D) Average monthly price paid for each species.

(E) Proportion of total poundage landed by each gear type.

(ii) *Alternate SRD.* For the purposes of paragraph (c)(1)(i) of this section, in the states from New York through Virginia, or in the waters off those states, ''SRD'' means the Science and Research Director, Northeast Fisheries Science Center, NMFS (see Table 1 of § 600.502 of this chapter), or a designee.

(2) *Gulf red drum.* A dealers or processor who purchases red drum harvested from the Gulf who is selected to report by the SRD must report to the

SRD such information as the SRD may request and in the form and manner as the SRD may require. The information required to be submitted must include, but is not limited to, the following:

(i) Dealer's or processor's name and address.

(ii) State and county where red drum were landed.

(iii) Total poundage of red drum received during the reporting period, by each type of gear used for harvest.

(3) *Gulf reef fish*. A person who purchases Gulf reef fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters must maintain records and submit information as follows:

(i) A dealer must maintain at his/her principal place of business a record of Gulf reef fish that he/she receives. The record must contain the name of each fishing vessel from which reef fish were received and the date, species, and quantity of each receipt. A dealer must retain such record for at least 1 year after receipt date and must provide such record for inspection upon the request of an authorized officer or the SRD.

(ii) When requested by the SRD, a dealer must provide information from his/her record of Gulf reef fish received the total poundage of each species received during the month, average monthly price paid for each species by market size, and proportion of total poundage landed by each gear type. This information must be provided on forms available from the SRD and must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no reef fish were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month.

(iii) The operator of a car or truck that is used to pick up from a fishing vessel reef fish harvested from the Gulf must maintain a record containing the name of each fishing vessel from which reef fish on the car or truck have been received. The vehicle operator must provide such record for inspection upon the request of an authorized officer.

(4) *Gulf shrimp*. A person who purchases shrimp from a vessel, or person, that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide the following information when requested by the SRD:

(i) Name and official number of the vessel from which shrimp were received or the name of the person from whom shrimp were received, if received from other than a vessel.

(ii) Amount of shrimp received by species and size category for each receipt.

(iii) Exvessel value, by species and size category, for each receipt.

(5) *South Atlantic snapper-grouper*. (i) A person who purchases South Atlantic snapper-grouper that were harvested from the EEZ or from adjoining state waters and who is selected to report by the SRD and a dealer who has been issued a dealer permit for wreckfish, as required under § 622.4(a)(4), must provide information on receipts of South Atlantic snapper-grouper and prices paid, by species, on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no South Atlantic snapper-grouper were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month. However, during complete months encompassed by the wreckfish spawning-season closure (that is, February and March), a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

(ii) A dealer reporting South Atlantic snapper-grouper other than wreckfish may submit the information required in paragraph (c)(5)(i) of this section via facsimile (fax).

(iii) A dealer who has been issued a dealer permit for wreckfish, as required under § 622.4(a)(4), must make available to an authorized officer upon request all records of commercial

offloadings, purchases, or sales of wreckfish.

(6) *South Atlantic golden crab.* A dealer who receives from a fishing vessel golden crab harvested from the South Atlantic EEZ and who is selected by the SRD must provide information on receipts of, and prices paid for, South Atlantic golden crab to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD.

(7) *South Atlantic rock shrimp.* (i) A dealer who has been issued a permit for rock shrimp, as required under § 622.4(a)(4), and who is selected by the SRD must provide information on receipts of rock shrimp and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(ii) On demand, a dealer who has been issued a dealer permit for rock shrimp, as required under § 622.4(a)(4), must make available to an authorized officer all records of offloadings, purchases, or sales of rock shrimp.

(8) *Atlantic dolphin and wahoo.* (i) A dealer who has been issued a permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(4), and who is selected by the SRD must provide information on receipts of Atlantic dolphin and wahoo and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(ii) For the purposes of paragraph (c)(8)(i) of this section, in the states from Maine through Virginia, or in the waters off those states, ''SRD'' means the Science and Research Director, Northeast Fisheries Science Center, NMFS, (see Table 1 of § 600.502 of this chapter), or a designee.

(iii) On demand, a dealer who has been issued a dealer permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(4), must make available to an authorized officer all records of offloadings, purchases, or sales of dolphin and wahoo.

(d) *Individuals with coral or live rock permits.* (1) An individual with a Federal allowable octocoral permit must submit a report of harvest to the SRD. Specific reporting requirements will be provided with the permit.

(2) A person with a Federal aquacultured live rock permit must report to the RA each deposition of material on a site. Such reports must be postmarked not later than 7 days after deposition and must contain the following information:

(i) Permit number of site and date of deposit.

(ii) Geological origin of material deposited.

(iii) Amount of material deposited.

(iv) Source of material deposited, that is, where obtained, if removed from another habitat, or from whom purchased.

(3) A person who takes aquacultured live rock must submit a report of harvest to the RA. Specific reporting requirements will be provided with the permit. This reporting requirement is waived for aquacultured live rock that is landed in Florida.

(e) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents and by authorized officers. A person who fishes for or possesses species in or from the EEZ governed in this part is required to make the applicable fish or parts thereof available for inspection by the SRD or an authorized officer upon request.

(f) *Commercial vessel, charter vessel, and headboat inventory.* The owner or operator of a commercial vessel, charter vessel, or headboat operating in a fishery governed in this part who is not selected to report by the SRD under paragraph (a) or (b) of this section must provide the following information when interviewed by the SRD:

(1) Name and official number of vessel and permit number, if applicable.

(2) Length and tonnage.

(3) Current home port.

(4) Fishing areas.

(5) Ports where fish were offloaded during the last year.

(6) Type and quantity of gear.

(7) Number of full- and part-time fishermen or crew members.

(g) *Private recreational vessels in the South Atlantic snapper-grouper fishery*. The owner or operator of a vessel that fishes for or lands South Atlantic snapper-grouper in or from the South Atlantic EEZ who is selected to report by the SRD must—

(1) Maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD. Completed fishing records must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(2) Participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD.

[61 FR 34940, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 47448, Sept. 9, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 59126, Nov. 2, 1999; 64 FR 68935, Dec. 9, 1999; 67 FR 43565, June 28, 2002; 69 FR 30241, May 27, 2004; 70 FR 73387, Dec. 12, 2005; 71 FR 56047, Sept. 26, 2006; 73 FR 410, Jan. 3, 2008; 74 FR 50704, Oct. 1, 2009; 74 FR 58911, Nov. 16, 2009; 77 FR 15926, Mar. 16, 2012; 77 FR 32419, June 1, 2012]

EFFECTIVE DATE NOTE: At 74 FR 58911, Oct. 1, 2009, in § 622.5, paragraph (g) was added. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 622.6 Vessel and gear identification.

(a) *Vessel identification*—(1) *Applicability*—(i) *Official number*. A vessel for which a permit has been issued under § 622.4, and a vessel that fishes for or possesses *pelagic sargassum* in the South Atlantic EEZ, must display its official number—

(A) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(B) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(C) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in height for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) long or less.

(ii) *Official number and color code*. The following vessels must display their official number as specified in paragraph (a)(1)(i) of this section and, in addition, must display their assigned color code: A vessel for which a permit has been issued to fish with a sea bass pot, as required under § 622.4(a)(2)(vi); a vessel in the commercial Caribbean reef fish fishery fishing with traps; and a vessel in the Caribbean spiny lobster fishery. Color codes required for the Caribbean reef fish fishery and Caribbean spiny lobster fishery are assigned by Puerto Rico or the U.S. Virgin Islands, whichever is applicable; color codes required in all other fisheries are assigned by the RA. The color code must be displayed—

(A) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(B) In the form of a circle permanently affixed to or painted on the vessel.

(C) At least 18 inches (45.7 cm) in diameter for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in diameter for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in diameter for vessels 25 ft (7.6 m) long or less.

(2) *Duties of operator*. The operator of a vessel specified in paragraph (a)(1) of this section must keep the official number and the color code, if applicable, clearly legible and in good repair and must ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number or the color code, if applicable, from an enforcement vessel or aircraft.

(b) *Gear identification*—(1) *Traps/pots and associated buoys*—(i) *Traps or pots*—(A) *Caribbean EEZ*. A fish trap or spiny lobster trap used or possessed in the

Caribbean EEZ must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands so as to be easily identified.

(B) *South Atlantic EEZ.* A sea bass pot used or possessed in the South Atlantic EEZ between 35°15.19′ N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), or a sea bass pot on board a vessel with a commercial permit for South Atlantic snapper-grouper, must have a valid identification tag issued by the RA attached. A golden crab trap used or possessed in the South Atlantic EEZ or on board a vessel with a commercial permit for golden crab must have the commercial vessel permit number permanently affixed so as to be easily distinguished, located, and identified; an identification tag issued by the RA may be used for this purpose but is not required.

(ii) *Associated buoys.* A buoy that is attached to a trap or pot must display the official number and assigned color code so as to be easily distinguished, located, and identified as follows:

(A) *Caribbean EEZ.* Traps or pots used in the Caribbean spiny lobster or Caribbean reef fish fisheries that are fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Traps or pots used in the Caribbean spiny lobster or Caribbean reef fish fisheries that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. Each buoy must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(B) *South Atlantic EEZ.* In the South Atlantic EEZ, buoys are not required to be used, but, if used, each buoy must display the official number and color code assigned by the RA. However, no color code is required on a buoy attached to a golden crab trap.

(iii) *Presumption of ownership.* A Caribbean spiny lobster trap, a fish trap, a golden crab trap, or a sea bass pot in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps and pots that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(iv) *Unmarked traps, pots, or buoys.* An unmarked Caribbean spiny lobster trap, a fish trap, a golden crab trap, a sea bass pot, or a buoy deployed in the EEZ where such trap, pot, or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer. In the EEZ off Florida, during times other than the authorized fishing season, a Caribbean spiny lobster trap, buoy, or any connecting lines will be considered derelict and may be disposed of in accordance with Florida Administrative Code Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.002: Retrieval of Trap Debris and Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.004: Retrieval of Derelict and Traps Located in Areas Permanently Closed to Trapping, both in effect as of October 15, 2007. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER. All material incorporated by reference is available for inspection at the NMFS, Office of Sustainable Fisheries, Office of the Regional Administrator, 1315 East-West Highway, Silver Spring, MD; and the National Archives and Records Administration (NARA), Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. For more 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.* Copies of the incorporated material may be obtained from the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: (850) 488–4676.

(2) *Gillnet buoys.* On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in

or from, the South Atlantic EEZ off Florida north of 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, the float line of each gillnet possessed, including any net in use, must have a maximum of nine distinctive floats, i.e., different from the usual net buoys, spaced uniformly at a distance of 100 yd (91.4 m) or less. Each such distinctive float must display the official number of the vessel.

(3) *Buoy gear*. In the Gulf EEZ, if buoy gear is used or possessed, each buoy must display the official number of the vessel.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43957, Aug. 27, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 59126, Nov. 2, 1999; 65 FR 52957, Aug. 31, 2000; 67 FR 22362, May 3, 2002; 67 FR 51078, Aug. 7, 2002; 68 FR 57378, Oct. 3, 2003; 70 FR 62080, Oct. 28, 2005; 73 FR 410, Jan. 3, 2008; 74 FR 50704, Oct. 1, 2009; 75 FR 74660, Dec. 1, 2010; 76 FR 75490, Dec. 2, 2011]

§ 622.7 Prohibitions.

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

(a) Engage in an activity for which a valid Federal permit, license, or endorsement is required under § 622.4 without such permit, license, or endorsement.

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in § 622.4(b), (g), (p), (q), or (r) or in §§ 622.18 or 622.19.

(c) Fail to display a permit, license, or endorsement, or other required identification, as specified in § 622.4(i).

(d) Falsify or fail to maintain, submit, or provide information or fail to comply with inspection requirements or restrictions, as specified in § 622.5.

(e) Fail to make a fish, or parts thereof, available for inspection, as specified in § 622.5(e).

(f) Falsify or fail to display and maintain vessel and gear identification, as specified in § 622.6(a) and (b) or § 622.4(r)(11).

(g) Fail to comply with any requirement or restriction regarding ITQ coupons, as specified in § 622.15(c)(3), (c)(5), (c)(6), or (c)(7).

(h) Possess wreckfish as specified in § 622.15(c)(4), receive wreckfish except as specified in § 622.15(c)(7), or offload a wreckfish except as specified in § 622.15 (d)(3) and (d)(4).

(i) Transfer—

(1) A wreckfish, as specified in § 622.15(d)(1);

(2) A limited-harvest species, as specified in § 622.32(c) introductory text;

(3) A species/species group subject to a bag limit, as specified § 622.39(a)(1);

(4) South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in § 622.41(d)(2)(iii); or

(5) A species subject to a commercial trip limit, as specified in § 622.44.

(j) Use or possess prohibited gear or methods or possess fish in association with possession or use of prohibited gear, as specified in § 622.31.

(k) Fish for, harvest, or possess a prohibited species, or a limited-harvest species in excess of its limitation, sell or purchase such species, fail to comply with release requirements, or molest or strip eggs from a Caribbean spiny lobster, as specified in § 622.32.

(l) Fish in violation of the prohibitions, restrictions, and requirements applicable to seasonal and/or area closures, including but not limited to: Prohibition of all fishing, gear restrictions, restrictions on take or retention of fish, fish release requirements, and restrictions on use of an anchor or grapple, as specified in § 622.33, § 622.34, or § 622.35, or as may be specified under § 622.46 (b) or (c).

(m) Harvest, possess, offload, sell, or purchase fish in excess of the seasonal harvest limitations, as specified in § 622.36.

(n) Except as allowed under § 622.37(c) (2) and (3) for king and Spanish mackerel, possess undersized fish, fail to release undersized fish, or sell or purchase undersized fish, as specified in § 622.37.

(o) Fail to maintain a fish intact through offloading ashore, as specified in § 622.38.

(p) Exceed a bag or possession limit, as specified in § 622.39.

(q) Fail to comply with the limitations on traps and pots, including but not limited to: Tending requirements, constructions requirements, and area

specific restrictions, as specified in § 622.40.

(r) Fail to comply with the species-specific limitations, as specified in § 622.41.

(s) Fail to comply with the restrictions that apply after closure of a fishery, as specified in § 622.43.

(t) Possess on board a vessel or land, purchase, or sell fish in excess of the commercial trip limits, as specified in § 622.44.

(u) Fail to comply with the restrictions on sale/purchase, as specified in § 622.45.

(v) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 622.46(a).

(w) Fail to comply with the requirements for observer coverage as specified in § 622.8.

(x) Assault, resist, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(y) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

(z) Fish for or possess golden crab in or from a fishing zone or sub-zone of the South Atlantic EEZ other than the zone or sub-zone for which the vessel is permitted or authorized, as specified in § 622.17(b).

(aa) Falsify information submitted regarding an application for testing a BRD or regarding testing of a BRD, as specified in § 622.41(g)(3)(i) or (h)(3).

(bb) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a vessel monitoring system (VMS) unit or communication service provider.

(cc) Operate or own a vessel that is required to have a permitted operator aboard when the vessel is at sea or offloading without such operator aboard, as specified in § 622.4(a)(5)(i) through (iv).

(dd) When a vessel that is subject to Federal fishing regulations is at sea or offloading, own or operate such vessel with a person aboard whose operator permit is revoked, suspended, or modified.

(ee) Fail to comply with any provision related to a vessel monitoring system as specified in § 622.9, including but not limited to, requirements for use, installation, activation, access to data, procedures related to interruption of VMS operation, and prohibitions on interference with the VMS.

(ff) Fail to comply with the protected species conservation measures as specified in § 622.10.

(gg) Fail to comply with any provision related to the Gulf red snapper IFQ program as specified in § 622.16, or the IFQ program for Gulf groupers and tilefishes as specified in § 622.20.

(hh) Falsify any information required to be submitted regarding the Gulf red snapper IFQ program as specified in § 622.16, or the IFQ program for Gulf groupers and tilefishes as specified in § 622.20.

(ii) Fail to comply with the Caribbean spiny lobster import prohibitions, as specified in § 622.50.

(jj) Harvest a Caribbean spiny lobster, effective May 11, 2010, in the portion of the Caribbean EEZ designated in § 622.33(c), due to the Deepwater Horizon oil spill.

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 622.8 At-sea observer coverage.

(a) *Required coverage*—(1) *Pelagic sargassum*. A vessel that harvests or possesses pelagic sargassum on any trip in the South Atlantic EEZ must carry a NMFS-approved observer.

(2) *Golden crab*. A vessel for which a Federal commercial permit for golden crab has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(3) *Gulf reef fish*. A vessel for which a Federal commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(3).

(4) *South Atlantic rock or penaeid shrimp*. A vessel for which a Federal commercial permit for South Atlantic rock shrimp or South Atlantic penaeid shrimp has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(5) *Gulf shrimp*. A vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(5).

(6) *South Atlantic snapper-grouper*. (i) A vessel for which a Federal commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(6)(i).

(ii) Any other vessel that fishes for South Atlantic snapper-grouper in the South Atlantic EEZ must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(b) *Notification to the SRD*. When observer coverage is required, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time).

(2) Expected landing information (port, dock, and date).

(c) *Observer accommodations and access*. An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

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

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

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

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

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

[61 FR 43957, Aug. 27, 1996, as amended at 63 FR 57590, Oct. 28, 1998; 68 FR 57378, Oct. 3, 2003; 70 FR 32272, June 2, 2005; 70 FR 73387, Dec. 12, 2005; 71 FR 56047, Sept. 26, 2006; 74 FR 58912, Nov. 16, 2009]

§ 622.9 Vessel monitoring systems (VMSs).

(a) *Requirements for use of a VMS*—(1) *South Atlantic rock shrimp*. An owner or operator of a vessel that has been issued a limited access endorsement for South Atlantic rock shrimp (until January 27, 2010) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) must ensure that such vessel has an operating VMS approved by NMFS for use in the South Atlantic rock shrimp fishery on board when on a trip in the South Atlantic. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

(2) *Gulf reef fish*. The VMS requirements of this paragraph (a)(2) apply throughout the Gulf of Mexico and adjacent states.

(i) *General VMS requirement*. An owner or operator of a vessel that has been issued a commercial vessel permit for Gulf reef fish, including a charter vessel/headboat issued such a permit even when under charter, must ensure that such vessel has an operating VMS approved by NMFS for use in the Gulf reef fish fishery on board at all times whether or not the vessel is underway, unless exempted by NMFS under the power-down exemptions specified in paragraph (a)(2)(iv) of this section and in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This NOAA Enforcement Vessel Monitoring System Requirements document is available from NMFS, Office

for Law Enforcement (OLE), Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS OLE maintains a current list of approved VMS units and communication providers which is available from the VMS Support Center, NMFS OLE, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910 or by calling toll free 888–219–9228. If a VMS unit approved for the Gulf reef fish fishery is removed from the approved list by NMFS OLE, a vessel owner who purchased and installed such a VMS unit prior to its removal from the approved list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by NMFS OLE. At the end of a VMS unit's service life, it must be replaced with a currently approved unit for the fishery.

(ii) *Hourly reporting requirement.* An owner or operator of a vessel subject to the requirements of paragraph (a)(2) of this section must ensure that the required VMS unit transmits a signal indicating the vessel's accurate position at least once an hour, 24 hours a day every day unless exempted under paragraphs (a)(2)(iii) or (iv) of this section.

(iii) *In-port exemption.* While in port, an owner or operator of a vessel with a type-approved VMS unit configured with the 4-hour reporting feature may utilize the 4-hour reporting feature rather than comply with the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section. Once the vessel is no longer in port, the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section applies. For the purposes of this paragraph (a)(2) of this section, ''in port'' means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(iv) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a VMS operating at all times as specified in paragraph (a)(2)(i) of this section can be exempted from that requirement and may power down the required VMS unit if—

(A) The vessel will be continuously out of the water or in port, as defined in paragraph (a)(2)(iii) of this section, for more than 72 consecutive hours;

(B) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS OLE VMS personnel as specified in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This is a one-time requirement. The letter of exemption must be maintained on board the vessel and remains valid for all subsequent power-down requests conducted consistent with the provisions of paragraphs (a)(2)(iv)(C) and (D) of this section.

(C) Prior to each power-down, the owner or operator of the vessel files a report to NMFS OLE VMS program personnel, using the VMS unit's e-mail, that includes the name of the person filing the report, vessel name, vessel U.S. Coast Guard documentation number or state registration number, commercial vessel reef fish permit number, vessel port location during VMS power down, estimated duration of the power down exemption, and reason for power down; and

(D) The owner or operator enters the power-down code through the use of the VMS Declaration form on the terminal and, prior to powering down the VMS, receives a confirmation, through the VMS terminal, that the form was successfully delivered.

(v) *Declaration of fishing trip and gear.* Prior to departure for each trip, a vessel owner or operator must report to NMFS any fishery the vessel will participate in on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel.

(b) *Installation and activation of a VMS.* Only a VMS that has been approved by NMFS for the applicable fishery may be used, and the VMS must be installed by a qualified marine electrician. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must—

(1) Follow procedures indicated on a NMFS-approved installation and activation checklist for the applicable fishery, which is available from NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833; and

(2) Submit to NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, a statement certifying compliance with the checklist, as prescribed on the checklist.

(3) Submit to NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, a vendor-completed installation certification checklist, which is available from NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, phone: 800–758–4833, and follow instructions from that office. If notified by NMFS that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized fishing for or possession of fish in a fishery subject to VMS requirements in this section, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

[71 FR 45434, Aug. 9, 2006, as amended at 72 FR 73273, Dec. 27, 2007; 73 FR 410, Jan. 3, 2008; 74 FR 50704, Oct. 1, 2009; 75 FR 82292, Dec. 30, 2010]

§ 622.10 Conservation measures for protected resources.

(a) *Atlantic dolphin and wahoo pelagic longliners.* The owner or operator of a vessel for which a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(2)(xii), and that has on board a pelagic longline must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS. Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, as specified in § 635.21(c)(5)(i) and (ii) of this chapter, respectively. For the purpose of this paragraph, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear.

(b)(1) *Sea turtle conservation measures.* (i) The owner or operator of a vessel for which a commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued, as required under §§ 622.4(a)(2)(v) and 622.4(a)(1)(i), respectively, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS.

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in §§ 635.21(c)(5)(i) and (ii) of this chapter, respectively.

(iii) Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board a dipnet, tire, short-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in

§§ 635.21(c)(5)(i)(E) through (L) of this chapter with the following modifications: the dipnet handle can be of variable length, only one NMFS-approved short-handled dehooker is required (i.e., § 635.21(c)(5)(i)(G) or (H) of this chapter); and life rings, seat cushions, life jackets, and life vests or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives to tires for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter. Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a dipnet, tire, long-handled line clipper, a short-handled and a long-handled dehooker, a long-handled device to pull an inverted ''V'', long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in § 635.21(c)(5)(i)(A) through (L) of this chapter with the following modifications: only one NMFS-approved long-handled dehooker (§ 635.21(c)(5)(i)(B) or (C)) of this chapter and one NMFS-approved short-handled dehooker (§ 635.21(c)(5)(i)(G) or (H) of this chapter) are required; and life rings, seat cushions, life jackets, and life vests, or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter.

(2) *Smalltooth sawfish conservation measures*. The owner or operator of a vessel for which a commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued, as required under §§ 622.4(a)(2)(v) and 622.4(a)(1)(i), respectively, that incidentally catches a smalltooth sawfish must—

(i) Keep the sawfish in the water at all times;

(ii) If it can be done safely, untangle the line if it is wrapped around the saw;

(iii) Cut the line as close to the hook as possible; and

(iv) Not handle the animal or attempt to remove any hooks on the saw, except for with a long-handled dehooker.

(c) *South Atlantic snapper-grouper commercial vessels and charter vessels/headboats*—(1) *Sea turtle conservation measures*. (i) The owner or operator of a vessel for which a commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under §§ 622.4(a)(2)(vi) and 622.4(a)(1)(i), respectively, and whose vessel has on board any hook-and-line gear, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS.

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in appendix F to this part.

(iii) Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board and must use a dipnet, cushioned/support device, short-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in appendix F to this part. Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a dipnet, cushioned/support device, long-handled line clipper, a short-handled and a long-handled dehooker, a long-handled device to pull an inverted ''V'', long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in appendix F to this part.

(2) *Smalltooth sawfish conservation measures*. The owner or operator of a vessel for which a commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under §§ 622.4(a)(2)(vi) and 622.4(a)(1)(i),

respectively, that incidentally catches a smalltooth sawfish must—

(i) Keep the sawfish in the water at all times;

(ii) If it can be done safely, untangle the line if it is wrapped around the saw;

(iii) Cut the line as close to the hook as possible; and

(iv) Not handle the animal or attempt to remove any hooks on the saw, except with a long-handled dehooker.

[71 FR 45435, Aug. 9, 2006, as amended at 74 FR 58912, Nov. 16, 2009; 77 FR 4494, Jan. 30, 2012]

Subpart B—Effort Limitations

§ 622.15 Wreckfish individual transferable quota (ITQ) system.

The provisions of this section apply to wreckfish in or from the South Atlantic EEZ.

(a) *Percentage shares.* (1) In accordance with the procedure specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, percentage shares of the quota for wreckfish have been assigned. Each person has been notified by the RA of his or her percentage share and shareholder certificate number.

(2) All or a portion of a person's percentage shares may be transferred to another person. Transfer of shares must be reported on a form available from the RA. The RA will confirm, in writing, each transfer of shares. The effective date of each transfer is the confirmation date provided by the RA. The confirmation date will normally be not later than 3 working days after receipt of a properly completed transfer form. A fee is charged for each transfer of shares. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service provided by NOAA to non-Federal recipients. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(b) *Lists of wreckfish shareholders and permitted vessels.* Annually, on or about March 1, the RA will provide each wreckfish shareholder with a list of all wreckfish shareholders and their percentage shares, reflecting share transactions on forms received through February 15. Annually by April 15, the RA will provide each dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4), with a list of vessels for which wreckfish permits have been issued, as required under § 622.4(a)(2)(vii). Annually, by April 15, the RA will provide each wreckfish shareholder with a list of dealers who have been issued dealer permits for wreckfish. From April 16 through January 14, updated lists will be provided when required. Updated lists may be obtained at other times or by a person who is not a wreckfish shareholder or wreckfish dealer permit holder by written request to the RA.

(c) *ITQs.* (1) Annually, as soon after March 1 as the TAC for wreckfish for the fishing year that commences April 16 is known, the RA will calculate each wreckfish shareholder's ITQ. Each ITQ is the product of the wreckfish TAC, in round weight, for the ensuing fishing year, the factor for converting round weight to eviscerated weight, and each wreckfish shareholder's percentage share, reflecting share transactions reported on forms received by the RA through February 15. Thus, the ITQs will be in terms of eviscerated weight of wreckfish.

(2) The RA will provide each wreckfish shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred from one wreckfish shareholder to another by completing the sale endorsement thereon (that is, the signature and shareholder certificate number of the buyer). An ITQ coupon may be possessed only by the shareholder to whom it has been issued, or by the shareholder's employee, contractor, or agent, unless the ITQ coupon has been transferred to another shareholder. An ITQ coupon that has been transferred to another shareholder may be possessed only by the shareholder whose signature appears on the coupon as the

buyer, or by the shareholder's employee, contractor, or agent, and with all required sale endorsements properly completed.

(4) Wreckfish may not be possessed on board a fishing vessel that has been issued a commercial vessel permit for South Atlantic snapper-grouper and a commercial vessel permit for wreckfish—

(i) In an amount exceeding the total of the ITQ coupons on board the vessel; or

(ii) That does not have on board logbook forms for that fishing trip, as required under § 622.5(a)(1)(iv)(C)(*1*).

(5) Prior to termination of a trip, a signature and date signed must be affixed in ink to the ''Fisherman'' part of ITQ coupons in denominations equal to the eviscerated weight of the wreckfish on board. The ''Fisherman'' part of each such coupon must be separated from the coupon and submitted with the logbook forms required by § 622.5(a)(1)(iv)(C)(*1*) for that fishing trip.

(6) The ''Fish House'' part of each such coupon must be given to the dealer to whom the wreckfish are transferred in amounts totaling the eviscerated weight of the wreckfish transferred to that dealer. A wreckfish may be transferred only to a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4).

(7) A dealer may receive a wreckfish only from a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii). A dealer must receive the ''Fish House'' part of ITQ coupons in amounts totaling the eviscerated weight of the wreckfish received; enter the permit number of the vessel from which the wreckfish were received, enter the date the wreckfish were received, enter the dealer's permit number, and sign each such ''Fish House'' part; and submit all such parts with the dealer reports required by § 622.5(c)(5)(i).

(8) An owner or operator of a vessel and a dealer must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(d) *Wreckfish limitations.* (1) A wreckfish taken in the South Atlantic EEZ may not be transferred at sea, regardless of where the transfer takes place; and a wreckfish may not be transferred in the South Atlantic EEZ.

(2) A wreckfish possessed by a fisherman or dealer shoreward of the outer boundary of the South Atlantic EEZ or in a South Atlantic coastal state will be presumed to have been harvested from the South Atlantic EEZ unless accompanied by documentation that it was harvested from other than the South Atlantic EEZ.

(3) A wreckfish harvested by a vessel that has been issued a commercial vessel permit for South Atlantic snapper-grouper and a commercial vessel permit for wreckfish may be offloaded from a fishing vessel only between 8 a.m. and 5 p.m., local time.

(4) If a wreckfish harvested by a vessel that has been issued a commercial vessel permit for South Atlantic snapper-grouper and a commercial vessel permit for wreckfish is to be offloaded at a location other than a fixed facility of a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4), the wreckfish shareholder or the vessel operator must advise the NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344), of the location not less than 24 hours prior to offloading.

[61 FR 34934, July 3, 1996, as amended at 64 FR 59126, Nov. 2, 1999; 73 FR 410, Jan. 3, 2008; 74 FR 58913, Nov. 16, 2009; 77 FR 15926, Mar. 16, 2012]

EFFECTIVE DATE NOTE: At 77 FR 59131, Sept. 26, 2012, § 622.15 was amended by revising paragraph (a), effective Oct. 26, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 622.15 Wreckfish individual transferable quota (ITQ) system.

* * * * *

(a) *General*—(1) *Percentage shares*—(i) *Initial ITQ shares.* In accordance with the procedure specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, percentage shares of the quota for wreckfish were assigned at the beginning of the program. Each person was notified by the RA of his or her percentage share and shareholder certificate number.

(ii) *Reverted ITQ shares.* Any shares determined by NMFS to be inactive, will be redistributed proportionately among remaining shareholders (subject to cap restrictions)

based on shareholder landings history. Inactive shares are, for purposes of this section, those shares held by ITQ shareholders who have not reported any wreckfish landings between April 16, 2006, and January 14, 2011.

(iii) *Percentage share set-aside to accommodate resolution of appeals.* During the 2012–2013 fishing year, the RA will reserve 1.401 percent of wreckfish ITQ shares prior to redistributing shares (see paragraph (a)(1)(ii) of this section) to accommodate resolution of appeals, if necessary. NMFS will distribute any portion of the 1.401-percent share remaining after the appeals process as soon as possible among the remaining shareholders.

(iv) *Procedure for appealing wreckfish quota share status and landings information.* Appeals must be submitted to the RA postmarked no later than January 24, 2013 and must contain documentation supporting the basis for the appeal. The only items subject to appeal are the status of wreckfish quota shares, as active or inactive, and the accuracy of the amount of landings. The RA will review and evaluate all appeals, render final decisions on the appeals, and advise the appellant of the final decision. Appeals based on hardship factors will not be considered. The RA will determine the outcome of appeals based on NMFS' logbooks. If NMFS' logbooks are not available, the RA may use state landings records. Appellants must submit NMFS' logbooks or state landings records, as appropriate, to support their appeal.

(2) *Share transfers.* All or a portion of a person's percentage shares are transferrable. Transfer of shares must be reported on a form available from the RA. The RA will confirm, in writing, each transfer of shares. The effective date of each transfer is the confirmation date provided by the RA. NMFS charges a fee for each transfer of shares and calculates the amount in accordance with the procedures of the NOAA Finance Handbook. The handbook is available from the RA. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(3) *ITQ share cap.* No person, including a corporation or other entity, may individually or collectively hold ITQ shares in excess of 49 percent of the total shares. For the purposes of considering the share cap, a corporation's total ITQ share is determined by adding the corporation's ITQ shares to any other ITQ shares the corporation owns in another corporation. If an individual ITQ shareholder is also a shareholder in a corporation that holds ITQ shares, an individual's total ITQ share is determined by adding the applicable ITQ shares held by the individual to the applicable ITQ shares equivalent to the corporate share the individual holds in a corporation. A corporation must provide the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of when a change occurs. This information must also be provided to the RA any time a commercial vessel permit for wreckfish is renewed or transferred.

* * * * *

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

(a) *General.* This section establishes an IFQ program for the commercial red snapper component of the Gulf reef fish fishery. Shares determine the amount of Gulf red snapper IFQ allocation, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. As of January 1, 2012, IFQ shares and allocation can only be transferred to U.S. citizens and permanent resident aliens. See § 622.16(b)(9) regarding eligibility to participate in the Gulf red snapper IFQ program as of January 1, 2012. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing red snapper subject to this IFQ program to have a Gulf red snapper IFQ vessel account. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section regarding the harvest and possession of Gulf IFQ red snapper apply to Gulf red snapper in or from the Gulf EEZ and, for a person aboard a vessel with a Gulf red snapper IFQ vessel account as required by § 622.4(a)(2)(ix) or for a person with a Gulf IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf red snapper regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, *e.g.*, registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. The computer must have browser software installed, *e.g.* Internet Explorer or Mozilla Firefox; as well as the software Adobe Flash Player version 9.0 or greater, which may be downloaded from the Internet for free. Assistance with online functions is available from IFQ Customer Service by calling 1-(866) 425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA mailed initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf red snapper IFQ dealer endorsement must first contact IFQ Customer Service at 1–(866) 425–7627 to obtain information necessary to set up the required IFQ online account. As of January 1, 2012, all U.S. citizens and permanent resident aliens are eligible to establish an IFQ online account. As of January 1, 2012, all current IFQ participants must complete and submit the application for an IFQ Online Account to certify their citizenship status and ensure their account information (*e.g.*, mailing address, corporate shareholdings, *etc.*) is up to date. See § 622.16(b)(9) regarding requirements for the application for an IFQ Online Account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the FEDERAL REGISTER, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1–(866) 425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf red snapper, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf red snapper. If the quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota for red snapper is increased.

(5) *Initial shareholder IFQ account setup information.* As soon as possible after an IFQ Online Account is established, the RA will provide IFQ account holders information pertinent to the IFQ program. This information will include:

(i) General instructions regarding procedures related to the IFQ online system; and

(ii) A user identification number—the personal identification number (PIN) is provided in a subsequent letter.

(6) *Dealer notification and IFQ account setup information.* As soon as possible after November 22, 2006, the RA mailed each dealer with a valid Gulf reef fish

dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a Gulf IFQ dealer endorsement, which can be downloaded from the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov* once an IFQ account has been established. The information package included general information about the IFQ program and instructions for accessing the IFQ Web site and establishing an IFQ dealer account.

(b) *IFQ operations and requirements*—(1) *IFQ Landing and transaction requirements.* (i) Gulf red snapper subject to this IFQ program can only be possessed or landed by a vessel with a Gulf red snapper IFQ vessel account with allocation at least equal to the pounds of red snapper on board, except as provided in paragraph (b)(1)(ii) of this section. Such red snapper can only be received by a dealer with a Gulf IFQ dealer endorsement.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, *i.e.*, a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf red snapper via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov* at the time of the transaction in accordance with the reporting form(s) and instructions provided on the Web site. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel price of red snapper landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering his unique PIN when the transaction report is submitted. After the dealer submits the report and the information has been verified, the Web site will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) must initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov*. The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(2) *IFQ cost recovery fees.* As required by section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the Gulf red snapper IFQ program. The fee cannot exceed 3 percent of the ex-vessel value of Gulf red snapper landed under the IFQ program as described in the Magnuson-Stevens Act. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel price of Gulf red snapper landed per trip under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the FEDERAL REGISTER.

(i) *Payment responsibility.* The IFQ allocation holder specified in the documented red snapper IFQ landing transaction report is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility*. A dealer who receives Gulf red snapper subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ allocation holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure*. For each IFQ dealer, the IFQ system will post, on individual message boards, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using *pay.gov* via the IFQ system. Authorized payments methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees*. The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ Web site and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(3) *Measures to enhance IFQ program enforceability*—(i) *Advance notice of landing*. For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated red snapper landings in pounds gutted weight, vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the red snapper are to be received. The vessel landing red snapper must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of red snapper on board (except for any overage up to the 10 percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling IFQ Customer Service at 1–(866) 425–7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov*. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (b)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading*. For the purpose of this paragraph, offloading means to remove IFQ red snapper from a vessel. IFQ red snapper may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ red snapper*. At-sea or dockside transfer of IFQ red snapper from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code*. If IFQ red snapper are offloaded to a vehicle for transportation to a dealer or are on a vessel that is trailered for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval

code verifying a legal transaction of the amount of IFQ red snapper in possession and a copy of the dealer endorsement must accompany any IFQ red snapper from the landing location through possession by a dealer. This requirement also applies to IFQ red snapper possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations.* Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be submitted online via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov*, or by calling IFQ Customer Service at 1–(866) 425–7627, at any time; however, new landing locations will be approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable waters;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard animal; a posted sign restricting access to the site; or any other physical deterrent.

(4) *Transfer of IFQ shares and allocation.* Until January 1, 2012, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred only to a U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, a Gulf red snapper IFQ vessel account, and Gulf red snapper IFQ allocation are required to possess (at and after the time of the advance notice of landing), land or sell Gulf red snapper subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, *i.e.*, they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent—unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, *i.e.*, has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* Share transfers must be accomplished online via the IFQ Web site. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov*. Following the instructions provided on the Web site, the shareholder must enter pertinent information regarding the transfer request including, but not limited to, amount of shares to be transferred, which must be a minimum of 0.0001 percent; name of the eligible transferee; and the value of the transferred shares. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf

reef fish fishery and the red snapper IFQ program; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share cap as specified in paragraph (b)(6) of this section. Thereafter, share transferee eligibility will only include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the transfer information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s) why the transfer request cannot be completed. If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transaction approval code to both the transferor and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel account, however, may only be transferred back to the IFQ account through which the vessel account was established.

(iv) *Allocation transfer procedures.* Allocation transfers must be accomplished online via the IFQ Web site. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov,* entering the required information, including but not limited to, name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the online system will provide a transaction approval code to the transferor and transferee confirming the transaction.

(5) *Restricted transactions during the 20-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas for Gulf red snapper have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1–(866) 425–7627.

(6) *IFQ share cap.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in excess of 6.0203 percent of the total shares. For the purposes of considering the share cap, a corporation's total IFQ share is determined by adding the applicable IFQ shares held by the corporation and any other IFQ shares held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. Initially, a corporation must provide the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef

fish is renewed or transferred and at the time of renewal of the application for an IFQ Online Account.

(7) *Redistribution of shares resulting from permanent revocation.* If a shareholder's IFQ shares have been permanently revoked, the RA will redistribute the IFQ shares held by that shareholder proportionately among remaining shareholders (subject to cap restrictions) based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov*, of their IFQ share and allocation for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of applicable shares. Updated allocation values will reflect any change in IFQ share, any change in the annual commercial quota for Gulf red snapper, and any debits required as a result of prior fishing year overages as specified in paragraph (b)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ Web site.

(9) *Eligibility to participate in the Gulf red snapper IFQ program as of January 1, 2012.* The provisions of paragraph (b)(9) of this section apply to all eligible participants for the Gulf red snapper IFQ program beginning January 1, 2012. In addition to eligible participants who already participate in the Gulf red snapper IFQ program, as of January 1, 2012, all U.S. citizens and permanent resident aliens who are in compliance with the provisions of this section are eligible and may participate in the Gulf red snapper IFQ program as shareholders and allocation holders. The requirements to meet the definition of a U.S. citizen are described in the Immigration and Nationality Act of 1952, as amended, and permanent resident aliens are those individuals who have been lawfully accorded the privilege of residing permanently in the U.S. in accordance with U.S. immigration laws. In order to harvest and possess Gulf IFQ red snapper, the requirements for a Gulf red snapper IFQ vessel account, as specified in § 622.4(a)(2)(ix), or a Gulf IFQ dealer endorsement, as specified in § 622.4(a)(4)(ii) apply.

(i) *Gulf red snapper IFQ program participation for current red snapper IFQ account holders.* (A) A current participant in the red snapper IFQ program must complete and submit the application for an IFQ Online Account that is available on the Web site *http://sero.nmfs.noaa.gov*, to certify status as a U.S. citizen or permanent resident alien. The IFQ account holder must also complete and submit any other information on this form that may be necessary for the administration of the IFQ online account.

(B) A person with an established IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will provide each participant who has established an online account, with an application approximately 2 months prior to the account validity date. A participant who is not provided an application at least 45 days prior to the account validity date must contact IFQ Customer Service at 1–(866) 425–7627 and request an application. Failure to submit a completed application prior to the account validity date will lead to the suspension of the participant's IFQ online account until a completed application is submitted. After January 1, 2012, participants who certify that they are either not U.S. citizens or permanent resident aliens will be ineligible to receive shares or allocation through transfer.

(ii) *Gulf red snapper IFQ program participation for entities that do not currently possess an IFQ online account.* The following procedures apply to U.S citizens or permanent resident aliens

who are not otherwise described in either paragraphs (a) or (b)(9)(i) of this section.

(A) To establish an IFQ online account, a person must first complete the application for an IFQ Online Account that is available on the Web site *http://sero.nmfs.noaa.gov*. An applicant for an IFQ online account under this paragraph must provide the following;

(*1*) Name; address; telephone number; date of birth; tax identification number; certification of status as either a U.S. citizen or permanent resident alien; and if a corporation, a list of all officers, directors, shareholders, and registered agents of the business; and other identifying information as specified on the application.

(*2*) Any other information that may be necessary for the establishment or administration of the IFQ online account.

(B) Completed applications and all required supporting documentation must be submitted to the RA. There is no fee to access the Web site or establish an IFQ online account. An applicant that submits an incomplete application will be contacted by the RA to correct any deficiencies. If an applicant fails to correct the deficiency within 30 days of being notified of the deficient application, the application will be considered abandoned.

(C) After an applicant submits a completed application for an IFQ online account, the RA will mail the applicant general instructions regarding procedures related to the IFQ online system, including how to set up an online account and a user identification number—the personal identification number (PIN) will be provided in a subsequent letter.

(D) A participant who has established an IFQ online account must notify the RA within 30 days after there is any change in the information submitted through the application for an IFQ Online Account. The IFQ online account is void if any change in the application information is not reported within 30 days.

(E) A person who has established an IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will mail each participant who has established an online account an application approximately 2 months prior to the Account Validity Date. A participant who does not receive an application at least 45 days prior to the Account Validity Date must contact IFQ Customer Service at 1–(866) 425–7627 and request an application. Failure to submit a completed application prior to the account validity date will lead to the suspension of the IFQ online account until a completed application is submitted.

(F) For information regarding transfer of IFQ shares and allocation, the IFQ share cap, and the annual recalculation and notification of IFQ shares and allocation, see paragraphs (b)(4), (b)(6), and (b)(8) of this section, respectively.

(G) Participation in the Gulf red snapper IFQ program beyond transferring IFQ shares and allocation is explained in paragraphs (a) through (b)(8) of this section.

[76 FR 68340, Nov. 4, 2011]

§ 622.17 South Atlantic golden crab controlled access.

(a) *General*. In accordance with the procedures specified in the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region, initial commercial vessel permits have been issued for the fishery. All permits in the fishery are issued on a fishing-year (calendar-year) basis. No additional permits may be issued except for the northern zone as follows:

(1) The RA will issue up to two new vessel permits for the northern zone. Selection will be made from the list of historical participants in the South Atlantic golden crab fishery. Such list was used at the October 1995 meeting of the South Atlantic Fishery Management Council and was prioritized based on pounds of golden crab landed, without reference to a specific zone. Individuals on the list who originally received permits will be deleted from the list.

(2) The RA will offer in writing an opportunity to apply for a permit for the northern zone to the individuals highest on the list until two individuals accept and apply in a timely manner. An offer that is not accepted within 30 days after it is received will no longer be valid.

(3) An application for a permit from an individual who accepts the RA's offer must be received by the RA no later than 30 days after the date of the individual's acceptance. Application forms are available from the RA.

(4) A vessel permit for the northern zone issued under paragraph (a)(1) of this section, and any successor permit, may not be changed to another zone. A successor permit includes a permit issued to that vessel for a subsequent owner and a permit issued via transfer from that vessel to another vessel.

(b) *Fishing zones*—(1) *Designation of fishing zones*. The South Atlantic EEZ is divided into three fishing zones for golden crab as follows:

(i) Northern zone—the South Atlantic EEZ north of 28° N. lat.

(ii) Middle zone—the South Atlantic EEZ from 28° N. lat. to 25° N. lat.

(iii) Southern zone—the South Atlantic EEZ south of 25° N. lat.

(2) *Authorization to fish in zones*. Each vessel permit indicates one of the zones specified in paragraph (b)(1) of this section. A vessel with a permit to fish for golden crab in the northern zone or the middle zone may fish only in that zone. A vessel with a documented length overall greater than 65 ft (19.8 m) with a permit to fish for golden crab in the southern zone may fish in that zone, consistent with the provisions of paragraph (b)(3) of this section. A vessel may possess golden crab only in a zone in which it is authorized to fish, except that other zones may be transited if the vessel notifies NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344) in advance and does not fish in a zone in which it is not authorized to fish.

(3) *Small-vessel sub-zone*. Within the southern zone, a small-vessel sub-zone is established bounded on the north by 24°15′ N. lat., on the south by 24°07′ N. lat., on the east by 81°22′ W. long., and on the west by 81°56′ W. long. No vessel with a documented length overall greater than 65 ft (19.8 m) may fish for golden crab in this sub-zone, and a vessel with a documented length overall of 65 ft (19.8 m) or less that is permitted for the southern zone may fish for golden crab only in this sub-zone.

(4) *Procedure for changing zones*. (i) Upon request from an owner of a permitted vessel, the RA will change the zone specified on a permit from the middle or southern zone to the northern zone. No other changes in the zone specified on a permit are allowed, except as specified in paragraph (b)(4)(ii) of this section. An owner of a permitted vessel who desires a change to the northern zone must submit his/her request with the existing permit to the RA.

(ii) [Reserved]

(c) *Transferring permits between vessels*—(1) *Procedure for transferring*. An owner of a vessel who desires a golden crab permit may request that NMFS transfer an existing permit or permits to his or her vessel by returning an existing permit or permits to the RA with an application for a permit for the replacement vessel.

(2) *Vessel size limitations on transferring*. (i) To obtain a permit for the middle or southern zone via transfer, the documented length overall of the replacement vessel may not exceed the documented length overall, or aggregate documented lengths overall, of the replaced vessel(s) by more than 20 percent. The owner of a vessel permitted for the middle or southern zone who has requested that NMFS transfer that permit to a smaller vessel (i.e., downsized) may subsequently request NMFS transfer that permit to a vessel of a length calculated from the length of the permitted vessel immediately prior to downsizing.

(ii) There are no vessel size limitations to obtain a permit for the northern zone via transfer.

(d) *Permit renewal*. NMFS will not renew a commercial vessel permit for South Atlantic golden crab if the permit is revoked or if the RA does not receive a required application for renewal within 6 months after the permit's expiration. See § 622.4(h) for the

applicable general procedures and requirements for permit renewals.

[67 FR 22361, May 3, 2002, as amended at 70 FR 73388, Dec. 12, 2005; 73 FR 410, Jan. 3, 2008]

§ 622.18 South Atlantic snapper-grouper limited access.

(a) *General*. The only valid commercial vessel permits for South Atlantic snapper-grouper are those that have been issued under the limited access criteria specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. A commercial vessel permit for South Atlantic snapper-grouper is either a transferable commercial permit or a trip-limited commercial permit.

(b) *Transfers of permits*. A snapper-grouper limited access permit is valid only for the vessel and owner named on the permit. To change either the vessel or the owner, an application for transfer must be submitted to the RA.

(1) *Transferable permits*. (i) An owner of a vessel with a transferable permit may request that the RA transfer the permit to another vessel owned by the same entity.

(ii) A transferable permit may be transferred upon a change of ownership of a permitted vessel with such permit—

(A) From one to another of the following: husband, wife, son, daughter, brother, sister, mother, or father; or

(B) From an individual to a corporation whose shares are all held by the individual or by the individual and one or more of the following: husband, wife, son, daughter, brother, sister, mother, or father. The application for transfer of a permit under this paragraph (b)(1)(ii)(B) and each application for renewal of such permit must be accompanied by a current annual report of the corporation that specifies all shareholders of the corporation. A permit will not be renewed if the annual report shows a new shareholder other than a husband, wife, son, daughter, brother, sister, mother, or father.

(iii) Except as provided in paragraphs (b)(1)(i) and (ii) of this section, a person desiring to acquire a limited access, transferable permit for South Atlantic snapper-grouper must obtain and exchange two such permits for one new permit.

(iv) A transfer of a permit that is undertaken under paragraph (b)(1)(ii) of this section will constitute a transfer of the vessel's entire catch history to the new owner.

(2) *Trip-limited permits*. An owner of a vessel with a trip- limited permit may request that the RA transfer the permit to another vessel owned by the same entity.

(c) *Renewal*. NMFS will not reissue a commercial vessel permit for South Atlantic snapper-grouper if the permit is revoked or if the RA does not receive an application for renewal within one year of the permit's expiration date.

[70 FR 73388, Dec. 12, 2005, as amended at 74 FR 58913, Nov. 16, 2009]

§ 622.19 South Atlantic rock shrimp limited access off Georgia and Florida.

(a) *Initial applicability*. (1) The measures in paragraph (a) of this section are applicable on November 2, 2009 through January 26, 2010.

(2) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board.

(3) A limited access endorsement for South Atlantic rock shrimp is valid only for the vessel and owner named on the permit/endorsement. To change either the vessel or the owner, a complete application for transfer must be submitted to the RA. An owner of a vessel with an endorsement may request that the RA transfer the endorsement to another vessel owned by the same entity, to the same vessel owned by another entity, or to another vessel with another owner. A transfer of an endorsement under this paragraph will include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to a new owner; no partial transfers are allowed. No transfer of a limited access endorsement for South Atlantic rock shrimp will be allowed after November 2, 2009.

(4) The RA will not reissue a limited access endorsement for South Atlantic

rock shrimp if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(b) *Subsequent applicability*. (1) The measures in paragraph (b) of this section are applicable on and after January 27, 2010.

(2) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off those states, a Commercial Permit for Rock Shrimp (South Atlantic EEZ) must be issued to the vessel and must be on board.

(3) *Applications*. No applications for additional Commercial Vessel Permits for Rock Shrimp (South Atlantic EEZ) will be accepted, except as follows:

(i) *Failure to renew*. An owner of a vessel may apply for a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) and such permit will be issued provided the owner,

(A) Had a limited access endorsement for South Atlantic rock shrimp;

(B) Failed to request renewal of his or her endorsement within 1 year after the endorsement's expiration date; and

(C) Renewed his or her commercial vessel permit for rock shrimp within 1 year after its expiration date.

(ii) *Inactive endorsement*. An owner of a vessel may apply for a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) and such permit will be issued provided the owner,

(A) Has a commercial vessel permit for rock shrimp;

(B) Had a limited access endorsement for South Atlantic rock shrimp and;

(C) Was unable to renew the endorsement because the endorsement was ''inactive'' for a period of 4 consecutive calendar years. ''Inactive'' means that the vessel with the endorsement did not land at least 15,000 lb (6,804 kg) of rock shrimp from the South Atlantic EEZ in a calendar year.

(iii) *Application period*. Applications under paragraph (b)(3) of this section must be received by NMFS by January 27, 2011.

(iv) *Continuity of ownership*. An applicant who believes he or she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his or her continuity of ownership.

(c) *Transfer of an existing permit*. A Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) is valid only for the vessel and owner named on the permit. To change either the vessel or the owner, a complete application for transfer must be submitted to the RA. An owner of a vessel with a permit may request that the RA transfer a valid permit to another vessel owned by the same entity, to the same vessel owned by another entity, or to another vessel with another owner. A transfer of a permit under this paragraph will include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to a new owner; no partial transfers are allowed.

(d) *Renewal*. The RA will not reissue a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) if the permit is revoked or if the RA does not receive an application for renewal of the permit within 1 year after the expiration date of the permit.

(e) *Limitation on permits*. A vessel for which a permit for South Atlantic rock shrimp is required may be issued either a Commercial Vessel Permit for Rock Shrimp (Carolinas Zone) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ), depending on its eligibility. However, no such vessel may be issued both permits for the same period of effectiveness.

[74 FR 50704, Oct. 1, 2009]

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) *General*. This section establishes an IFQ program for the commercial sectors of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and Other SWG) and tilefishes (including goldface tilefish, blueline tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, warsaw grouper, snowy grouper, speckled hind, and scamp, but only as specified in paragraph (a)(7) of this section. For the purposes of this IFQ program, Other SWG includes black grouper, scamp,

yellowfin grouper, yellowmouth grouper, warsaw grouper, and speckled hind, but only as specified in paragraph (a)(6) of this section. Under the IFQ program, the RA initially will assign eligible participants IFQ shares, in five share categories. These IFQ shares are equivalent to a percentage of the annual commercial quotas for DWG, red grouper, gag, Other SWG, and tilefishes, based on their applicable historical landings. Shares determine the amount of IFQ allocation for Gulf groupers and tilefishes, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing groupers or tilefishes subject to this IFQ program to have an IFQ vessel account for Gulf groupers and tilefishes. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope*. The provisions of this section apply to Gulf groupers and tilefishes in or from the Gulf EEZ and, for a person aboard a vessel with an IFQ vessel account for Gulf groupers and tilefishes as required by § 622.4(a)(2)(ix) or for a person with a Gulf IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf groupers and tilefishes regardless of where harvested or possessed.

(2) *Duration*. The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements*. (i) The administrative functions associated with this IFQ program, *e.g.*, registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. The computer must have browser software installed, *e.g.* Internet Explorer or Mozilla Firefox; as well as the software Adobe Flash Player version 9.0 or greater, which may be downloaded from the Internet for free. Assistance with online functions is available from IFQ Customer Service by calling 1–(866) 425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA will mail initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf IFQ dealer endorsement must first contact IFQ Customer Service at 1–(866) 425–7627 to obtain information necessary to set up the required IFQ online account. All current IFQ participants must complete and submit the application for an IFQ Online Account to certify their citizenship status and ensure their account information (*e.g.*, mailing address, corporate shareholdings, *etc.*) is up to date. See § 622.20(b)(9) regarding requirements for the application for an IFQ Online Account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the FEDERAL REGISTER, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic

areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1–(866) 425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(4) *IFQ allocation*. IFQ allocation is the amount of Gulf groupers and tilefishes, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation for the five respective share categories is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for gag, red grouper, DWG, Other SWG and tilefishes. If a quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota is increased.

(5) *Red grouper and gag multi-use allocation*—(i) *Red grouper multi-use allocation*. (A) At the time the commercial quota for red grouper is distributed to IFQ shareholders, a percentage of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation, determined annually, will be based on the following formula:

Red Grouper multi-use allocation (in percent) = 100 * [Gag ACL—Gag commercial quota]/Red grouper commercial quota

(B) Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred. However, if gag is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero.

(ii) *Gag multi-use allocation*. (A) At the time the commercial quota for gag is distributed to IFQ shareholders, a percentage of each shareholder's initial gag allocation will be converted to gag multi-use allocation. Gag multi-use allocation, determined annually, will be based on the following formula:

Gag multi-use allocation (in percent) = 100 * [Red grouper ACL—Red grouper commercial quota]/Gag commercial quota

(B) Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's (shareholder or allocation holder's) gag allocation has been landed and sold, or transferred; and to possess, land, or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (b)(4)(iv) of this section. However, if red grouper is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero.

(6) *Warsaw grouper and speckled hind classification*. Warsaw grouper and speckled hind are considered DWG species and under certain circumstances SWG species. For the purposes of the IFQ program for Gulf groupers and tilefishes, after all of an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then Other SWG allocation may be used to land and sell warsaw grouper and speckled hind.

(7) *Scamp classification*. Scamp is considered a SWG species and under certain circumstances a DWG. For the purposes of the IFQ program for Gulf groupers and tilefishes, after all of an IFQ account holder's Other SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation, then DWG allocation may be used to land and sell scamp.

(8) *Initial shareholder and IFQ account setup information*. On or about October 1, 2009, the RA mailed each Gulf reef fish commercial vessel permittee with grouper and tilefish landings history during the qualifying years, information pertinent to the IFQ program. This information included:

(i) Gulf grouper and tilefish landings associated with the Gulf reef fish commercial vessel permit during each year of the applicable landings history;

(ii) The highest average annual grouper and tilefish landings, in each of the five share categories, based on the permittee's best 5 out of 6 years of applicable landings history;

(iii) The permittee's initial IFQ share, in each of the five share categories, based on the highest average annual landings associated with the permittee's best 5 out of 6 years of applicable landings history;

(iv) The initial IFQ allocation, in each of the five share categories, as well as their total IFQ allocation;

(v) Instructions for appeals;

(vi) General instructions regarding procedures related to the IFQ online system, including how to set up an online account; and

(vii) A user identification number; and a personal identification number (PIN) that was provided in a subsequent letter.

(9) *Dealer notification and IFQ account setup information*. On or about October 1, 2009, the RA mailed each dealer with a valid Gulf reef fish dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a Gulf IFQ dealer endorsement, which can be downloaded from the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov* once an IFQ account has been established. The information package included general information about the IFQ program and instructions for accessing the IFQ Web site and establishing an IFQ dealer account.

(b) *IFQ operations and requirements*—(1) *IFQ Landing and transaction requirements*. (i) Gulf groupers and tilefishes subject to this IFQ program can only be possessed or landed by a vessel with a IFQ vessel account for Gulf groupers and tilefishes. Such groupers and tilefishes can only be received by a dealer with a Gulf IFQ dealer endorsement. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of grouper or tilefish species to be landed, from the time of advance notice of landing through landing, except as provided in paragraph (b)(1)(ii) of this section.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation from among any of the grouper or tilefish share categories, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, *i.e.* a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf groupers and tilefishes via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov* at the time of the transaction in accordance with reporting form and instructions provided on the Web site. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel price of groupers and tilefishes landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering the unique PIN for the vessel account when the transaction report is submitted. After the dealer submits the report and the information has been verified by NMFS, the online system will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) must initiate a landing transaction correction form to correct the

landing transaction. This form is available via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov*. The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(2) *IFQ cost recovery fees.* As required by the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the IFQ program for Gulf groupers and tilefishes. The fee cannot exceed 3 percent of the ex-vessel value of Gulf groupers and tilefishes landed under the IFQ program as described in the Magnuson-Stevens Act. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel price of Gulf groupers and tilefishes landed per trip under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the FEDERAL REGISTER.

(i) *Payment responsibility*. The IFQ account holder specified in the documented IFQ landing transaction report for Gulf groupers and tilefishes is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility*. A dealer who receives Gulf groupers or tilefishes subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ account holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system, at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure*. For each IFQ dealer, the IFQ system will post, in individual IFQ dealer accounts, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using *pay.gov* via the IFQ system. Authorized payment methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees*. The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ Web site and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(3) *Measures to enhance IFQ program enforceability*—(i) *Advance notice of landing*. For the purpose of this paragraph (b), landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ groupers or tilefishes is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated grouper and tilefish landings in pounds gutted weight for each share category (gag, red grouper, DWG, Other SWG, tilefishes), vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the groupers or tilefishes are to be received. The vessel landing groupers or

tilefishes must have sufficient IFQ allocation in the IFQ vessel account, and in the appropriate share category or categories, at least equal to the pounds in gutted weight of all groupers and tilefishes on board (except for any overage up to the 10 percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling IFQ Customer Service at 1–(866) 425–7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the Web-based form available on the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov*. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (b)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading*. For the purpose of this paragraph, offloading means to remove IFQ groupers and tilefishes from a vessel. IFQ groupers or tilefishes may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ groupers and tilefishes*. At-sea or dockside transfer of IFQ groupers or tilefishes from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code*. If IFQ groupers or tilefishes are offloaded to a vehicle for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ groupers and tilefishes in possession and a copy of the dealer endorsement must accompany any IFQ groupers or tilefishes from the landing location through possession by a dealer. This requirement also applies to IFQ groupers and tilefishes possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations*. Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be submitted online via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov*, or by calling IFQ Customer Service at 1–(866) 425–7627, at any time; however, new landing locations will be approved only at the end of each calendar-year quarter. To have your landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable water;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard; animal; a posted sign restricting access to the site; or any other physical deterrent.

(4) *Transfer of IFQ shares and allocation*. Until January 1, 2015, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred only to a U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, an IFQ vessel account for Gulf groupers and tilefishes, and IFQ allocation for Gulf groupers or

tilefishes are required to possess (at and after the time of the advance notice of landing), land or sell Gulf groupers or tilefishes subject to this IFQ program.

(i) *Share transfers*. Share transfers are permanent, *i.e.*, they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent—unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, *i.e.*, has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures*. Share transfers must be accomplished online via the IFQ Web site. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov*. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. Following the instructions provided on the Web site, the shareholder must enter pertinent information regarding the transfer request including, but not limited to: Amount of shares to be transferred, which must be a minimum of 0.000001 percent; name of the eligible transferee; and the value of the transferred shares. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the IFQ program for Gulf groupers and tilefishes; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share or allocation caps as specified in paragraph (b)(6) of this section. Thereafter, share transferee eligibility will only include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s). If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transfer approval code to both the shareholder and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers*. An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel account, however, may only be transferred back to the IFQ account through which the vessel account was established.

(iv) *Allocation transfer procedures and restrictions*—(A) *Allocation transfer procedures*. Allocation transfers must be accomplished online via the IFQ Web site. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov*, entering the required information, including but not limited to, the name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in

writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the Web site will provide a transfer approval code to the transferor and transferee confirming the transaction.

(B) *Multi-use allocation transfer restrictions—(1) Red grouper multi-use allocation.* Red grouper multi-use allocation may only be transferred after all an IFQ account holder's red grouper allocation has been landed and sold, or transferred.

(*2*) *Gag multi-use allocation.* Gag multi-use allocation may only be transferred after all an IFQ account holder's gag allocation has been landed and sold, or transferred.

(5) *Restricted transactions during the 20-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas or catch allowances for Gulf groupers and tilefishes have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1–(866) 425–7627.

(6) *IFQ share and allocation caps.* A corporation's total IFQ share (or allocation) is determined by adding the applicable IFQ shares (or allocation) held by the corporation and any other IFQ shares (or allocation) held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. An individual's total IFQ allocation is determined by adding the individual's total allocation to the allocation derived from the IFQ shares equivalent to the corporate share the individual holds in a corporation.

(i) *IFQ share cap for each share category.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in any share category (gag, red grouper, DWG, Other SWG, or tilefishes) in excess of the maximum share initially issued for the applicable share category to any person at the beginning of the IFQ program, as of the date appeals are resolved and shares are adjusted accordingly. A corporation must provide to the RA the identity of the shareholders of the corporation and their percent of shares in the corporation for initial issuance of IFQ shares and allocation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef fish is renewed or transferred and at the time of renewal of the application for an IFQ Online Account

(ii) *Total allocation cap.* No person, including a corporation or other entity, may individually or collectively hold, cumulatively during any fishing year, IFQ allocation in excess of the total allocation cap. The total allocation cap is the sum of the maximum allocations associated with the share caps for each individual share category and is calculated annually based on the applicable quotas or catch allowance associated with each share category.

(7) *Redistribution of shares resulting from permanent revocation.* If a shareholder's IFQ shares have been permanently revoked, the RA will redistribute the IFQ shares proportionately among remaining shareholders (subject to cap restrictions) based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ

Web site at *http://ifq.sero.nmfs.noaa.gov*, of their IFQ shares and allocations, for each of the five share categories, for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of IFQ shares. Allocation, for each share category, is calculated by multiplying IFQ share for that category times the annual commercial quota or commercial catch allowance for that share category. Updated allocation values will reflect any change in IFQ share for each share category, any change in the annual commercial quota or commercial catch allowance for the applicable categories; and any debits required as a result of prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ Web site.

(9) *Gulf grouper and tilefish IFQ program participation for current grouper and tilefish IFQ account holders.* (i) A current participant in the Gulf grouper and tilefish IFQ program must complete and submit the application for an IFQ Online Account that is available on the Web site *http://sero.nmfs.noaa.gov*, to certify status as a U.S. citizen or permanent resident alien. The account holder must also complete and submit any other information on this form that may be necessary for the administration of the IFQ online account.

(ii) A person with an established IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will provide each participant who has established an online account an application approximately 2 months prior to the account validity date. A participant who is not provided an application at least 45 days prior to the account validity date must contact IFQ Customer Service at 1–(866) 425–7627 and request an application. Failure to submit a completed application prior to the participant's account validity date will lead to the suspension of the participant's access to his IFQ online account until a completed application is submitted. Participants who certify that they are either not a U.S. citizens or permanent resident alien will be ineligible to receive shares or allocation through transfer.

[76 FR 68345, Nov. 4, 2011, as amended at 76 FR 82052, Dec. 29, 2011; 77 FR 6998, Feb. 10, 2012; 77 FR 45271, July 31, 2012]

Subpart C—Management Measures

§ 622.30 Fishing years.

The fishing year for species or species groups governed in this part is January 1 through December 31 except for the following:

(a) *Allowable octocoral*— October 1 through September 30.

(b) *King and Spanish mackerel.* The fishing year for the king and Spanish mackerel bag limits specified in § 622.39(c)(1) is January 1 through December 31. The following fishing years apply only for the king and Spanish mackerel quotas specified in § 622.42(c):

(1) *Gulf migratory group king mackerel*— July 1 through June 30.

(2) *Gulf migratory group Spanish mackerel*—April through March.

(3) *South Atlantic migratory group king and Spanish mackerel*—March through February.

(c) *Wreckfish*— April 16 through April 15.

(d) *South Atlantic greater amberjack*— May 1 through April 30.

(e) *South Atlantic black sea bass*—June 1 through May 31.

(f) *South Atlantic black sea bass*—(1) The fishing year for the black sea bass bag limit specified in § 622.39(d)(1)(vii) is June 1 through May 31.

(2) The fishing year for the black sea bass quota specified in § 622.42(e)(5) is July 1 through May 31.

[61 FR 34934, July 3, 1996, as amended at 64 FR 3627, Jan. 25, 1999; 70 FR 39190, July 7, 2005; 71 FR 55106, Oct. 23, 2006; 77 FR 28308, May 14, 2012]

EFFECTIVE DATE NOTE: At 77 FR 28308, May 14, 2012, § 622.30(e) was suspended and (f) was

added, effective May 14, 2012, through Dec. 31, 2012.

§ 622.31 Prohibited gear and methods.

In addition to the prohibited gear/methods specified in this section, see §§ 622.33, 622.34, and 622.35 for seasonal/area prohibited gear/methods and § 622.41 for species specific authorized and unauthorized gear/methods.

(a) *Explosives.* An explosive (except an explosive in a powerhead) may not be used to fish in the Caribbean, Gulf, or South Atlantic EEZ. A vessel fishing in the EEZ for a species governed in this part, or a vessel for which a permit has been issued under § 622.4, may not have on board any dynamite or similar explosive substance.

(b) *Chemicals and plants.* A toxic chemical may not be used or possessed in a coral area, and a chemical, plant, or plant-derived toxin may not be used to harvest a Caribbean coral reef resource in the Caribbean EEZ.

(c) *Fish traps.* A fish trap may not be used or possessed in the Gulf or South Atlantic EEZ. A fish trap deployed in the Gulf or South Atlantic EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(2) A fish trap may not be used or possessed in the Gulf EEZ west of 85°30′ W. long. and, after February 7, 2007, may not be used or possessed in the Gulf EEZ.

(3) A fish trap used other than where authorized in paragraph (c) (1) or (2) of this section may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(d) *Longlines for wreckfish.* A bottom longline may not be used to fish for wreckfish in the South Atlantic EEZ. A person aboard a vessel that has a longline on board may not retain a wreckfish in or from the South Atlantic EEZ. For the purposes of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery longer than 1.5 mi (2.4 km) on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(e) *Poisons.* (1) A poison, drug, or other chemical may not be used to fish for Caribbean reef fish in the Caribbean EEZ.

(2) A poison may not be used to take Gulf reef fish in the Gulf EEZ.

(3) A poison may not be used to fish for South Atlantic snapper-grouper in the South Atlantic EEZ.

(f) *Power-assisted tools.* A power-assisted tool may not be used in the Caribbean EEZ to take a Caribbean coral reef resource, in the Gulf EEZ to take prohibited coral or live rock, or in the South Atlantic EEZ to take allowable octocoral, prohibited coral, or live rock.

(g) *Powerheads.* A powerhead may not be used in the Caribbean EEZ to harvest Caribbean reef fish or in the EEZ off South Carolina to harvest South Atlantic snapper-grouper. The possession of a mutilated Caribbean reef fish in or from the Caribbean EEZ, or a mutilated South Atlantic snapper-grouper in or from the EEZ off South Carolina, and a powerhead is *prima facie* evidence that such fish was harvested by a powerhead.

(h) *Rebreathers and spearfishing gear.* In the South Atlantic EEZ, a person using a rebreather may not harvest South Atlantic snapper-grouper with spearfishing gear. The possession of such snapper-grouper while in the water with a rebreather is *prima facie* evidence that such fish was harvested with spearfishing gear while using a rebreather.

(i) *Sea bass pots.* A sea bass pot may not be used in the South Atlantic EEZ south of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL). A sea bass pot deployed in the EEZ south of 28°35.1′ N. lat. may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(j) *Spears and hooks.* A spear, hook, or similar device may not be used in the Caribbean EEZ to harvest a Caribbean spiny lobster. The possession of a speared, pierced, or punctured Caribbean spiny lobster in or from the Caribbean EEZ is *prima facie* evidence of violation of this section.

(k) *Traps for royal red shrimp in the Gulf EEZ and transfer at sea.* A trap may not be used to fish for royal red

shrimp in the Gulf EEZ. Possession of a trap and royal red shrimp on board a vessel is prohibited. A trap used to fish for royal red shrimp in the Gulf EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer. In addition, royal red shrimp cannot be transferred in the Gulf EEZ, and royal red shrimp taken in the Gulf EEZ cannot be transferred at sea regardless of where the transfer takes place.

(l) *Gillnets and trammel nets in the Caribbean EEZ.* A gillnet or trammel net may not be used in the Caribbean EEZ to fish for Caribbean reef fish or Caribbean spiny lobster. Possession of a gillnet or trammel net and any Caribbean reef fish or Caribbean spiny lobster in or from the Caribbean EEZ is prima facie evidence of violation of this paragraph (l). A gillnet or trammel net used in the Caribbean EEZ to fish for any other species must be tended at all times.

(m) *Weak link.* A bottom trawl that does not have a weak link in the tickler chain may not be used to fish in the Gulf EEZ. For the purposes of this paragraph, a weak link is defined as a length or section of the tickler chain that has a breaking strength less than the chain itself and is easily seen as such when visually inspected.

(n) Gulf reef fish may not be used as bait in any fishery, except that, when purchased from a fish processor, the filleted carcasses and offal of Gulf reef fish may be used as bait in trap fisheries for blue crab, stone crab, deepwater crab, and spiny lobster.

[61 FR 34934, July 3, 1996, as amended at 62 FR 13987, Mar. 25, 1997; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 67 FR 51079, Aug. 7, 2002; 70 FR 62080, Oct. 28, 2005; 70 FR 76219, Dec. 23, 2005; 71 FR 45435, Aug. 9, 2006; 73 FR 411, Jan. 3, 2008; 76 FR 82052, Dec. 29, 2011]

§ 622.32 Prohibited and limited-harvest species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Prohibited species.* Prohibited species, by geographical area, are as follows:

(1) *Caribbean.* (i) Caribbean prohibited coral may not be fished for or possessed in or from the Caribbean EEZ. The taking of Caribbean prohibited coral in the Caribbean EEZ is not considered unlawful possession provided it is returned immediately to the sea in the general area of fishing.

(ii) No person may fish for or possess goliath grouper and Nassau grouper in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released immediately with a minimum of harm.

(iii) Egg-bearing spiny lobster in the Caribbean EEZ must be returned to the water unharmed. An egg-bearing spiny lobster may be retained in a trap, provided the trap is returned immediately to the water. An egg-bearing spiny lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(iv) No person may fish for or possess on board a fishing vessel a Caribbean queen conch in or from the Caribbean EEZ, in the area east of 64°34′ W. longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands, except during November 1 through May 31.

(v) No person may fish for or possess midnight parrotfish, blue parrotfish, or rainbow parrotfish in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released with a minimum of harm.

(2) *Gulf.* (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the Gulf EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Goliath grouper may not be harvested or possessed in or from the Gulf EEZ.

(iii) Red drum and Nassau grouper may not be harvested or possessed in or from the Gulf EEZ. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

(3) *South Atlantic.* (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the South Atlantic EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Goliath grouper and Nassau grouper may not be harvested or possessed in or from the South Atlantic EEZ. Goliath grouper and Nassau grouper taken in the South Atlantic EEZ incidentally by hook-and-line must be released immediately by cutting the line without removing the fish from the water.

(iii) Wild live rock may not be harvested or possessed in the South Atlantic EEZ.

(iv) It is intended that no female golden crabs in or from the South Atlantic EEZ be retained on board a vessel and that any female golden crab in or from the South Atlantic EEZ be released in a manner that will ensure maximum probability of survival. However, to accommodate legitimate incidental catch and retention, the number of female golden crabs in or from the South Atlantic EEZ retained on board a vessel may not exceed 0.5 percent, by number, of all golden crabs on board. See § 622.45(f)(1) regarding the prohibition of sale of female golden crabs.

(v) South Atlantic snapper-grouper may not be possessed in whole, gutted, or filleted form by a person aboard a vessel fishing for or possessing golden crab in or from the South Atlantic EEZ or possessing a golden crab trap in the South Atlantic. Only the head, fins, and backbone (collectively the ''rack'') of South Atlantic snapper-grouper may be possessed for use as bait.

(vi) Red snapper may not be harvested or possessed in or from the South Atlantic EEZ. Such fish caught in the South Atlantic EEZ must be released immediately with a minimum of harm. In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply in the South Atlantic, regardless of where such fish are harvested, *i.e.*, in State or Federal waters.

(vii) Speckled hind and warsaw grouper may not be harvested or possessed in or from the South Atlantic EEZ. Such fish caught in the South Atlantic EEZ must be released immediately with a minimum of harm. These restrictions also apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, *i.e.*, in State or Federal waters.

(viii) Octocoral may not be harvested or possessed in or from the portion of the South Atlantic EEZ managed under the FMP. Octocoral collected in the portion of the South Atlantic EEZ managed under the FMP must be released immediately with a minimum of harm.

(c) *Limited-harvest species.* A person who fishes in the EEZ may not combine a harvest limitation specified in this paragraph (c) with a harvest limitation applicable to state waters. A species subject to a harvest limitation specified in this paragraph (c) taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ.

(1) *Cobia.* No person may possess more than two cobia per day in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, regardless of the number of trips or duration of a trip.

(2) *Cubera snapper.* No person may harvest more than two cubera snapper measuring 30 inches (76.2 cm), TL, or larger, per day in the South Atlantic EEZ off Florida and no more than two such cubera snapper in or from the South Atlantic EEZ off Florida may be possessed on board a vessel at any time.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 62 FR 13988, Mar. 25, 1997; 63 FR 10567, Mar. 4, 1998; 70 FR 62081, Oct. 28, 2005; 73 FR 58060, Oct. 6, 2008; 75 FR 76889, Dec. 9, 2010; 75 FR 82293, Dec. 30, 2010; 76 FR 23908, Apr. 29, 2011; 76 FR 30554, May 26, 2011; 76 FR 82186, 82410, Dec. 30, 2011; 77 FR 4494, Jan. 30, 2012]

EFFECTIVE DATE NOTE: At 77 FR 51941, Aug. 28, 2012, § 622.32, paragraph (b)(3)(vi) was suspended, effective Aug. 28, 2012, through Dec. 31, 2012.

EFFECTIVE DATE NOTE: At 76 FR 82052, Dec. 29, 2011, § 622.32 was amended by revising the first sentence of paragraph (b)(2)(iii), however this amendment was not given an effective date. For the convenience of the user, the revised text is set forth as follows:

§ 622.32 Prohibited and limited-harvest species.

* * * * *

(b) * * *

(2) * * *

(iii) Red drum may not be harvested or possessed in or from the Gulf EEZ. * * *

* * * * *

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Seasonal closures*. In addition to the other restrictions specified in this paragraph (a), fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in the closed areas specified in paragraphs (a)(1), (2), (3), and (8) of this section.

(1) *Mutton snapper spawning aggregation area*. From March 1 through June 30, each year, fishing is prohibited in that part of the following area that is in the EEZ. The area is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	17°37.8′	64°53.0′
B	17°39.0′	64°53.0′
C	17°39.0′	64°50.5′
D	17°38.1′	64°50.5′
E	17°37.8′	64°52.5′
A	17°37.8′	64°53.0′

(2) *Red hind spawning aggregation areas*. From December 1 through February 28, each year, fishing is prohibited in those parts of the following areas that are in the EEZ. Each area is bounded by rhumb lines connecting, in order, the points listed.

(i) East of St. Croix.

Point	North lat.	West long.
A	17°50.2′	64°27.9′
B	17°50.1′	64°26.1′
C	17°49.2′	64°25.8′
D	17°48.6′	64°25.8′
E	17°48.1′	64°26.1′
F	17°47.5′	64°26.9′
A	17°50.2′	64°27.9′

(ii) *West of Puerto Rico*—(A) [Reserved]

(B) *Tourmaline Bank*.

Point	North lat.	West long.
A	18°11.2′	67°22.4′
B	18°11.2′	67°19.2′
C	18°08.2′	67°19.2′
D	18°08.2′	67°22.4′
A	18°11.2′	67°22.4′

(C) *Abrir La Sierra Bank*.

Point	North lat.	West long.
A	18°06.5′	67°26.9′
B	18°06.5′	67°23.9′
C	18°03.5′	67°23.9′
D	18°03.5′	67°26.9′
A	18°06.5′	67°26.9′

(3) *Grammanik Bank closed area*. (i) The Grammanik Bank closed area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	18°11.898′	64°56.328′
B	18°11.645′	64°56.225′
C	18°11.058′	64°57.810′
D	18°11.311′	64°57.913′
A	18°11.898′	64°56.328′

(ii) From February 1 through April 30, each year, no person may fish for or possess any species of fish, except highly migratory species, in or from the Grammanik Bank closed area. This prohibition on possession does not apply to such fish harvested and landed ashore prior to the closure. For the purpose of paragraph (a)(4) of this section, ''fish'' means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. ''Highly migratory species'' means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Appendix A to part 635 of this title); and white marlin, blue marlin, sailfish, and longbill spearfish.

(4) *Red, black, tiger, yellowfin, or yellowedge grouper*. From February 1 through April 30, each year, no person may fish for or possess red, black, tiger, yellowfin, or yellowedge grouper in or from the Caribbean EEZ. This prohibition on possession does not

apply to such grouper harvested and landed ashore prior to the closure.

(5) *Additional red hind closure*. From December 1 through the last day of February, each year, no person may fish for or possess red hind in or from the Caribbean EEZ west of 67°10′ W. longitude. This prohibition on possession does not apply to red hind harvested and landed ashore prior to the closure.

(6) *Vermilion, black, silk, or blackfin snapper*. From October 1 through December 31, each year, no person may fish for or possess vermilion, black, silk, or blackfin snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(7) *Lane or mutton snapper*. From April 1 through June 30, each year, no person may fish for or possess lane or mutton snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(8) *Bajo de Sico closed area*. (i) The Bajo de Sico closed area is bounded by rhumb lines connecting, in order the following points:

Point A	North lat.	West long.
A	18°15.7′	67°26.4′
B	18°15.7′	67°23.2′
C	18°12.7′	67°23.2′
D	18°12.7′	67°26.4′
A	18°15.7′	67°26.4′

(ii) From October 1 through March 31, each year, no person may fish for or possess any Caribbean reef fish, as listed in Table 2 of Appendix A to part 622, in or from those parts of the Bajo de Sico closed area that are in the EEZ. The prohibition on possession does not apply to such Caribbean reef fish harvested and landed ashore prior to the closure.

(iii) Anchoring, by fishing vessels, is prohibited year-round in those parts of the Bajo de Sico closed area that are in the EEZ.

(b) *Year-round area closures*—

(1) *Hind Bank Marine Conservation District (MCD)*. The following activities are prohibited within the Hind Bank MCD: Fishing for any species, and anchoring by fishing vessels. The Hind Bank MCD is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	18°13.2′	65°06.0′
B	18°13.2′	64°59.0′
C	18°11.8′	64°59.0′
D	18°10.7′	65°06.0′
A	18°13.2′	65°06.0′

(2) [Reserved]

(c) *Caribbean EEZ area closure related to Deepwater Horizon oil spill*. Effective [May 11, 2010, all fishing is prohibited in the portion of the Caribbean EEZ identified in the map shown on the NMFS Web site: *http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm*.

(d) *Queen conch closure in the Caribbean EEZ*. (1) Pursuant to the procedures and criteria established in the FMP for Queen Conch Resources in Puerto Rico and the U.S. Virgin Islands, when the ACL, as specified in § 622.49(c)(2)(i)(A), is reached or projected to be reached, the Regional Administrator will close the Caribbean EEZ to the harvest and possession of queen conch, in the area east of 64°34′ W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands, by filing a notification of closure with the Office of the Federal Register.

(2) During the closure, as specified in paragraph (d)(1) of this section, no person may fish for or possess on board a fishing vessel, a Caribbean queen conch, in or from the Caribbean EEZ, in the area east of 64°34′ W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands.

[64 FR 60133, Nov. 4, 1999, as amended at 70 FR 62081, Oct. 28, 2005; 73 FR 68361, Nov. 18, 2008; 75 FR 27218, May 14, 2010; 75 FR 67251, Nov. 2, 2010; 76 FR 23908, Apr. 29, 2011; 76 FR 30554, May 26, 2011; 76 FR 82410, Dec. 30, 2011]

§ 622.34 Gulf EEZ seasonal and/or area closures.

(a) *Alabama SMZ*. The Alabama SMZ consists of artificial reefs and surrounding areas. In the Alabama SMZ, fishing by a vessel that is operating as a charter vessel or headboat, a vessel that does not have a commercial permit for Gulf reef fish, as required under § 622.4(a)(2), or a vessel with such a permit fishing for Gulf reef fish is limited

to hook-and-line gear with three or fewer hooks per line and spearfishing gear. A person aboard a vessel that uses on any trip gear other than hook-and-line gear with three or fewer hooks per line and spearfishing gear in the Alabama SMZ is limited on that trip to the bag limits for Gulf reef fish specified in § 622.39(b) and, for Gulf reef fish for which no bag limit is specified in § 622.39(b), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The Alabama SMZ is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	30°02.5′	88°07.7′
B	30°02.6′	87°59.3′
C	29°55.0′	87°55.5′
D	29°54.5′	88°07.5′
A	30°02.5′	88°07.7′

(b) *Florida middle grounds HAPC*. Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited year round in the area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°42.5′	84°24.8′
B	28°42.5′	84°16.3′
C	28°11.0′	84°00.0′
D	28°11.0′	84°07.0′
E	28°26.6′	84°24.8′
A	28°42.5′	84°24.8′

(c) *Reef fish longline and buoy gear restricted area*. A person aboard a vessel that uses, on any trip, longline or buoy gear in the longline and buoy gear restricted area is limited on that trip to the bag limits for Gulf reef fish specified in § 622.39(b)(1) and, for Gulf reef fish for which no bag limit is specified in § 622.39(b)(1), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The longline and buoy gear restricted area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 1, in appendix B of this part.

(d) *Tortugas marine reserves HAPC*. The following activities are prohibited within the Tortugas marine reserves HAPC: Fishing for any species and bottom anchoring by fishing vessels.

(1) *EEZ portion of Tortugas North*. The area is bounded by rhumb lines connecting the following points: From point A at 24°40′00″ N. lat., 83°06′00″ W. long. to point B at 24°46′00″ N. lat., 83°06′00″ W. long. to point C at 24°46′00″ N. lat., 83°00′00″ W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11434, to point A at 24°40′00″ N. lat., 83°06′00″ W. long.

(2) *Tortugas South*. The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33′00″	83°09′00″
B	24°33′00″	83°05′00″
C	24°18′00″	83°05′00″
D	24°18′00″	83°09′00″
A	24°33′00″	83°09′00″

(e) *Shrimp/stone crab separation zones*. Five zones are established in the Gulf EEZ and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. Although Zone II is entirely within Florida's waters, it is included in this paragraph (e) for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. Geographical coordinates of the points referred to in this paragraph (e) are as follows:

Point	North lat.	West long.
A	28°59′30″	82°45′36″
B	28°59′30″	83°00′10″
C	28°26′01″	82°59′47″
D	28°26′01″	82°56′54″
E	28°41′39″	82°55′25″
F	28°41′39″	82°56′09″
G	28°48′56″	82°56′19″
H	28°53′51″	82°51′19″
I[1]	28°54′43″	82°44′52″
J[2]	28°51′09″	82°44′00″
K	28°50′59″	82°54′16″
L	28°41′39″	82°53′56″
M[3]	28°41′39″	82°38′46″
N	28°41′39″	82°53′12″
O	28°30′51″	82°55′11″
P	28°40′00″	82°53′08″
Q	28°40′00″	82°47′58″
R	28°35′14″	82°47′47″
S	28°30′51″	82°52′55″
T	28°27′46″	82°55′09″
U	28°30′51″	82°52′09″

[1] Crystal River Entrance Light 1A.
[2] Long Pt. (southwest tip).
[3] Shoreline.

(1) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D,

T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ from October 5 through May 20, each year.

(2) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M.

(3) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ from October 5 through May 20, each year.

(4) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(i) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ from October 5 through December 1 and from April 2 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone IV that is in the EEZ from December 2 through April 1, each year.

(5) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(i) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ from October 5 through November 30 and from March 16 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone V that is in the EEZ from December 1 through March 15, each year.

(f) *Southwest Florida seasonal trawl closure*. From January 1 to 1 hour after official sunset on May 20, each year, trawling, including trawling for live bait, is prohibited in that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
B[1]	26°16.0′	81°58.5′
C	26°00.0′	82°04.0′
D	25°09.0′	81°47.6′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

(g) *Reef fish stressed area*. The stressed area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 2, in Appendix B of this part.

(1) A powerhead may not be used in the stressed area to take Gulf reef fish. Possession of a powerhead and a mutilated Gulf reef fish in the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area. The provisions of this paragraph do not apply to hogfish.

(2) A roller trawl may not be used in the stressed area. Roller trawl means a trawl net equipped with a series of large, solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, that is, in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

(h) *Texas closure*. (1) From 30 minutes after official sunset on May 15 to 30 minutes after official sunset on July 15, trawling, except trawling for royal red shrimp beyond the 100-fathom (183-m) depth contour, is prohibited in the Gulf EEZ off Texas.

(2) In accordance with the procedures and restrictions of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, the RA may adjust the closing and/or opening date of the Texas closure to provide an earlier, later, shorter, or longer closure, but the duration of the closure may not exceed 90 days or be less than 45 days. Notification of the adjustment of the closing or opening date will be published in the FEDERAL REGISTER.

(i) *Tortugas shrimp sanctuary*. (1) The Tortugas shrimp sanctuary is closed to trawling. The Tortugas shrimp sanctuary is that part of the EEZ off Florida shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
N[1]	25°52.9′	81°37.9′
F	24°50.7′	81°51.3′
G[2]	24°40.1′	82°26.7′
H[3]	24°34.7′	82°35.2′
P[4]	24°35.0′	82°08.0′

[1] Coon Key Light.
[2] New Ground Rocks Light.

[3] Rebecca Shoal Light.
[4] Marquessas Keys.

(2) The provisions of paragraph (i)(1) of this section notwithstanding—

(i) Effective from April 11 through September 30, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point T at 24°47.8′ N. lat., 82°01.0′ W. long. to point U at 24°43.83′ N. lat., 82°01.0′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point V at 24°42.55′ N. lat., 82°15.0′ W. long.; thence north to point W at 24°43.6′ N. lat., 82°15.0′ W. long.

(ii) Effective from April 11 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point W to point V, both points as specified in paragraph (i)(2)(i) of this section, to point G, as specified in paragraph (i)(1) of this section.

(iii) Effective from May 26 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point F, as specified in paragraph (i)(1) of this section, to point Q at 24°46.7′ N. lat., 81°52.2′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (i)(2)(i) of this section.

(j) *West and East Flower Garden Banks HAPC*. The following activities are prohibited year-round in the HAPC: Fishing with a bottom longline, bottom trawl, buoy gear, dredge, pot, or trap and bottom anchoring by fishing vessels.

(1) *West Flower Garden Bank*. West Flower Garden Bank is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°55′22.8″	93°53′09.6″
B	27°55′22.8″	93°46′46.0″
C	27°49′03.0″	93°46′46.0″
D	27°49′03.0″	93°53′09.6″
A	27°55′22.8″	93°53′09.6″

(2) *East Flower Garden Bank*. East Flower Garden Bank is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°59′14.4″	93°38′58.2″
B	27°59′14.4″	93°34′03.5″
C	27°52′36.5″	93°34′03.5″
D	27°52′36.5″	93°38′58.2″
A	27°59′14.4″	93°38′58.2″

(k) *Closure provisions applicable to the Madison and Swanson sites, Steamboat Lumps, and the Edges*.—(1) *Descriptions of areas*. (i) The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°17′	85°50′
B	29°17′	85°38′
C	29°06′	85°38′
D	29°06′	85°50′
A	29°17′	85°50′

(ii) Steamboat Lumps is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°14′	84°48′
B	28°14′	84°37′
C	28°03′	84°37′
D	28°03′	84°48′
A	28°14′	84°48′

(iii) The Edges is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°51′	85°16′
B	28°51′	85°04′
C	28°14′	84°42′
D	28°14′	84°54′
A	28°51′	85°16′

(2) Within the Madison and Swanson sites and Steamboat Lumps, possession of Gulf reef fish is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(4) of this section.

(3) Within the Madison and Swanson sites and Steamboat Lumps during November through April, and within the Edges during January through April, all fishing is prohibited, and possession of any fish species is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(4) of this section. The provisions of this paragraph, (k)(3), do not apply to highly migratory species.

(4) For the purpose of paragraph (k) of this section, transit means non-stop progression through the area; fishing gear appropriately stowed means -

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl net may remain on deck, but trawl doors must be disconnected from the trawl gear and must be secured.

(iii) A gillnet must be left on the drum. Any additional gillnets not attached to the drum must be stowed below deck.

(iv) A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (i.e., hook, leader, sinker, flasher, or bait) must be disconnected and stowed separately from the rod and reel. Sinkers must be disconnected from the down rigger and stowed separately.

(5) Within the Madison and Swanson sites and Steamboat Lumps, during May through October, surface trolling is the only allowable fishing activity. For the purpose of this paragraph (k)(5), surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(6) For the purpose of paragraph (k) of this section, fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Highly migratory species means tuna species, marlin (*Tetrapturus spp.* and *Makaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*).

(l) Closures of the Gulf shrimp fishery to reduce red snapper bycatch. During a closure implemented in accordance with this paragraph (l), trawling is prohibited within the specified closed area(s).

(1) *Procedure for determining need for and extent of closures.* Each year, in accordance with the applicable framework procedure established in the FMP for the Shrimp Fishery in the Gulf of Mexico (FMP), the RA will, if necessary, establish a seasonal area closure for the shrimp fishery in all or a portion of the areas of the Gulf EEZ specified in paragraphs (l)(2) through (l)(4) of this section. The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and associated shrimp trawl bycatch mortality on red snapper in the 10–30 fathom area of statistical zones 10–21, compared to the 67-percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001–2003 established in the FMP (which corresponds in terms of annual shrimp effort to 27,328 days fished). The framework procedure provides for adjustment of this target reduction level, consistent with the red snapper stock rebuilding plan and the findings of subsequent stock assessments, via appropriate rulemaking. The assessment will use shrimp effort data for the most recent 12-month period available and will include a recommendation regarding the geographical scope and duration of the closure. The Southeast Fisheries Science Center's assessment will be provided to the RA on or about March 1 of each year. If the RA determines that a closure is necessary, the closure falls within the scope of the potential closures evaluated in the FMP, and good cause exists to waive notice and comment, NMFS will implement the closure by publication of a final rule in the FEDERAL REGISTER. If such good cause waiver is not justified, NMFS

will implement the closure via appropriate notice and comment rulemaking. NMFS intends that any closure implemented consistent with this paragraph (l) will begin on the same date and time as the Texas closure unless circumstances dictate otherwise.

(2) *Eastern zone*. The eastern zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°14′	88°57′
B	29°24′	88°34′
C	29°34′	87°38′
D	30°04′	87°00′
E	30°04′	88°41′
F	29°36′	88°37′
G	29°21′	88°59′
A	29°14′	88°57′

(3) *Louisiana zone*. The Louisiana zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1′	93°41.4′
B	29°09.25′	92°36′
C	28°35′	90°44′
D	29°09′	89°48′
E	28°57′	89°34′
F	28°40′	90°09′
G	28°18′	90°33′
H	28°25′	91°37′
I	28°21.7′	93°28.4′
A	29°09.1′	93°41.4′

(4) *Texas zone*. The Texas zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1′	93°41.4′
B	28°44′	95°15′
C	28°11′	96°17′
D	27°44′	96°53′
E	27°02′	97°11′
F	26°00.5′	96°57.3′
G	26°00.5′	96°35.85′
H	26°24′	96°36′
I	26°49′	96°52′
J	27°12′	96°51′
K	27°39′	96°33′
L	27°55′	96°04′
M	28°21.7′	93°28.4′
A	29°09.1′	93°41.4′

(m) *Seasonal closure of the recreational sector for red snapper*. The recreational sector for red snapper in or from the Gulf EEZ is closed from January 1 through May 31, each year. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

(n) *Gulf EEZ area closure related to Deepwater Horizon oil spill*. Effective [May 11, 2010, all fishing is prohibited in the portion of the Gulf EEZ identified in the map shown on the NMFS Web site: *http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm*.

(o) *Seasonal closure of the recreational sector for greater amberjack*. The recreational sector for greater amberjack in or from the Gulf EEZ is closed from June 1 through July 31, each year. During the closure, the bag and possession limit for greater amberjack in or from the Gulf EEZ is zero.

(p) *Closures of the Gulf group king mackerel gillnet fishery*. The gillnet fishery for Gulf group king mackerel in or from the Gulf EEZ is closed each fishing year from July 1 until 6:00 a.m. on the day after the Martin Luther King Jr. Federal holiday. The gillnet fishery also is closed during all subsequent weekends and observed Federal holidays, except for the first weekend following the Martin Luther King Jr. holiday which will remain open to the gillnet fishery provided a notification of closure of that fishery has not been filed under § 622.43(a). Weekend closures are effective from 6:00 a.m. Saturday to 6:00 a.m. Monday. Holiday closures are effective from 6:00 a.m. on the observed Federal holiday to 6:00 a.m. the following day. All times are eastern standard time. During these closures, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the southern Florida west coast subzone may not fish for or possess Gulf group king mackerel.

(q) *Prohibitions applicable to bottom longline fishing for Gulf reef fish*. (1) From June through August each year, bottom longlining for Gulf reef fish is prohibited in the portion of the Gulf EEZ east of 85°30′ W. long. that is shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°58.70′	85°30.00′
B	28°59.25′	85°26.70′
C	28°57.00′	85°13.80′
D	28°47.40′	85°3.90′
E	28°19.50′	84°43.00′
F	28°0.80′	84°20.00′
G	26°48.80′	83°40.00′
H	25°17.00′	83°19.00′
I	24°54.00′	83°21.00′

Point	North lat.	West long.
J	24°29.50′	83°12.30′
K	24°26.50′	83°00.00′

(2) Within the prohibited area and time period specified in paragraph (q)(1) of this section, a vessel with bottom longline gear on board may not possess Gulf reef fish unless the bottom longline gear is appropriately stowed, and a vessel that is using bottom longline gear to fish for species other than Gulf reef fish may not possess Gulf reef fish. For the purposes of paragraph (q) of this section, appropriately stowed means that a longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck; hooks cannot be baited; and all buoys must be disconnected from the gear but may remain on deck.

(3) Within the Gulf EEZ east of 85°30′ W. long., a vessel for which a valid eastern Gulf reef fish bottom longline endorsement has been issued that is fishing bottom longline gear or has bottom longline gear on board cannot possess more than a total of 1000 hooks including hooks on board the vessel and hooks being fished and cannot possess more than 750 hooks rigged for fishing at any given time. For the purpose of this paragraph, ''hooks rigged for fishing'' means hooks attached to a line or other device capable of attaching to the mainline of the longline.

(r) *Pulley Ridge HAPC*. Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the area of the HAPC bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°58′18″	83°38′33″
B	24°58′18″	83°37′00″
C	24°41′11″	83°37′00″
D	24°40′00″	83°41′22″
E	24°43′55″	83°47′15″
A	24°58′18″	83°38′33″

(s) *Stetson Bank HAPC*. Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the HAPC, which is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°10′38.3″	94°18′36.5″
B	28°10′38.3″	94°17′06.3″
C	28°09′18.6″	94°17′06.3″
D	28°09′18.6″	94°18′36.5″
A	28°10′38.3″	94°18′36.5″

(t) *McGrail Bank HAPC*. Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the HAPC, which is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°59′06.0″	92°37′19.2″
B	27°59′06.0″	92°32′17.4″
C	27°55′55.5″	92°32′17.4″
D	27°55′55.5″	92°37′19.2″
A	27°59′06.0″	92°37′19.2″

(u) *Seasonal closure of the recreational fishery for shallow-water grouper (SWG)*. The recreational fishery for SWG, in or from the Gulf EEZ, is closed from February 1 through March 31, each year. During the closure, the bag and possession limit for SWG in or from the Gulf EEZ is zero.

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.34, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 622.35 Atlantic EEZ seasonal and/or area closures.

(a) *Allowable octocoral closed area*. No person may harvest or possess allowable octocoral in the South Atlantic EEZ north of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL).

(b) *Longline closed areas*. A longline may not be used to fish in the EEZ for South Atlantic snapper-grouper south of 27°10′ N. lat. (due east of the entrance to St. Lucie Inlet, FL); or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location. A person aboard a vessel with a longline on board that fishes on a trip in the South Atlantic EEZ south of 27°10′ N. lat., or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), is limited on that trip to the

bag limit for South Atlantic snapper-grouper for which a bag limit is specified in § 622.39(d)(1), and to zero for all other South Atlantic snapper-grouper. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(c) *Oculina Bank*—(1) *HAPC*. The Oculina Bank HAPC encompasses an area bounded on the north by 28°30′ N. lat., on the south by 27°30′ N. lat., on the east by the 100-fathom (183-m) contour, as shown on the latest edition of NOAA chart 11460, and on the west by 80°00′ W. long.; and two adjacent areas: the first bounded on the north by 28°30′ N. lat., on the south by 28°29′ N. lat., on the east by 80°00′ W. long., and on the west by 80°03′ W. long.; and the second bounded on the north by 28°17′ N. lat., on the south by 28°16′ N. lat., on the east by 80°00′ W. long., and on the west by 80°03′ W. long. In the Oculina Bank HAPC, no person may:

(i) Use a bottom longline, bottom trawl, dredge, pot, or trap.

(ii) If aboard a fishing vessel, anchor, use an anchor and chain, or use a grapple and chain.

(iii) Fish for rock shrimp or possess rock shrimp in or from the area on board a fishing vessel.

(2) *Experimental closed area*. Within the Oculina Bank HAPC, the experimental closed area is bounded on the north by 27°53′ N. lat., on the south by 27°30′ N. lat., on the east by 79°56′ W. long., and on the west by 80°00′ W. long. No person may fish for South Atlantic snapper-grouper in the experimental closed area, and no person may retain South Atlantic snapper-grouper in or from the area. In the experimental closed area, any South Atlantic snapper-grouper taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

(d) *South Atlantic shrimp cold weather closure*. (1) Pursuant to the procedures and criteria established in the FMP for the Shrimp Fishery of the South Atlantic Region, when Florida, Georgia, North Carolina, or South Carolina closes all or a portion of its waters of the South Atlantic to the harvest of brown, pink, and white shrimp, the Assistant Administrator may concurrently close the South Atlantic EEZ adjacent to the closed state waters by filing a notification of closure with the Office of the Federal Register. Closure of the adjacent EEZ will be effective until the ending date of the closure in state waters, but may be ended earlier based on the state's request. In the latter case, the Assistant Administrator will terminate a closure of the EEZ by filing a notification to that effect with the Office of the Federal Register.

(2) During a closure, as specified in paragraph (d)(1) of this section—

(i) No person may trawl for brown shrimp, pink shrimp, or white shrimp in the closed portion of the EEZ (closed area); and no person may possess on board a fishing vessel brown shrimp, pink shrimp, or white shrimp in or from a closed area, except as authorized in paragraph (d)(2)(iii) of this section.

(ii) No person aboard a vessel trawling in that part of a closed area that is within 25 nm of the baseline from which the territorial sea is measured may use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

(iii) Brown shrimp, pink shrimp, or white shrimp may be possessed on board a fishing vessel in a closed area, provided the vessel is in transit and all trawl nets with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, are stowed below deck while transiting the closed area. For the purpose of this paragraph, a vessel is in transit when it is on a direct and continuous course through a closed area.

(e) *SMZs*. (1) The SMZs consist of artificial reefs and surrounding areas as follows:

(i) *Paradise Reef* is bounded on the north by 33°31.59′ N. lat.; on the south by 33°30.51′ N. lat.; on the east by 78°57.55′ W. long.; and on the west by 78°58.85′ W. long.

(ii) *Ten Mile Reef* is bounded on the north by 33°26.65′ N. lat.; on the south

by 33°24.80′ N. lat.; on the east by 78°51.08′ W. long.; and on the west by 78°52.97′ W. long.

(iii) *Pawleys Island Reef* is bounded on the north by 33°26.58′ N. lat.; on the south by 33°25.76′ N. lat.; on the east by 79°00.29′ W. long.; and on the west by 79°01.24′ W. long.

(iv) *Georgetown Reef* is bounded on the north by 33°14.90′ N. lat.; on the south by 33°13.85′ N. lat.; on the east by 78°59.45′ W. long.; and on the west by 79°00.65′ W. long.

(v) *Capers Reef* is bounded on the north by 32°45.45′ N. lat.; on the south by 32°43.91′ N. lat.; on the east by 79°33.81′ W. long.; and on the west by 79°35.10′ W. long.

(vi) *Kiawah Reef* is bounded on the north by 32°29.78′ N. lat.; on the south by 32°28.25′ N. lat.; on the east by 79°59.00′ W. long.; and on the west by 80°00.95′ W. long.

(vii) *Edisto Offshore Reef* is bounded on the north by 32°15.30′ N. lat.; on the south by 32°13.90′ N. lat.; on the east by 79°50.25′ W. long.; and on the west by 79°51.45′ W. long.

(viii) *Hunting Island Reef* is bounded on the north by 32°13.72′ N. lat.; on the south by 32°12.30′ N. lat.; on the east by 80°19.23′ W. long.; and on the west by 80°21.00′ W. long.

(ix) *Fripp Island Reef* is bounded on the north by 32°15.92′ N. lat.; on the south by 32°14.75′ N. lat.; on the east by 80°21.62′ W. long.; and on the west by 80°22.90′ W. long.

(x) *Betsy Ross Reef* is bounded on the north by 32°03.60′ N. lat.; on the south by 32°02.88′ N. lat.; on the east by 80°24.57′ W. long.; and on the west by 80°25.50′ W. long.

(xi) *Hilton Head Reef/Artificial Reef—T* is bounded on the north by 32°00.71′ N. lat.; on the south by 31°59.42′ N. lat.; on the east by 80°35.23′ W. long.; and on the west by 80°36.37′ W. long.

(xii) *Artificial Reef—A* is bounded on the north by 30°57.4′ N. lat.; on the south by 30°55.4′ N. lat.; on the east by 81°13.9′ W. long.; and on the west by 81°16.3′ W. long.

(xiii) *Artificial Reef—C* is bounded on the north by 30°52.0′ N. lat.; on the south by 30°50.0′ N. lat.; on the east by 81°08.5′ W. long.; and on the west by 81°10.9′ W. long.

(xiv) *Artificial Reef—G* is bounded on the north by 31°00.0′ N. lat.; on the south by 30°58.0′ N. lat.; on the east by 80°56.8′ W. long.; and on the west by 80°59.2′ W. long.

(xv) *Artificial Reef—F* is bounded on the north by 31°06.8′ N. lat.; on the south by 31°04.8′ N. lat.; on the east by 81°10.5′ W. long.; and on the west by 81°13.4′ W. long.

(xvi) *Artificial Reef—J* is bounded on the north by 31°36.7′ N. lat.; on the south by 31°34.7′ N. lat.; on the east by 80°47.3′ W. long.; and on the west by 80°50.1′ W. long.

(xvii) *Artificial Reef—L* is bounded on the north by 31°46.0′ N. lat.; on the south by 31°44.0′ N. lat.; on the east by 80°34.7′ W. long.; and on the west by 80°37.1′ W. long.

(xviii) *Artificial Reef—KC* is bounded on the north by 31°51.2′ N. lat.; on the south by 31°49.2′ N. lat.; on the east by 80°45.3′ W. long.; and on the west by 80°47.7′ W. long.

(xix) *Ft. Pierce Inshore Reef* is bounded on the north by 27°26.8′ N. lat.; on the south by 27°25.8′ N. lat.; on the east by 80°09.24′ W. long.; and on the west by 80°10.36′ W. long.

(xx) *Ft. Pierce Offshore Reef* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°23.68′	80°03.95′
B	27°22.80′	80°03.60′
C	27°23.94′	80°00.02′
D	27°24.85′	80°00.33′
A	27°23.68′	80°03.95′

(xxi) *Key Biscayne/Artificial Reef—H* is bounded on the north by 25°42.82′ N. lat.; on the south by 25°41.32′ N. lat.; on the east by 80°04.22′ W. long.; and on the west by 80°05.53′ W. long.

(xxii) *Little River Offshore Reef* is bounded on the north by 33°42.10′ N. lat.; on the south by 33°41.10′ N. lat.; on the east by 78°26.40′ W. long.; and on the west by 78°27.10′ W. long.

(xxiii) *BP–25 Reef* is bounded on the north by 33°21.70′ N. lat.; on the south by 33°20.70′ N. lat.; on the east by 78°24.80′ W. long.; and on the west by 78°25.60′ W. long.

(xxiv) *Vermilion Reef* is bounded on the north by 32°57.80′ N. lat.; on the south by 32°57.30′ N. lat.; on the east by

78°39.30′ W. long.; and on the west by 78°40.10′ W. long.

(xxv) *Cape Romaine Reef* is bounded on the north by 33°00.00′ N. lat.; on the south by 32°59.50′ N. lat.; on the east by 79°02.01′ W. long.; and on the west by 79°02.62′ W. long.

(xxvi) *Y–73 Reef* is bounded on the north by 32°33.20′ N. lat.; on the south by 32°32.70′ N. lat.; on the east by 79°19.10′ W. long.; and on the west by 79°19.70′ W. long.

(xxvii) *Eagles Nest Reef* is bounded on the north by 32°01.48′ N. lat.; on the south by 32°00.98′ N. lat.; on the east by 80°30.00′ W. long.; and on the west by 80°30.65′ W. long.

(xxviii) *Bill Perry Jr. Reef* is bounded on the north by 33°26.20′ N. lat.; on the south by 33°25.20′ N. lat.; on the east by 78°32.70′ W. long.; and on the west by 78°33.80′ W. long.

(xxix) *Comanche Reef* is bounded on the north by 32°27.40′ N. lat.; on the south by 32°26.90′ N. lat.; on the east by 79°18.80′ W. long.; and on the west by 79°19.60′ W. long.

(xxx) *Murrel's Inlet 60 Foot Reef* is bounded on the north by 33°17.50′ N. lat.; on the south by 33°16.50′ N. lat.; on the east by 78°44.67′ W. long.; and on the west by 78°45.98′ W. long.

(xxxi) *Georgetown 95 Foot Reef* is bounded on the north by 33°11.75′ N. lat.; on the south by 33°10.75′ N. lat.; on the east by 78°24.10′ W. long.; and on the west by 78°25.63′ W. long.

(xxxii) *New Georgetown 60 Foot Reef* is bounded on the north by 33°09.25′ N. lat.; on the south by 33°07.75′ N. lat.; on the east by 78°49.95′ W. long.; and on the west by 78°51.45′ W. long.

(xxxiii) *North Inlet 45 Foot Reef* is bounded on the north by 33°21.03′ N. lat.; on the south by 33°20.03′ N. lat.; on the east by 79°00.31′ W. long.; and on the west by 79°01.51′ W. long.

(xxxiv) *CJ Davidson Reef* is bounded on the north by 33°06.48′ N. lat.; on the south by 33°05.48′ N. lat.; on the east by 79°00.27′ W. long.; and on the west by 79°01.39′ W. long.

(xxxv) *Greenville Reef* is bounded on the north by 32°57.25′ N. lat.; on the south by 32°56.25′ N. lat.; on the east by 78°54.25′ W. long.; and on the west by 78°55.25′ W. long.

(xxxvi) *Charleston 60 Foot Reef* is bounded on the north by 32°33.60′ N. lat.; on the south by 32°32.60′ N. lat.; on the east by 79°39.70′ W. long.; and on the west by 79°40.90′ W. long.

(xxxvii) *Edisto 60 Foot Reef* is bounded on the north by 32°21.75′ N. lat.; on the south by 32°20.75′ N. lat.; on the east by 80°04.10′ W. longitude; and on the west by 80°05.70′ W. long.

(xxxviii) *Edisto 40 Foot Reef* is bounded on the north by 32°25.78′ N. lat.; on the south by 32°24.78′ N. lat.; on the east by 80°11.24′ W. long.; and on the west by 80°12.32′ W. long.

(xxxix) *Beaufort 45 Foot Reef* is bounded on the north by 32°07.65′ N. lat.; on the south by 32°06.65′ N. lat.; on the east by 80°28.80′ W. long.; and on the west by 80°29.80′ W. long.

(xl) *Artificial Reef—ALT* is bounded on the north by 31°18.6′ N. lat.; on the south by 31°16.6′ N. lat.; on the east by 81°07.0′ W. long.; and on the west by 81°09.4′ W. long.

(xli) *Artificial Reef—CAT* is bounded on the north by 31°40.2′ N. lat.; on the south by 31°38.2′ N. lat.; on the east by 80°56.2′ W. long.; and on the west by 80°58.6′ W. long.

(xlii) *Artificial Reef—CCA* is bounded on the north by 31°43.7′ N. lat.; on the south by 31°41.7′ N. lat.; on the east by 80°40.0′ W. long.; and on the west by 80°42.3′ W. long.

(xliii) *Artificial Reef—DRH* is bounded on the north by 31°18.0′ N. lat.; on the south by 31°16.0′ N. lat.; on the east by 80°56.6′ W. long.; and on the west by 80°59.0′ W. long.

(xliv) *Artificial Reef—DUA* is bounded on the north by 31°47.8′ N. lat.; on the south by 31°45.8′ N. lat.; on the east by 80°52.1′ W. long.; and on the west by 80°54.5′ W. long.

(xlv) *Artificial Reef—DW* is bounded on the north by 31°22.8′ N. lat.; on the south by 31°20.3′ N. lat.; on the east by 79°49.8′ W. long.; and on the west by 79°51.1′ W. long.

(xlvi) *Artificial Reef—KBY* is bounded on the north by 30°48.6′ N. lat.; on the south by 30°46.6′ N. lat.; on the east by 81°15.0′ W. long.; and on the west by 81°17.4′ W. long.

(xlvii) *Artificial Reef—KTK* is bounded on the north by 31°31.3′ N. lat.; on the south by 31°29.3′ N. lat.; on the east by 80°59.1′ W. long.; and on the west by 81°01.5′ W. long.

(xlviii) *Artificial Reef—MRY* is bounded on the north by 30°47.5′ N. lat.; on the south by 30°45.5′ N. lat.; on the east by 81°05.5′ W. long.; and on the west by 81°07.8′ W. long.

(xlix) *Artificial Reef—SAV* is bounded on the north by 31°55.4′ N. lat.; on the south by 31°53.4′ N. lat.; on the east by 80°45.2′ W. long.; and on the west by 80°47.6′ W. long.

(l) *Artificial Reef—SFC* is bounded on the north by 31°00.8′ N. lat.; on the south by 30°59.8′ N. lat.; on the east by 81°02.2′ W. long.; and on the west by 81°03.4′ W. long.

(li) *Artificial Reef—WW* is bounded on the north by 31°43.5′ N. lat.; on the south by 31°42.2′ N. lat.; on the east by 79°57.7′ W. long.; and on the west by 79°59.3′ W. long.

(2) To determine what restrictions apply in the SMZs listed in § 622.35(e)(1), follow this table:

IN SMZs SPECIFIED IN THE FOLLOWING PARAGRAPHS OF § 622.35	THESE RESTRICTIONS APPLY
(e)(1)(i) through (x), (e)(1)(xx), and (e)(1)(xxii) through (xxxix)	Use of a powerhead to take South Atlantic snapper-grouper is prohibited. Possession of a powerhead and a mutilated South Atlantic snapper-grouper in, or after having fished in, one of these SMZs constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ. Harvest and possession of a coastal migratory pelagic fish or a South Atlantic snapper-grouper is limited to the bag-limits specified in § 622.39(c)(1) and (d)(1), respectively.
(e)(1)(i) through (xviii) and (e)(1)(xxii) through (li)	Fishing may only be conducted with handline, rod and reel, and spearfishing gear.
(e)(1)(i) through (li)	Use of a sea bass pot or bottom longline is prohibited.
(e)(1)(xii) through (xviii) and (e)(1)(xl) through (li)	Possession of South Atlantic snapper-grouper taken with a powerhead is limited to the bag limits specified in § 622.39(d)(1).
(e)(1)(xix) and (e)(1)(xx)	A hydraulic or electric reel that is permanently affixed to the vessel is prohibited when fishing for South Atlantic snapper-grouper.
(e)(1)(xix) and (e)(1)(xxi)	Use of spearfishing gear is prohibited.

(f) *Golden crab trap closed areas*. In the golden crab northern zone, a golden crab trap may not be deployed in waters less than 900 ft (274 m) deep. In the golden crab middle and southern zones, a golden crab trap may not be deployed in waters less than 700 ft (213 m) deep. See § 622.17(b) for specification of the golden crab zones.

(g) *Pelagic sargassum area and seasonal restrictions*—(1) *Area limitations*. (i) No person may harvest pelagic sargassum in the South Atlantic EEZ between 36°33′01.0″ N. lat. (directly east from the Virginia/North Carolina boundary) and 34° N. lat., within 100 nautical miles east of the North Carolina coast.

(ii) No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ south of 34° N. lat.

(2) *Seasonal limitation*. No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ during the months of July through October. This prohibition on possession does not apply to pelagic sargassum that was harvested and landed ashore prior to the closed period.

(h) *Dolphin/wahoo closed areas*. (1) If pelagic longline gear is on board a vessel, a person aboard such vessel may not fish for or retain a dolphin or wahoo—

(i) In the Northeastern United States closed area from June 1 through June 30 each year. The Northeastern United States closed area is that portion of the EEZ between 40° N. lat. and 39° N. lat. from 68° W. long. to 74° W. long.

(ii) In the Charleston Bump closed area from February 1 through April 30 each year. The Charleston Bump closed area is that portion of the EEZ off North Carolina, South Carolina, and Georgia between 34° N. lat. and 31° N. lat. and west of 76° W. long.

(iii) In the East Florida Coast closed area year round. The East Florida Coast closed area is that portion of the EEZ off Georgia and the east coast of Florida from the inner boundary of the EEZ at 31° N. lat.; thence due east to 78° W. long.; thence by a rhumb line to 28°17′ N. lat., 79°12′ W. long.; thence proceeding in a southerly direction along the outer boundary of the EEZ to 24° N.

lat.; thence due west to 24° N. lat., 81°47′ W. long.; thence due north to the innermost boundary of the EEZ at 81°47′ W. long.

(2) A vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and gangions with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear.

(3) If a vessel is in a closed area during a time specified in paragraph (h)(1) of this section with pelagic longline gear on board, it is a rebuttable presumption that fish on board such vessel were taken with pelagic longline gear in the closed area.

(i) *MPAs*. (1) No person may fish for a South Atlantic snapper-grouper in an MPA, and no person may possess a South Atlantic snapper-grouper in an MPA. However, the prohibition on possession does not apply to a person aboard a vessel that is in transit with fishing gear appropriately stowed as specified in paragraph (i)(2) of this section. In addition to these restrictions, see § 635.21(d)(1)(iii) of this chapter regarding restrictions applicable within these MPAs for any vessel issued a permit under part 635 of this chapter that has longline gear on board. MPAs consist of deepwater areas as follows:

(i) *Snowy Grouper Wreck MPA* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	33°25′	77°04.75′
B	33°34.75′	76°51.3′
C	33°25.5′	76°46.5′
D	33°15.75′	77°00.0′
A	33°25′	77°04.75′

(ii) *Northern South Carolina MPA* is bounded on the north by 32°53.5′ N. lat.; on the south by 32°48.5′ N. lat.; on the east by 78°04.75′ W. long.; and on the west by 78°16.75′ W. long.

(iii) *Edisto MPA* is bounded on the north by 32°24′ N. lat.; on the south by 32°18.5′ N. lat.; on the east by 78°54.0′ W. long.; and on the west by 79°06.0′ W. long.

(iv) *Charleston Deep Artificial Reef MPA* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	32°04′	79°12′
B	32°08.5′	79°07.5′
C	32°06′	79°05′
D	32°01.5′	79°09.3′
A	32°04′	79°12′

(v) *Georgia MPA* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	31°43′	79°31′
B	31°43′	79°21′
C	31°34′	79°29′
D	31°34′	79°39′
A	31°43′	79°31′

(vi) *North Florida MPA* is bounded on the north by 30°29’ N. lat.; on the south by 30°19’ N. lat.; on the east by 80°02’ W. long.; and on the west by 80°14’ W. long.

(vii) *St. Lucie Hump MPA* is bounded on the north by 27°08’ N. lat.; on the south by 27°04’ N. lat.; on the east by 79°58’ W. long.; and on the west by 80°00’ W. long.

(viii) *East Hump MPA* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°36.5′	80°45.5′
B	24°32′	80°36′
C	24°27.5′	80°38.5′
D	24°32.5′	80°48′
A	24°36.5′	80°45.5′

(2) For the purpose of paragraph (i)(1) of this section, transit means direct, non-stop progression through the MPA. Fishing gear appropriately stowed means—

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl or try net may remain on deck, but trawl doors must be disconnected from such net and must be secured.

(iii) A gillnet, stab net, or trammel net must be left on the drum. Any additional such nets not attached to the drum must be stowed below deck.

(iv) Terminal gear (i.e., hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear, buoy gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. A rod and reel must be removed from the rod holder and stowed securely on or below deck.

(v) A crustacean trap, golden crab trap, or sea bass pot cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(j) *Seasonal closure of the recreational and commercial fisheries for gag and associated grouper species*. During January through April each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any SASWG (gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney). In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply in the South Atlantic, regardless of where such fish are harvested, i.e., in state or Federal waters.

(k) *Seasonal closure of the recreational fishery for vermilion snapper*. The recreational fishery for vermilion snapper in or from the South Atlantic EEZ is closed from November 1 through March 31, each year. In addition, for a person on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, this closure applies in the South Atlantic, regardless of where the fish are harvested, i.e., in state or Federal waters. During the closure, the bag and possession limit for vermilion snapper in or from the South Atlantic EEZ is zero.

(l) *Closures of the commercial and recreational sectors for red snapper*. The commercial and recreational sectors for red snapper are closed, except for a limited commercial season (7-day or less openings) and a limited recreational season (weekends consisting of Fridays, Saturdays, and Sundays only) determined by the RA. The Southeast Fisheries Science Center (SEFSC) will monitor commercial landings in-season to determine if the ACL has been harvested. If the SEFSC determined the ACL has not been harvested in the first 7-day opening, the RA may reopen the commercial sector for an additional limited time. If severe weather conditions exist, the RA may modify the opening and closing dates. The RA will determine when severe weather conditions exist, the duration of the severe weather conditions, and which geographic areas are deemed affected by severe weather conditions. If severe weather conditions exist or if NMFS determines a reopening of the commercial sector is possible, the RA will file a notification to that effect with the Office of the Federal Register, and announce via NOAA Weather Radio and Fishery Bulletin any change in the red snapper fishing seasons.

(m) *Atlantic EEZ area closure related to Deepwater Horizon oil spill*. Effective May 11, 2010, all fishing is prohibited in the portion of the South Atlantic EEZ identified in the map shown on the NMFS Web site: *http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm*.

(n) *Deepwater Coral HAPCs*—(1) *Locations*. The following areas are designated Deepwater Coral HAPCs:

(i) *Cape Lookout Lophelia Banks* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	34°24′37″	75°45′11″
1	34°10′26″	75°58′44″
2	34°05′47″	75°54′54″
3	34°21′02″	75°41′25″
Origin	34°24′37″	75°45′11″

(ii) *Cape Fear Lophelia Banks* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	33°38′49″	76°29′32″
1	33°32′21″	76°32′38″
2	33°29′49″	76°26′19″
3	33°36′09″	76°23′37″
Origin	33°38′49″	76°29′32″

(iii) *Stetson Reefs, Savannah and East Florida Lithotherms, and Miami Terrace (Stetson-Miami Terrace)* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	28°17′10″	79°00′00″
1	31°23′37″	79°00′00″
2	31°23′37″	77°16′21″
3	32°38′37″	77°16′21″
4	32°38′21″	77°34′06″
5	32°35′24″	77°37′54″
6	32°32′18″	77°40′26″
7	32°28′42″	77°44′10″
8	32°25′51″	77°47′43″
9	32°22′40″	77°52′05″
10	32°20′58″	77°56′29″
11	32°20′30″	77°57′50″
12	32°19′53″	78°00′49″
13	32°18′44″	78°04′35″
14	32°17′35″	78°07′48″
15	32°17′15″	78°10′41″
16	32°15′50″	78°14′09″
17	32°15′20″	78°15′25″
18	32°12′15″	78°16′37″
19	32°10′26″	78°18′09″
20	32°04′42″	78°21′27″
21	32°03′41″	78°24′07″
22	32°04′58″	78°29′19″
23	32°06′59″	78°30′48″
24	32°09′27″	78°31′31″
25	32°11′23″	78°32′47″
26	32°13′09″	78°34′04″
27	32°14′08″	78°34′36″
28	32°12′48″	78°36′34″
29	32°13′07″	78°39′07″
30	32°14′17″	78°40′01″
31	32°16′20″	78°40′18″
32	32°16′33″	78°42′32″
33	32°14′26″	78°43′23″
34	32°11′14″	78°45′42″
35	32°10′19″	78°49′08″
36	32°09′42″	78°52′54″
37	32°08′15″	78°56′11″
38	32°05′00″	79°00′30″
39	32°01′54″	79°02′49″
40	31°58′40″	79°04′51″
41	31°56′32″	79°06′48″
42	31°53′27″	79°09′18″
43	31°50′56″	79°11′29″
44	31°49′07″	79°13′35″
45	31°47′56″	79°16′08″
46	31°47′11″	79°16′30″
47	31°46′29″	79°16′25″
48	31°44′31″	79°17′24″
49	31°43′20″	79°18′27″
50	31°42′26″	79°20′41″
51	31°41′09″	79°22′26″
52	31°39′36″	79°23′59″
53	31°37′54″	79°25′29″
54	31°35′57″	79°27′14″
55	31°34′14″	79°28′24″
56	31°31′08″	79°29′59″
57	31°30′26″	79°29′52″
58	31°29′11″	79°30′11″
59	31°27′58″	79°31′41″
60	31°27′06″	79°32′08″
61	31°26′22″	79°32′48″
62	31°24′21″	79°33′51″
63	31°22′53″	79°34′41″
64	31°21′03″	79°36′01″
65	31°20′00″	79°37′12″
66	31°18′34″	79°38′15″
67	31°16′49″	79°38′36″
68	31°13′06″	79°38′19″
70	31°11′04″	79°38′39″
70	31°09′28″	79°39′09″
71	31°07′44″	79°40′21″
72	31°05′53″	79°41′27″
73	31°04′40″	79°42′09″
74	31°02′58″	79°42′28″
75	31°01′03″	79°42′40″
76	30°59′50″	79°42′43″
77	30°58′27″	79°42′43″
78	30°57′15″	79°42′50″
79	30°56′09″	79°43′28″
80	30°54′49″	79°44′53″
81	30°53′44″	79°46′24″
82	30°52′47″	79°47′40″
83	30°51′45″	79°48′16″
84	30°48′36″	79°49′02″
85	30°45′24″	79°49′55″
86	30°41′36″	79°51′31″
87	30°38′38″	79°52′23″
88	30°35′29″	79°52′54″
89	30°32′55″	79°54′19″
90	30°31′05″	79°55′27″
91	30°28′09″	79°56′06″
92	30°26′57″	79°56′34″
93	30°25′25″	79°57′36″
94	30°23′03″	79°58′25″
95	30°21′27″	79°59′24″
96	30°18′22″	80°00′09″
97	30°16′34″	80°00′33″
98	30°14′55″	80°00′23″
99	30°12′36″	80°01′44″
100	30°12′00″	80°01′49″
101	30°06′52″	80°01′58″
102	29°59′16″	80°04′11″
103	29°49′12″	80°05′44″
104	29°43′59″	80°06′24″
105	29°38′37″	80°06′53″
106	29°36′54″	80°07′18″
107	29°31′59″	80°07′32″
108	29°29′14″	80°07′18″
109	29°21′48″	80°05′01″
110	29°20′25″	80°04′29″
111	29°08′00″	79°59′43″
112	29°06′56″	79°59′07″
113	29°05′59″	79°58′44″
114	29°03′34″	79°57′37″
115	29°02′11″	79°56′59″
116	29°00′00″	79°55′32″
117	28°56′55″	79°54′22″
118	28°55′00″	79°53′31″
119	28°53′35″	79°52′51″
120	28°51′47″	79°52′07″
121	28°50′25″	79°51′27″
122	28°49′53″	79°51′20″
123	28°49′01″	79°51′20″
124	28°48′19″	79°51′10″
125	28°47′13″	79°50′59″
126	28°43′30″	79°50′36″
127	28°41′05″	79°50′04″
128	28°40′27″	79°50′07″
129	28°39′50″	79°49′56″
130	28°39′04″	79°49′58″
131	28°36′43″	79°49′35″
132	28°35′01″	79°49′24″
133	28°30′37″	79°48′35″
134	28°14′00″	79°46′20″
135	28°11′41″	79°46′12″
136	28°08′02″	79°45′45″
137	28°01′20″	79°45′20″
138	27°58′13″	79°44′51″
139	27°56′23″	79°44′53″
140	27°49′40″	79°44′25″

Point	North lat.	West long.
141	27°46′27″	79°44′22″
142	27°42′00″	79°44′33″
143	27°36′08″	79°44′58″
144	27°30′00″	79°45′29″
145	27°29′04″	79°45′47″
146	27°27′05″	79°45′54″
147	27°25′47″	79°45′57″
148	27°19′46″	79°45′14″
149	27°17′54″	79°45′12″
150	27°12′28″	79°45′00″
151	27°07′45″	79°46′07″
152	27°04′47″	79°46′29″
153	27°00′43″	79°46′39″
154	26°58′43″	79°46′28″
155	26°57′06″	79°46′32″
156	26°49′58″	79°46′54″
157	26°48′58″	79°46′56″
158	26°47′01″	79°47′09″
159	26°46′04″	79°47′09″
160	26°35′09″	79°48′01″
161	26°33′37″	79°48′21″
162	26°27′56″	79°49′09″
163	26°25′55″	79°49′30″
164	26°21′05″	79°50′03″
165	26°20′30″	79°50′20″
166	26°18′56″	79°50′17″
167	26°16′19″	79°54′06″
168	26°13′48″	79°54′48″
169	26°12′19″	79°55′37″
170	26°10′57″	79°57′05″
171	26°09′17″	79°58′45″
172	26°07′11″	80°00′22″
173	26°06′12″	80°00′33″
174	26°03′26″	80°01′02″
175	26°00′35″	80°01′13″
176	25°49′10″	80°00′38″
177	25°48′30″	80°00′23″
178	25°46′42″	79°59′14″
179	25°27′28″	80°02′26″
180	25°24′06″	80°01′44″
181	25°21′04″	80°01′27″
182	25°21′04″	79°42′04″

(B) The outer boundary of the EEZ in a northerly direction from Point 182 to the Origin.

(iv) *Pourtales Terrace* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	24°20′12″	80°43′50″
1	24°33′42″	80°34′23″
2	24°37′45″	80°31′20″
3	24°47′18″	80°23′08″
4	24°51′08″	80°27′58″
5	24°42′52″	80°35′51″
6	24°29′44″	80°49′45″
7	24°15′04″	81°07′52″
8	24°10′55″	80°58′11″

(B) The outer boundary of the EEZ in a northerly direction from Point 8 to the Origin.

(v) *Blake Ridge Diapir* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	32°32′28″	76°13′16″
1	32°30′44″	76°13′24″
2	32°30′37″	76°11′21″
3	32°32′21″	76°11′13″
Origin	32°32′28″	76°13′16″

(2) *Restrictions*. In the Deepwater Coral HAPCs specified in paragraph (n)(1) of this section, no person may:

(i) Use a bottom longline, trawl (midwater or bottom), dredge, pot, or trap.

(ii) If aboard a fishing vessel, anchor, use an anchor and chain, or use a grapple and chain.

(iii) Fish for coral or possess coral in or from the Deepwater Coral HAPC on board a fishing vessel.

(3) *Shrimp fishery access areas*. The provisions of paragraph (n)(2)(i) of this section notwithstanding, an owner or operator of a vessel for which a valid commercial vessel permit for rock shrimp (South Atlantic EEZ) has been issued may trawl for shrimp in the following portions of the Stetson-Miami Terrace Deepwater Coral HAPC:

(i) *Shrimp access area A* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	30°12′00″	80°01′49″
1	30°06′52″	80°01′58″
2	29°59′16″	80°04′11″
3	29°49′12″	80°05′44″
4	29°43′59″	80°06′24″
5	29°38′37″	80°06′53″
6	29°36′54″	80°07′18″
7	29°31′59″	80°07′32″
8	29°29′14″	80°07′18″
9	29°21′48″	80°05′01″
10	29°20′25″	80°04′29″
11	29°20′25″	80°03′11″
12	29°21′48″	80°03′52″
13	29°29′14″	80°06′08″
14	29°31′59″	80°06′23″
15	29°36′54″	80°06′00″
16	29°38′37″	80°05′43″
17	29°43′59″	80°05′14″
18	29°49′12″	80°04′35″
19	29°59′16″	80°03′01″
20	30°06′52″	80°00′46″
21	30°12′00″	80°00′42″
Origin	30°12′00″	80°01′49″

(ii) *Shrimp access area B* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	29°08′00″	79°59′43″
1	29°06′56″	79°59′07″
2	29°05′59″	79°58′44″
3	29°03′34″	79°57′37″

Point	North lat.	West long.
4	29°02′11″	79°56′59″
5	29°00′00″	79°55′32″
6	28°56′55″	79°54′22″
7	28°55′00″	79°53′31″
8	28°53′35″	79°52′51″
9	28°51′47″	79°52′07″
10	28°50′25″	79°51′27″
11	28°49′53″	79°51′20″
12	28°49′01″	79°51′20″
13	28°48′19″	79°51′10″
14	28°47′13″	79°50′59″
15	28°43′30″	79°50′36″
16	28°41′05″	79°50′04″
17	28°40′27″	79°50′07″
18	28°39′50″	79°49′56″
19	28°39′04″	79°49′58″
20	28°36′43″	79°49′35″
21	28°35′01″	79°49′24″
22	28°30′37″	79°48′35″
23	28°30′37″	79°47′27″
24	28°35′01″	79°48′16″
25	28°36′43″	79°48′27″
26	28°39′04″	79°48′50″
27	28°39′50″	79°48′48″
28	28°40′27″	79°48′58″
29	28°41′05″	79°48′56″
30	28°43′30″	79°49′28″
31	28°47′13″	79°49′51″
32	28°48′19″	79°50′01″
33	28°49′01″	79°50′13″
34	28°49′53″	79°50′12″
35	28°50′25″	79°50′17″
36	28°51′47″	79°50′58″
37	28°53′35″	79°51′43″
38	28°55′00″	79°52′22″
39	28°56′55″	79°53′14″
40	29°00′00″	79°54′24″
41	29°02′11″	79°55′50″
42	29°03′34″	79°56′29″
43	29°05′59″	79°57′35″
44	29°06′56″	79°57′59″
45	29°08′00″	79°58′34″
Origin	29°08′00″	79°59′43″

(iii) *Shrimp access area C* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	28°14′00″	79°46′20″
1	28°11′41″	79°46′12″
2	28°08′02″	79°45′45″
3	28°01′20″	79°45′20″
4	27°58′13″	79°44′51″
5	27°56′23″	79°44′53″
6	27°49′40″	79°44′25″
7	27°46′27″	79°44′22″
8	27°42′00″	79°44′33″
9	27°36′08″	79°44′58″
10	27°30′00″	79°45′29″
11	27°29′04″	79°45′47″
12	27°27′05″	79°45′54″
13	27°25′47″	79°45′57″
14	27°19′46″	79°45′14″
15	27°17′54″	79°45′12″
16	27°12′28″	79°45′00″
17	27°07′45″	79°46′07″
18	27°04′47″	79°46′29″
19	27°00′43″	79°46′39″
20	26°58′43″	79°46′28″
21	26°57′06″	79°46′32″
22	26°57′06″	79°44′52″
23	26°58′43″	79°44′47″
24	27°00′43″	79°44′58″
25	27°04′47″	79°44′48″
26	27°07′45″	79°44′26″
27	27°12′28″	79°43′19″
28	27°17′54″	79°43′31″
29	27°19′46″	79°43′33″
30	27°25′47″	79°44′15″
31	27°27′05″	79°44′12″
32	27°29′04″	79°44′06″
33	27°30′00″	79°43′48″
34	27°30′00″	79°44′22″
35	27°36′08″	79°43′50″
36	27°42′00″	79°43′25″
37	27°46′27″	79°43′14″
38	27°49′40″	79°43′17″
39	27°56′23″	79°43′45″
40	27°58′13″	79°43′43″
41	28°01′20″	79°44′11″
42	28°04′42″	79°44′25″
43	28°08′02″	79°44′37″
44	28°11′41″	79°45′04″
45	28°14′00″	79°45′12″
Origin	28°14′00″	79°46′20″

(iv) *Shrimp access area D* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	26°49′58″	79°46′54″
1	26°48′58″	79°46′56″
2	26°47′01″	79°47′09″
3	26°46′04″	79°47′09″
4	26°35′09″	79°48′01″
5	26°33′37″	79°48′21″
6	26°27′56″	79°49′09″
7	26°25′55″	79°49′30″
8	26°21′05″	79°50′03″
9	26°20′30″	79°50′20″
10	26°18′56″	79°50′17″
11	26°18′56″	79°48′37″
12	26°20′30″	79°48′40″
13	26°21′05″	79°48′08″
14	26°25′55″	79°47′49″
15	26°27′56″	79°47′29″
16	26°33′37″	79°46′40″
17	26°35′09″	79°46′20″
18	26°46′04″	79°45′28″
19	26°47′01″	79°45′28″
20	26°48′58″	79°45′15″
21	26°49′58″	79°45′13″
Origin	26°49′58″	79°46′54″

(4) *Golden crab fishery access areas.* The provisions of paragraphs (n)(2)(i) and (ii) of this section notwithstanding, an owner or operator of a vessel for which a valid commercial permit for South Atlantic golden crab has been issued may use a trap to fish for golden crab and use a grapple and chain while engaged in such fishing in the following portions of the Stetson-Miami Terrace and the Pourtales Terrace Deepwater Coral HAPCs. Access to an area specified in paragraph (n)(4)(i)

through (v) of this section is contingent on that zone being authorized on the vessel's permit for South Atlantic golden crab. See § 622.17(b) of this part for specification of zones.

(i) *Golden crab northern zone access area* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	29°00′00″	79°54′24″
1	28°56′55″	79°53′14″
2	28°55′00″	79°52′22″
3	28°53′35″	79°51′43″
4	28°51′47″	79°50′58″
5	28°50′25″	79°50′17″
6	28°49′53″	79°50′12″
7	28°49′01″	79°50′13″
8	28°48′19″	79°50′01″
9	28°47′13″	79°49′51″
10	28°43′30″	79°49′28″
11	28°41′05″	79°48′56″
12	28°40′27″	79°48′58″
13	28°39′50″	79°48′48″
14	28°39′04″	79°48′50″
15	28°36′43″	79°48′27″
16	28°35′01″	79°48′16″
17	28°30′37″	79°47′27″
18	28°30′37″	79°42′12″
19	28°14′00″	79°40′54″
20	28°14′00″	79°45′12″
21	28°11′41″	79°45′04″
22	28°08′02″	79°44′37″
23	28°04′42″	79°44′25″
24	28°01′20″	79°44′11″
25	28°00′00″	79°43′59″
26	28°00′00″	79°38′16″
27	28°11′42″	79°38′13″
28	28°23′02″	79°38′57″
29	28°36′50″	79°40′25″
30	28°38′33″	79°41′33″
31	28°38′20″	79°43′04″
32	28°41′00″	79°43′39″
33	28°48′16″	79°44′32″
34	28°54′29″	79°45′55″
35	29°00′00″	79°45′50″
Origin	29°00′00″	79°54′24″

(ii) *Golden crab middle zone access area A* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	26°58′45″	79°35′05″
1	27°00′39″	79°36′26″
2	27°07′55″	79°37′52″
3	27°14′52″	79°37′09″
4	27°29′21″	79°37′15″
5	28°00′00″	79°38′16″
6	28°00′00″	79°43′59″
7	27°58′13″	79°43′43″
8	27°56′23″	79°43′45″
9	27°49′40″	79°43′17″
10	27°46′27″	79°43′14″
11	27°42′00″	79°43′25″
12	27°36′08″	79°43′50″
13	27°30′00″	79°44′22″
14	27°30′00″	79°43′48″
15	27°29′04″	79°44′06″
16	27°27′05″	79°44′12″
17	27°25′47″	79°44′15″
18	27°19′46″	79°43′33″
19	27°17′54″	79°43′31″
20	27°12′28″	79°43′19″
21	27°07′45″	79°44′26″
22	27°04′47″	79°44′48″
23	27°00′43″	79°44′58″
24	26°58′43″	79°44′47″
25	26°57′06″	79°44′52″
26	26°57′06″	79°42′34″
27	26°49′58″	79°42′34″
28	26°49′58″	79°45′13″
29	26°48′58″	79°45′15″
30	26°47′01″	79°45′28″
31	26°46′04″	79°45′28″
32	26°35′09″	79°46′20″
33	26°33′37″	79°46′40″
34	26°27′56″	79°47′29″
35	26°25′55″	79°47′49″
36	26°21′05″	79°48′08″
37	26°20′30″	79°48′40″
38	26°18′56″	79°48′37″
39	26°03′38″	79°48′16″
40	26°03′35″	79°46′09″
41	25°58′33″	79°46′08″
42	25°54′27″	79°45′37″
43	25°46′55″	79°44′14″
44	25°38′04″	79°45′58″
45	25°38′05″	79°42′27″

(B) The outer boundary of the EEZ in a northerly direction from Point 45 to Point 46.

(C) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
46	26°07′49″	79°36′07″
47	26°17′36″	79°36′06″
48	26°21′18″	79°38′04″
49	26°50′46″	79°35′12″
50	26°50′40″	79°33′45″

(D) The outer boundary of the EEZ in a northerly direction from Point 50 to the Origin.

(iii) *Golden crab middle zone access area B* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	25°49′10″	80°00′38″
1	25°48′30″	80°00′23″
2	25°46′42″	79°59′14″
3	25°27′28″	80°02′26″
4	25°24′06″	80°01′44″
5	25°21′04″	80°01′27″
6	25°21′04″	79°58′12″
7	25°23′25″	79°58′19″
8	25°32′52″	79°54′48″
9	25°36′58″	79°54′46″
10	25°37′20″	79°56′20″
11	25°49′11″	79°56′00″
Origin	25°49′10″	80°00′38″

(iv) *Golden crab middle zone access area C* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	25°33′32″	79°42′18″
1	25°33′32″	79°47′14″
2	25°21′04″	79°53′45″
3	25°21′04″	79°42′04″

(B) The outer boundary of the EEZ in a northerly direction from Point 3 to the Origin.

(v) *Golden crab southern zone access area* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	24°14′07″	80°53′27″
1	24°13′46″	81°04′54″
2	24°10′55″	80°58′11″

(B) The outer boundary of the EEZ in a northerly direction from Point 2 to the Origin.

(o) [Reserved]

(p) *Closures of the recreational sector for wreckfish.* The recreational sector for wreckfish in or from the South Atlantic EEZ is closed from January 1 through June 30, and September 1 through December 31, each year. During a closure, the bag and possession limit for wreckfish in or from the South Atlantic EEZ is zero.

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.35, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 77 FR 51941, Aug. 28, 2012, § 622.35, paragraph (l) was added, effective Aug. 28, 2012, through Dec. 31, 2012.

§ 622.36 Seasonal harvest limitations.

(a) *Gulf EEZ.* During March, April, and May, each year, the possession of greater amberjack in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such greater amberjack were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(i) and (b)(2), respectively, and such greater amberjack are subject to the prohibition on sale or purchase of greater amberjack possessed under the bag limit, as specified in § 622.45(c)(1). Also note that if commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, are on board the vessel, no bag limit of Gulf reef fish may be possessed, as specified in § 622.39(a)(5).

(b) *South Atlantic EEZ*—(1) *Greater amberjack spawning season.* During April, each year, the possession of greater amberjack in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such greater amberjack were harvested, is limited to one per person per day or one per person per trip, whichever is more restrictive. Such greater amberjack are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(6).

(2) *Mutton snapper spawning season.* During May and June, each year, the possession of mutton snapper in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to 10 per person per day or 10 per person per trip, whichever is more restrictive.

(3) *Wreckfish spawning-season closure.* From January 15 through April 15, each year, no person may harvest or possess on a fishing vessel wreckfish in or from the EEZ; offload wreckfish from the EEZ; or sell or purchase wreckfish in or from the EEZ. The prohibition on sale or purchase of wreckfish does not apply to trade in wreckfish that were harvested, offloaded, and sold or purchased prior to January 15 and were held in cold storage by a dealer or processor.

(4) [Reserved]

(5) *Red porgy.* During January, February, March, and April, the harvest or possession of red porgy in or from the South Atlantic EEZ is limited to three per person per day or three per person per trip, whichever is more restrictive. In addition, this limitation is applicable in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued without regard to where such red porgy were harvested.

Such red porgy are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

[61 FR 34934, July 3, 1996, as amended at 62 FR 67723, Dec. 30, 1997; 64 FR 3627, Jan. 25, 1999; 65 FR 51252, Aug. 23, 2000; 71 FR 45435; Aug. 9, 2006; 71 FR 55106, Oct. 23, 2006; 74 FR 30972, June 29, 2009]

§ 622.37 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. Except for undersized king and Spanish mackerel allowed in paragraphs (c)(2) and (c)(3) of this section, a fish not in compliance with its size limit, as specified in this section, in or from the Caribbean, Gulf, South Atlantic, and/or Mid-Atlantic EEZ, as appropriate, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section.

(a) *Caribbean reef fish:* Yellowtail snapper—12 inches (30.5 cm), TL.

(b) *Caribbean spiny lobster*—3.5 inches (8.9 cm), carapace length.

(c) *Coastal migratory pelagic fish.* (1) Cobia in the Gulf, Mid-Atlantic, or South Atlantic—33 inches (83.8 cm), fork length.

(2) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—24 inches (61.0 cm), fork length, except that a vessel fishing under a quota for king mackerel specified in § 622.42(c)(1) may possess undersized king mackerel in quantities not exceeding 5 percent, by weight, of the king mackerel on board.

(3) Spanish mackerel in the Gulf, South Atlantic, or Mid-Atlantic—12 inches (30.5 cm), fork length, except that a vessel fishing under a quota for Spanish mackerel specified in § 622.42(c)(2) may possess undersized Spanish mackerel in quantities not exceeding 5 percent, by weight, of the Spanish mackerel on board.

(d) *Gulf reef fish*—(1) *Snapper.* (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—10 inches (25.4 cm), TL.

(iii) Cubera, gray, and yellowtail snappers—12 inches (30.5 cm), TL.

(iv) Red snapper -16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (b)(1)(iii) and 13 inches (33.0 cm), TL, for a fish taken by a person not subject to the bag limit.

(v) Mutton snapper—16 inches (40.6 cm), TL.

(2) *Grouper.* (i) Scamp—16 inches (40.6 cm), TL.

(ii) Yellowfin grouper—20 inches (50.8 cm), TL.

(iii) Black grouper—(A) For a person not subject to the bag limit specified in § 622.39(b)(1)(ii)—24 inches (61.0 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—22 inches (55.9 cm), TL.

(iv) Red grouper—(A) For a person not subject to the bag limit specified in § 622.39 (b)(1)(ii)—18 inches (45.7 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—20 inches (50.8 cm), TL.

(v) Gag—22 inches (55.9 cm), TL.

(3) *Other Gulf reef fish species.* (i) Gray triggerfish—14 inches (35.6 cm), fork length.

(ii) Hogfish—12 inches (30.5 cm), fork length.

(iii) Banded rudderfish and lesser amberjack—14 inches (35.6 cm), fork length (minimum size); 22 inches (55.9 cm), fork length (maximum size).

(iv) Greater amberjack—30 inches (76 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(i) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

(4) A person aboard a vessel that has a Federal commercial vessel permit for Gulf reef fish and commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, may not possess any Gulf reef fish that do not comply with the applicable commercial minimum size limit.

(e) *South Atlantic snapper-grouper*—(1) *Snapper.* (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—12 inches (30.5 cm), TL.

(iii) Blackfin, cubera, dog, gray, mahogany, queen, silk, and yellowtail snappers—12 inches (30.5 cm), TL.

(iv) Mutton snapper—16 inches (40.6 cm), TL.

(v) Red snapper—20 inches (50.8 cm), TL, however, *see* ' 622.32(b)(3)(vii) for the current prohibition on the harvest and possession of red snapper.

(2) *Grouper*. (i) Red, yellowfin, and yellowmouth grouper; and scamp—20 inches (50.8 cm), TL.

(ii) Black grouper and gag—24 inches (61.0 cm), TL.

(3) *Other snapper-grouper species*—(i) *Black seas bass*. (A) For a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(vii)—13 inches (33 cm), TL.

(B) For a fish taken by a person not subject to the bag limit specified in § 622.39(d)(1)(vii)—11 inches (28 cm), TL.

(ii) Gray triggerfish in the South Atlantic EEZ off Florida—12 inches (30.5 cm), TL.

(iii) Hogfish—12 inches (30.5 cm), fork length.

(iv) Red porgy—14 inches (35.6 cm), TL.

(v) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(i) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

(f) *Gulf shrimp*. White shrimp harvested in the EEZ are subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State.

(g) *Caribbean queen conch*—9 inches (22.9 cm) in length, that is, from the tip of the spire to the distal end of the shell, and ⅜ inch (9.5 mm) in lip width at its widest point. A queen conch with a length of at least 9 inches (22.9 cm) or a lip width of at least ⅜ inch (9.5 mm) is not undersized.

(h) *Dolphin in the Atlantic off Florida, Georgia, and South Carolina*—20 inches (50.8 cm), fork length.

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.37, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 77 FR 51941, Aug. 28, 2012, § 622.37, paragraph (e)(1)(v) was suspended, effective Aug. 28, 2012, through Dec. 31, 2012.

§ 622.38 Landing fish intact.

The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(a) The following must be maintained with head and fins intact: cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (g) of this section; dolphin and wahoo in or from the Atlantic EEZ; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraph (h) of this section; finfish in or from the Caribbean EEZ, except as specified in paragraphs (c) and (d) of this section; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c) and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

(b) A Caribbean spiny lobster in or from the Caribbean EEZ must be maintained with head and carapace intact.

(c) Shark, swordfish, and tuna species are exempt from the requirements of paragraph (a) of this section.

(d) In the Gulf EEZ or Caribbean EEZ:

(1) Bait is exempt from the requirement to be maintained with head and fins intact. See § 622.31(n) regarding a prohibition on the use of Gulf reef fish as bait.

(i) For the purpose of this paragraph (d)(1), ''bait'' means--

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated;

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 in3 (7.6 cm3) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (d)(1)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the Gulf EEZ or Caribbean EEZ that is subsequently sold or purchased as a finfish species, rather than as bait, is not bait.

(2) Legal-sized finfish possessed for consumption at sea on the harvesting vessel are exempt from the requirement to have head and fins intact, provided—

(i) Such finfish do not exceed any applicable bag limit;

(ii) Such finfish do not exceed 1.5 lb (680 g) of finfish parts per person aboard; and

(iii) The vessel is equipped to cook such finfish on board.

(e) A golden crab in or from the South Atlantic EEZ must be maintained in whole condition through landing ashore. For the purposes of this paragraph, whole means a crab that is in its natural condition and that has not been gutted or separated into component pieces, e.g., clusters.

(f) Queen conch in or from the Caribbean EEZ must be maintained with meat and shell intact.

(g) Cut-off (damaged) king or Spanish mackerel that comply with the minimum size limits in § 622.37(c)(2) and (c)(3), respectively, and the trip limits in § 622.44(a) and (b), respectively, may be possessed in the Gulf, Mid-Atlantic, or South Atlantic EEZ on, and offloaded ashore from, a vessel that is operating under the respective trip limits. Such cut-off fish also may be sold. A maximum of five additional cut-off (damaged) king mackerel, not subject to the size limits or trip limits, may be possessed or offloaded ashore but may not be sold or purchased and are not counted against the trip limit.

(h) In the South Atlantic EEZ, snapper-grouper lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided valid Bahamian fishing and cruising permits are on board the vessel and the vessel is in transit through the South Atlantic EEZ. For the purpose of this paragraph, a vessel is in transit through the South Atlantic EEZ when it is on a direct and continuous course through the South Atlantic EEZ and no one aboard the vessel fishes in the EEZ.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 61 FR 65483, Dec. 13, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 38303, July 16, 1998; 64 FR 3628, Jan. 25, 1999; 65 FR 16340, Mar. 28, 2000; 67 FR 22362, May 3, 2002; 69 FR 30242, May 27, 2004; 70 FR 62081, Oct. 28, 2005; 71 FR 45436, Aug. 9, 2006; 73 FR 68361, Nov. 18, 2008]

§ 622.39 Bag and possession limits.

(a) *Applicability*. (1) The bag and possession limits apply for species/species groups listed in this section in or from the EEZ. Unless specified otherwise, bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Unless specified otherwise, possession limits apply to a person on a trip after the first 24 hours of that trip. The bag and possession limits apply to a person who fishes in the EEZ in any manner, except a person aboard a vessel in the EEZ that has on board the commercial vessel permit required under § 622.4(a)(2) for the appropriate species/species group. However, see § 622.32 for limitations on taking prohibited and limited-harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit or by a person subject to the bag limits. The possession of a commercial vessel permit notwithstanding, the bag and possession limits apply when the vessel is operating as a charter vessel or headboat. A person who fishes in the EEZ may not combine a bag limit specified in this section with a bag or possession limit applicable to state waters. A species/species group subject to a bag limit specified in this section taken in the EEZ by a person subject to the bag limits may not be transferred at sea, regardless of where such transfer takes place, and such fish may not be transferred in the EEZ. The operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag and possession limits specified in this section are not exceeded.

(2) Paragraph (a)(1) of this section notwithstanding, bag and possession limits also apply for Gulf reef fish in or

from the EEZ to a person aboard a vessel that has on board a commercial permit for Gulf reef fish—

(i) When trawl gear or entangling net gear is on board. A vessel is considered to have trawl gear on board when trawl doors and a net are on board. Removal from the vessel of all trawl doors or all nets constitutes removal of trawl gear.

(ii) When a longline or buoy gear is on board and the vessel is fishing or has fished on a trip in the reef fish longline and buoy gear restricted area specified in § 622.34(c). A vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements, in its entirety, constitutes removal of a longline.

(iii) For a species/species group when its quota has been reached and closure has been effected, provided that no commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, are on board as specified in paragraph (a)(5) of this section.

(iv) When the vessel has on board or is tending any trap other than a stone crab trap or a spiny lobster trap.

(3) Paragraph (a)(1) of this section notwithstanding, the bag and other limits specified in § 622.35(b) apply for South Atlantic snapper-grouper in or from the EEZ to a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued that has on board a longline in the longline closed area.

(4) Paragraph (a)(1) of this section notwithstanding, a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued must comply with the bag limits specified in paragraph (d)(1) of this section for South Atlantic snapper-grouper taken with a powerhead, regardless of where taken, when such snapper-grouper are possessed in an SMZ specified in § 622.35(e)(1)(xii) through (e)(1)(xviii) or (e)(1)(xl) through (e)(1)(li).

(5) A person aboard a vessel that has a Federal commercial vessel permit for Gulf reef fish and commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, may not possess Gulf reef fish caught under a bag limit.

(b) *Gulf reef fish*—(1) *Bag limits*. (i) Greater amberjack—1. However, no greater amberjack may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(ii) Groupers, combined, excluding goliath grouper and Nassau grouper—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(iii) Red snapper—2. However, no red snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(iv) Snappers, combined, excluding red, lane, and vermilion snapper—10.

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section—20.

(vi) Banded rudderfish and lesser amberjack, combined—5.

(vii) Hogfish—5.

(2) *Possession limits*. A person, or a vessel in the case of speckled hind or Warsaw grouper, on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(c) *King and Spanish mackerel*—(1) *Bag limits*. (i) Atlantic migratory group king mackerel—

(A) Mid-Atlantic and South Atlantic, other than off Florida—3.

(B) Off Florida—2, which is the daily bag limit specified by Florida for its waters (Rule 46–12.004(1), Florida Administrative Code). If Florida changes its limit, the bag limit specified in this paragraph (c)(1)(i)(B) will be changed

to conform to Florida's limit, provided such limit does not exceed 5.

(ii) Gulf migratory group king mackerel—2.

(iii) Atlantic migratory group Spanish mackerel—15.

(iv) Gulf migratory group Spanish mackerel—15.

(2) *Possession limits.* A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(d) *South Atlantic snapper-grouper*—(1) *Bag limits.* (i) Greater amberjack—1.

(ii) Grouper and tilefish, combined—3. However, no grouper or tilefish may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero. In addition, within the 3-fish aggregate bag limit:

(A) No more than one fish may be gag or black grouper, combined;

(B) No more than one fish per vessel may be a snowy grouper;

(C) No more than one fish may be a golden tilefish; and

(D) No goliath grouper or Nassau grouper may be retained.

(iii) Hogfish in the South Atlantic off Florida—5.

(iv) Snappers, combined—10. However, excluded from this 10-fish bag limit are cubera snapper, measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and red snapper and vermilion snapper. (*See* § 622.32(b)(3)(vii) for the prohibition on harvest and possession of red snapper and § 622.32(c)(2) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

(v) Vermilion snapper—5. However, no vermilion snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(vi) Red porgy—3.

(vii) Black sea bass—5.

(viii) South Atlantic snapper-grouper, combined—20. However, excluded from this 20-fish bag limit are tomtate, blue runner, ecosystem component species (specified in table 4 of appendix A to part 622), and those specified in paragraphs (d)(1)(i) through (vii) and paragraphs (d)(1)(ix) and (x) of this section.

(ix) No red snapper may be retained.

(x) No more than one fish per vessel may be a wreckfish.

(xi) Snappers, combined—10, of which no more than 1 may be red snapper. The 1-fish red snapper bag limit applies during the recreational red snapper season, specified in § 622.35(l). However, excluded from this 10-fish bag limit are cubera snapper, measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and vermilion snapper. (See § 622.32(c)(2) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

(xii) South Atlantic snapper-grouper, combined—20. However, excluded from this 20-fish bag limit are tomtate, blue runner, and those specified in paragraphs (d)(1)(i) through (vii) and paragraphs (d)(1)(x) and (xi) of this section.

(2) *Possession limits.* (i) Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

(A) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits of species other than red porgy.

(B) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits of species other than red porgy.

(ii) A person aboard a vessel may not possess red porgy in or from the EEZ in excess of three per day or three per trip, whichever is more restrictive.

(3) *Longline bag limits.* Other provisions of this paragraph (d) notwithstanding, a person on a trip aboard a vessel for which the bag limits apply that has a longline on board is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a

bag limit is specified in paragraph (d)(1) of this section, and to zero for all other South Atlantic snapper-grouper. For the purpose of this paragraph (d)(3), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(e) *Caribbean queen conch*—(1) *Applicability*. Paragraph (a)(1) of this section notwithstanding, the bag limit of paragraph (e)(2) of this section does not apply to a fisherman who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands. See § 622.44 for the commercial daily trip limit.

(2) *Bag limit*. The bag limit for queen conch in or from the Caribbean EEZ is 3 per person or, if more than 4 persons are aboard, 12 per boat.

(f) *Atlantic dolphin and wahoo*. Bag and possession limits are as follows:

(1) Dolphin—10, not to exceed 60 per vessel, whichever is less, except, on board a headboat, 10 per paying passenger.

(2) Wahoo—2.

(g) *Caribbean reef fish*—(1) *Applicability*. Paragraph (a)(1) of this section notwithstanding, the bag limits of paragraph (g)(2) of this section do not apply to a person who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands.

(2) *Bag limits*. (i) Groupers, snappers, and parrotfishes combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day; but not to exceed 2 parrotfish per person per day or 6 parrotfish per vessel per day.

(ii) Other reef fish species combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day, but not to exceed 1 surgeonfish per person per day or 4 surgeonfish per vessel per day.

(h) *Caribbean spiny lobster*—(1) *Applicability*. Paragraph (a)(1) of this section notwithstanding, the bag limit of paragraph (h)(2) of this section does not apply to a fisherman who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands.

(2) *Bag limit*. The bag limit for spiny lobster in or from the Caribbean EEZ is 3 per person per day, not to exceed 10 per vessel per day, whichever is less.

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.39, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 77 FR 51941, Aug. 28, 2012, § 622.39, paragraphs (d)(1)(iv), (viii), and (ix) were suspended and paragraphs (d)(1)(xi), and (xii) were added, effective Aug. 28, 2012, through Dec. 31, 2012.

EFFECTIVE DATE NOTE: At 76 FR 82052, Dec. 29, 2011, § 622.39 was amended by revising the first sentences in paragraph (b)(1)(ii) and paragraph (b)(1)(v), however this amendment was not given an effective date. For the convenience of the user, the revised text is set forth as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding goliath grouper—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag per person per day. * * *

* * * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section—20.

* * * * *

§ 622.40 Limitations on traps and pots.

(a) *Tending*—(1) *Caribbean EEZ*. A fish trap or Caribbean spiny lobster trap in the Caribbean EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the fish trap or spiny lobster trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

(2) *South Atlantic EEZ.* A sea bass pot or golden crab trap in the South Atlantic EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot or trap or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so permitted. For golden crab only, a vessel with written consent on board must also possess a valid commercial vessel permit for golden crab.

(b) *Escape mechanisms*—(1) *Caribbean EEZ.* (i) A fish trap used or possessed in the Caribbean EEZ must have a panel located on one side of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by the panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of the panel may not be smaller than the mesh size of the trap. The panel must be attached to the trap with untreated jute twine with a diameter not exceeding ⅛ inch (3.2 mm). An access door may serve as the panel, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is untreated jute twine with a diameter not exceeding ⅛ inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

(ii) A spiny lobster trap used or possessed in the Caribbean EEZ must contain on any vertical side or on the top a panel no smaller in diameter than the throat or entrance of the trap. The panel must be made of or attached to the trap by one of the following degradable materials:

(A) Untreated fiber of biological origin with a diameter not exceeding ⅛ inch (3.2 mm). This includes, but is not limited to tyre palm, hemp, jute, cotton, wool, or silk.

(B) Ungalvanized or uncoated iron wire with a diameter not exceeding 1/16 inch (1.6 mm), that is, 16 gauge wire.

(2) *South Atlantic EEZ.* (i) A sea bass pot that is used or possessed in the South Atlantic EEZ between 35°15.19′ N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have—

(A) On at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(*1*) Ungalvanized or uncoated iron wire with a diameter not exceeding 0.041 inches (1.0 mm), that is, 19 gauge wire.

(*2*) Galvanic timed-release mechanisms with a letter grade designation (degradability index) no higher than J.

(B) An unobstructed escape vent opening on at least two opposite vertical sides, excluding top and bottom. The minimum dimensions of an escape vent opening (based on inside measurement) are:

(*1*) 1⅛ by 5¾ inches (2.9 by 14.6 cm) for a rectangular vent.

(*2*) 1.75 by 1.75 inches (4.5 by 4.5 cm) for a square vent.

(*3*) 2.0-inch (5.1-cm) diameter for a round vent.

(ii) A golden crab trap that is used or possessed in the South Atlantic EEZ must have at least one escape gap or escape ring on each of two opposite vertical sides. The minimum allowable inside dimensions of an escape gap are 2.75 by 3.75 inches (7.0 by 9.5 cm); the minimum allowable inside diameter of an escape ring is 4.5 inches (11.4 cm). In addition to the escape gaps—

(A) A golden crab trap constructed of webbing must have an opening (slit) at least 1 ft (30.5 cm) long that may be closed (relaced) only with untreated cotton string no larger than 3/16 inch (0.48 cm) in diameter.

(B) A golden crab trap constructed of material other than webbing must have an escape panel or door measuring at least 11⅞ by 11⅞ inches (30.2 by 30.2 cm), located on at least one side, excluding top and bottom. The hinges or fasteners of such door or panel must be made of either ungalvanized or uncoated iron wire no larger than 19 gauge (0.04 inch (1.0 mm) in diameter) or untreated cotton string no larger than 3/16 inch (4.8 mm) in diameter.

(c) *Construction requirements and mesh sizes*—(1) *Caribbean EEZ.* A bare-wire fish trap used or possessed in the EEZ

that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ, must have a minimum mesh size of 2.0 inches (5.1 cm) in the smallest dimension measured between centers of opposite strands.

(2) *South Atlantic EEZ*. (i) A sea bass pot used or possessed in the South Atlantic EEZ must have mesh sizes as follows (based on centerline measurements between opposite, parallel wires or netting strands):

(A) For sides of the pot other than the back panel:

(*1*) Hexagonal mesh (chicken wire)—at least 1.5 inches (3.8 cm) between the wrapped sides;

(*2*) Square mesh—at least 1.5 inches (3.8 cm) between sides; or

(*3*) Rectangular mesh—at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides.

(B) For the entire back panel, *i.e.*, the side of the pot opposite the side that contains the pot entrance, mesh that is at least 2 inches (5.1 cm) between sides.

(ii) A golden crab trap deployed or possessed in the South Atlantic EEZ may not exceed 64 ft^3 (1.8 m^3) in volume in the northern zone or 48 ft^3 (1.4 m^3) in volume in the middle and southern zones. See § 622.17(b) for specification of the golden crab zones.

(d) *Area-specific restrictions*—(1) *South Atlantic EEZ*—(i) *Sea bass pots*. (A) In the South Atlantic EEZ, sea bass pots may not be used or possessed in multiple configurations, that is, two or more pots may not be attached one to another so that their overall dimensions exceed those allowed for an individual sea bass pot. This does not preclude connecting individual pots to a line, such as a ''trawl'' or trot line.

(B) A sea bass pot must be removed from the water in the South Atlantic EEZ and the vessel must be returned to a dock, berth, beach, seawall, or ramp at the conclusion of each trip. Sea bass pots may remain on the vessel at the conclusion of each trip.

(C) A sea bass pot must be removed from the water in the South Atlantic EEZ when the applicable quota specified in § 622.42(e)(5) is reached. After a closure is in effect, a black sea bass may not be retained by a vessel that has a sea bass pot on board.

(D) A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper and a South Atlantic black sea bass pot endorsement that fishes in the South Atlantic EEZ on a trip with black sea bass pots, may possess only 35 black sea bass pots per vessel per permit year. Each black sea bass pot in the water or onboard a vessel in the South Atlantic EEZ, must have a valid identification tag issued by NMFS attached. NMFS will issue new identification tags each permit year that will replace the tags from the previous permit year.

(ii) *Golden crab traps*. Rope is the only material allowed to be used for a buoy line or mainline attached to a golden crab trap.

(2) [Reserved]

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 62 FR 13988, Mar. 25, 1997; 63 FR 10568, Mar. 4, 1998; 63 FR 38303, July 16, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 3628, Jan. 25, 1999; 67 FR 22362, May 3, 2002; 70 FR 62081, Oct. 28, 2005; 71 FR 55107, Oct. 23, 2006; 73 FR 411, Jan. 3, 2008; 77 FR 32419, June 1, 2012]

§ 622.41 Species specific limitations.

(a) *Aquacultured live rock*. In the Gulf or South Atlantic EEZ:

(1) Aquacultured live rock may be harvested only under a permit, as required under § 622.4(a)(3)(iii), and aquacultured live rock on a site may be harvested only by the person, or his or her employee, contractor, or agent, who has been issued the aquacultured live rock permit for the site. A person harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(2) The following restrictions apply to individual aquaculture activities:

(i) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(ii) Material deposited on the aquaculture site—

(A) May not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas.

(B) Must be free of contaminants.

(C) Must be nontoxic.

(D) Must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely.

(E) Must be placed from a vessel that is anchored.

(F) In the Gulf EEZ, must be distinguishable, geologically or otherwise (for example, be indelibly marked or tagged), from the naturally occurring substrate.

(G) In the South Atlantic EEZ, must be geologically distinguishable from the naturally occurring substrate and, in addition, may be indelibly marked or tagged.

(iii) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(3) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and aquacultured live rock may be harvested only by hand. In addition, the following activities are prohibited in the South Atlantic: Chipping of aquacultured live rock in the EEZ, possession of chipped aquacultured live rock in or from the EEZ, removal of allowable octocoral or prohibited coral from aquacultured live rock in or from the EEZ, and possession of prohibited coral not attached to aquacultured live rock or allowable octocoral, while aquacultured live rock is in possession. See the definition of ''Allowable octocoral'' for clarification of the distinction between allowable octocoral and live rock. For the purposes of this paragraph (a)(3), chipping means breaking up reefs, ledges, or rocks into fragments, usually by means of a chisel and hammer.

(4) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting vessel must provide the following information to the NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344):

(i) Permit number of site to be harvested and date of harvest.

(ii) Name and official number of the vessel to be used in harvesting.

(iii) Date, port, and facility at which aquacultured live rock will be landed.

(b) *Caribbean reef fish anchoring restriction*. The owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses Caribbean reef fish in or from the Caribbean EEZ must ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery. For a grapnel hook, this could include an incorporated anchor rode reversal bar that runs parallel along the shank, which allows the rode to reverse and slip back toward the crown. For a fluke- or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy would be required.

(c) *Coastal migratory pelagic fish*—(1) *Authorized gear*. Subject to the prohibitions on gear/methods specified in § 622.31, the following are the only fishing gears that may be used in the Gulf, Mid-Atlantic, and South Atlantic EEZ in directed fisheries for coastal migratory pelagic fish:

(i) King mackerel, Atlantic migratory group—

(A) North of 34°37.3′ N. lat., the latitude of Cape Lookout Light, NC—all gear except drift gillnet and long gillnet.

(B) South of 34°37.3′ N. lat.—automatic reel, bandit gear, handline, and rod and reel.

(ii) King mackerel, Gulf migratory group—hook-and-line gear and, in the southern Florida west coast subzone only, run-around gillnet. (See § 622.42(c)(1)(i)(A)(*3*) for a description of the southern Florida west coast subzone.)

(iii) Spanish mackerel, Atlantic migratory group—automatic reel, bandit gear, handline, rod and reel, cast net, run-around gillnet, and stab net.

(iv) Spanish mackerel, Gulf migratory group—all gear except drift gillnet, long gillnet, and purse seine.

(v) Cobia in the Mid-Atlantic and South Atlantic EEZ—automatic reel, bandit gear, handline, rod and reel, and pelagic longline.

(vi) Cobia in the Gulf EEZ—all gear except drift gillnet and long gillnet.

(2) *Unauthorized gear*. Gear types other than those specified in paragraph (c)(1) of this section are unauthorized gear and the following possession limitations apply:

(i) *Long gillnets*. A vessel with a long gillnet on board in, or that has fished on a trip in, the Gulf, Mid-Atlantic, or South Atlantic EEZ may not have on board on that trip a coastal migratory pelagic fish.

(ii) *Drift gillnets*. A vessel with a drift gillnet on board in, or that has fished on a trip in, the Gulf EEZ may not have on board on that trip a coastal migratory pelagic fish.

(iii) *Other unauthorized gear*. Except as specified in paragraph (c)(2)(iv) of this section, a person aboard a vessel with unauthorized gear other than a drift gillnet in the Gulf EEZ or a long gillnet on board in, or that has fished in, the EEZ where such gear is not authorized in paragraph (c)(1) of this section, is subject to the bag limit for king and Spanish mackerel specified in § 622.39(c)(1)(ii) and to the limit on cobia specified in § 622.32(c)(1).

(iv) *Exception for king mackerel in the Gulf EEZ*. The provisions of this paragraph (c)(2)(iv) apply to king mackerel taken in the Gulf EEZ and to such king mackerel possessed in the Gulf. Paragraph (c)(2)(iii) of this section notwithstanding, a person aboard a vessel that has a valid commercial permit for king mackerel is not subject to the bag limit for king mackerel when the vessel has on board on a trip unauthorized gear other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone. Thus, the following applies to a vessel that has a commercial permit for king mackerel:

(A) Such vessel may not use unauthorized gear in a directed fishery for king mackerel in the Gulf EEZ.

(B) If such a vessel has a drift gillnet or a long gillnet on board or a run-around gillnet in an area other than the southern Florida west coast subzone, no king mackerel may be possessed.

(C) If such a vessel has unauthorized gear on board other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone, the possession of king mackerel taken incidentally is restricted only by the closure provisions of § 622.43(a)(3) and the trip limits specified in § 622.44(a). See also paragraph (c)(4) of this section regarding the purse seine incidental catch allowance of king mackerel.

(3) *Gillnets*—(i) *King mackerel*. The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for king mackerel is 4.75 inches (12.1 cm), stretched mesh. A vessel in such EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 4.75 (12.1 cm) inches, stretched mesh, may not possess on that trip an incidental catch of king mackerel that exceeds 10 percent, by number, of the total lawfully possessed Spanish mackerel on board.

(ii) *Spanish mackerel*. (A) The minimum allowable mesh size for a gillnet used to fish for Spanish mackerel in the Gulf, Mid-Atlantic, or South Atlantic EEZ is 3.5 inches (8.9 cm), stretched mesh.

(*1*) A vessel in the Gulf EEZ, or having fished on a trip in the Gulf EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(*2*) A vessel in the South Atlantic or Mid-Atlantic EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may possess or land on the day of that trip no more than 500 lb (227 kg) of incidentally caught Spanish mackerel.

(B) On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in or from, the South Atlantic EEZ off Florida north of 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary—

(*1*) No person may fish with, set, place in the water, or have on board a gillnet with a float line longer than 800 yd (732 m).

(*2*) No person may fish with, set, or place in the water more than one gillnet at any one time.

(*3*) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm).

(*4*) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water.

(*5*) The float line of each gillnet possessed, including any net in use, must have the distinctive floats specified in § 622.6(b)(2).

(4) *Purse seine incidental catch allowance*. A vessel in the EEZ, or having fished in the EEZ, with a purse seine on board will not be considered as fishing, or having fished, for king or Spanish mackerel in violation of a prohibition of purse seines under paragraph (c)(2) of this section, in violation of the possession limits under paragraph (c)(2)(iii) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 622.43(a), provided the king mackerel on board does not exceed 1 percent, or the Spanish mackerel on board does not exceed 10 percent, of all fish on board the vessel. Incidental catch will be calculated by number and/or weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the quotas provided for under § 622.42(c) and are subject to the prohibition of sale under § 622.43(a)(3)(iii).

(d) *South Atlantic snapper-grouper*—(1) *Authorized gear*. Subject to the gear restrictions specified in § 622.31, the following are the only gear types authorized in a directed fishery for snapper-grouper in the South Atlantic EEZ: Bandit gear, bottom longline, buoy gear, handline, rod and reel, sea bass pot, and spearfishing gear.

(2) *Unauthorized gear*. All gear types other than those specified in paragraph (d)(1) of this section are unauthorized gear and the following possession and transfer limitations apply.

(i) A vessel with trawl gear on board that fishes in the EEZ on a trip may possess no more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, in or from the EEZ on that trip. It is a rebuttable presumption that a vessel with more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, on board harvested such fish in the EEZ.

(ii) Except as specified in paragraphs (d)(3) through (d)(5) of this section, a person aboard a vessel with unauthorized gear on board, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

(A) South Atlantic snapper-grouper species for which a bag limit is specified in § 622.39(d)(1)—the bag limit.

(B) All other South Atlantic snapper-grouper—zero.

(iii) South Atlantic snapper-grouper on board a vessel with unauthorized gear on board may not be transferred at sea, regardless of where such transfer takes place, and such snapper-grouper may not be transferred in the EEZ.

(iv) No vessel may receive at sea any South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in paragraph (d)(2)(iii) of this section.

(3) *Possession allowance regarding sink nets off North Carolina*. A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina with a sink net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(3), a sink net is a gillnet with stretched mesh measurements of 3 to 4.75 inches (7.6 to 12.1 cm) that is attached to the vessel when deployed.

(4) *Possession allowance regarding bait nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ with no more than one bait net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(4), a bait net is a gillnet not exceeding 50 ft (15.2 m) in length or 10 ft (3.1 m) in height with stretched mesh measurements of 1.5 inches (3.8 cm) or smaller that is attached to the vessel when deployed.

(5) *Possession allowance regarding cast nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ with a cast net on board, may retain, without regard to the limits specified in paragraph (d)(2)(ii) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(5), a cast net is a cone-shaped net thrown by hand and designed to spread out and capture fish as the weighted circumference sinks to the bottom and comes together when pulled by a line.

(6) *Longline species limitation.* A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ on a trip with a longline on board, may possess only the following South Atlantic snapper-grouper: snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(e) *South Atlantic golden crab.* Traps are the only fishing gear authorized in directed fishing for golden crab in the South Atlantic EEZ. Golden crab in or from the South Atlantic EEZ may not be retained on board a vessel possessing or using unauthorized gear.

(f) *Caribbean queen conch.* In the Caribbean EEZ, no person may harvest queen conch by diving while using a device that provides a continuous air supply from the surface.

(g) *BRD requirement for Gulf and South Atlantic shrimp.* On a shrimp trawler in the Gulf EEZ or South Atlantic EEZ, each net that is rigged for fishing must have a BRD installed that is listed in paragraph (g)(2) of this section and is certified or provisionally certified for the area in which the shrimp trawler is located, unless exempted as specified in paragraphs (g)(1)(i) through (iv) of this section. A trawl net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(1) *Exemptions from BRD requirement*—(i) *Royal red shrimp exemption.* A shrimp trawler is exempt from the requirement to have a certified or provisionally certified BRD installed in each net provided that at least 90 percent (by weight) of all shrimp on board or offloaded from such trawler are royal red shrimp.

(ii) *Try net exemption.* A shrimp trawler is exempt from the requirement to have a certified or provisionally certified BRD installed in a single try net with a headrope length of 16 ft (4.9 m) or less provided the single try net is either placed immediately in front of another net or is not connected to another net.

(iii) *Roller trawl exemption.* A shrimp trawler is exempt from the requirement to have a certified or provisionally certified BRD installed in up to two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length used or possessed on board. A rigid-frame roller trawl is a trawl that has a mouth formed by a rigid frame and a grid of rigid vertical bars; has rollers on the lower horizontal part of the frame to allow the trawl to roll over the bottom and any obstruction while being towed;

and has no doors, boards, or similar devices attached to keep the mouth of the trawl open.

(iv) *BRD certification testing exemption*. A shrimp trawler that is authorized by the RA to participate in the pre-certification testing phase or to test a BRD in the EEZ for possible certification, has such written authorization on board, and is conducting such test in accordance with the ''Bycatch Reduction Device Testing Manual'' is granted a limited exemption from the BRD requirement specified in this paragraph (g). The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified or provisionally certified BRDs.

(2) *Procedures for certification and decertification of BRDs*. The process for the certification of BRDs consists of two phases--an optional pre-certification phase and a required certification phase. The RA may also provisionally certify a BRD.

(i) *Pre-certification*. The pre-certification phase allows a person to test and evaluate a new BRD design for up to 60 days without being subject to the observer requirements and rigorous testing requirements specified for certification testing in the ''Bycatch Reduction Device Testing Manual.''

(A) A person who wants to conduct pre-certification phase testing must submit an application to the RA, as specified in the ''Bycatch Reduction Device Testing Manual.'' The ''Bycatch Reduction Device Testing Manual'', which is available from the RA, upon request, contains the application forms.

(B) After reviewing the application, the RA will determine whether to issue a letter of authorization (LOA) to conduct pre-certification trials upon the vessel specified in the application. If the RA authorizes pre-certification, the RA's LOA must be on board the vessel during any trip involving the BRD testing.

(ii) *Certification*. A person who proposes a BRD for certification for use in the Gulf EEZ or South Atlantic EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the ''Bycatch Reduction Device Testing Manual.'' The RA will issue a LOA to conduct certification trials upon the vessel specified in the application if the RA finds that: The operation plan submitted with the application meets the requirements of the ''Bycatch Reduction Device Testing Manual'; the observer identified in the application is qualified; and the results of any pre-certification trials conducted have been reviewed and deemed to indicate a reasonable scientific basis for conducting certification testing. If authorization to conduct certification trials is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies resulting in the denial. To be certified for use in the fishery, the BRD candidate must successfully demonstrate a 30 percent reduction in total weight of finfish bycatch. In addition, the BRD candidate must satisfy the following conditions: There is at least a 50-percent probability the true reduction rate of the BRD candidate meets the bycatch reduction criterion and there is no more than a 10-percent probability the true reduction rate of the BRD candidate is more than 5 percentage points less than the bycatch reduction criterion. If a BRD meets both conditions, consistent with the ''Bycatch Reduction Device Testing Manual'', NMFS, through appropriate rulemaking procedures, will add the BRD to the list of certified BRDs in paragraph (g)(3) of this section; and provide the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

(iii) *Provisional certification*. Based on data provided consistent with the ''Bycatch Reduction Device Testing Manual'', the RA may provisionally certify a BRD if there is at least a 50-percent probability the true reduction rate of the BRD is no more than 5 percentage points less than the bycatch reduction criterion, i.e. 25 percent reduction in total weight of finfish bycatch. Through appropriate rulemaking procedures, NMFS will add the BRD to the list of provisionally certified BRDs in paragraph (g)(3) of this section; and

provide the specifications for the BRD, including any special conditions deemed appropriate based on the certification testing results. A provisional certification is effective for 2 years from the date of publication of the notification in the FEDERAL REGISTER announcing the provisional certification.

(iv) *Decertification*. The RA will decertify a BRD if NMFS determines the BRD does not meet the requirements for certification or provisional certification. Before determining whether to decertify a BRD, the RA will notify the appropriate Fishery Management Council in writing, and the public will be provided an opportunity to comment on the advisability of any proposed decertification. The RA will consider any comments from the Council and public, and if the RA elects to decertify the BRD, the RA will proceed with decertification via appropriate rulemaking.

(3) *Certified and provisionally certified BRDs*—(i) *Certified BRDS*. The following BRDs are certified for use in the Gulf EEZ and South Atlantic EEZ unless indicated otherwise. Specifications of these certified BRDs are contained in appendix D to this part.

(A) Fisheye—see appendix D to part 622 for separate specifications in the Gulf and South Atlantic EEZ.

(B) Gulf fisheye—South Atlantic EEZ only.

(C) Jones-Davis.

(D) Modified Jones-Davis.

(E) Expanded mesh—South Atlantic EEZ only.

(F) Extended funnel -South Atlantic EEZ only.

(G) Cone Fish Deflector Composite Panel.

(H) Square Mesh Panel (SMP) Composite Panel.

(ii) [Reserved]

(h) [Reserved]

(i) *Pre-certification*. The pre-certification phase allows a person to test and evaluate a new BRD design for up to 60 days without being subject to the observer requirements and rigorous testing requirements specified for certification testing in the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual*.

(A) A person who wants to conduct pre-certification phase testing must submit an application, as specified in the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual*, to the RA. The *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual*, which is available from the RA, upon request, contains the application forms.

(B) After reviewing the application, the RA will determine whether to issue a letter of authorization (LOA) to conduct pre-certification trials upon the vessel specified in the application. The RA will issue a pre-certification phase LOA if the BRD design is substantially unlike any BRD design previously determined not to meet the BRD certification criterion or, if the design is substantially similar to a BRD design previously determined not to meet the BRD certification criteria, and the application demonstrates that the design could meet the certification criterion through design revision or upon retesting (e.g., the application shows that statistical results could be improved upon retesting by such things as using a larger sample size than that previously used). If the RA authorizes pre-certification, the RA's letter of authorization must be on board the vessel during any trip involving the BRD testing.

(ii) *Certification*. A person who proposes a BRD for certification for use in the Gulf EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual*. The RA will issue a LOA to conduct certification trials upon the vessel specified in the application if the RA finds that: The test plan meets the requirements of the protocol; the observer identified in the application is qualified and has no current or prior financial relationship with the entity seeking BRD certification; the application presents a BRD candidate substantially unlike BRDs previously determined not to meet the current bycatch reduction criterion, or the applicant has shown good cause for reconsideration (such as the likelihood of improved statistical results yielded from a larger sample size than that

previously used); and for BRDs not previously tested for certification, the results of any pre-certification trials conducted have been reviewed and deemed to indicate a reasonable scientific basis for conducting certification testing. If authorization to conduct certification trials is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies resulting in the denial. If a BRD meets the certification criterion, as determined under the testing protocol, NMFS will publish a notice in the FEDERAL REGISTER adding the BRD to the list of certified BRDs in paragraph (h)(2) of this section providing the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

(iii) A shrimp trawler that is authorized to participate in the pre-certification phase or to test a BRD in the EEZ for possible certification has such written authorization on board and is conducting such test in accordance with the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual* is granted a limited exemption from the BRD requirement specified in paragraph (h)(1) of this section. The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified BRDs.

(i) Gulf reef fish exhibiting trap rash. Possession of Gulf reef fish in or from the Gulf EEZ that exhibit trap rash is prima facie evidence of illegal trap use and is prohibited. For the purpose of this paragraph, trap rash is defined as physical damage to fish that characteristically results from contact with wire fish traps. Such damage includes, but is not limited to, broken fin spines, fin rays, or teeth; visually obvious loss of scales; and cuts or abrasions on the body of the fish, particularly on the head, snout, or mouth.

(j) *Rock shrimp in the South Atlantic off Georgia and Florida*. The minimum mesh size for the cod end of a rock shrimp trawl net in the South Atlantic EEZ off Georgia and Florida is 1⅞ inches (4.8 cm), stretched mesh. This minimum mesh size is required in at least the last 40 meshes forward of the cod end drawstring (tie-off rings), and smaller-mesh bag liners are not allowed. A vessel that has a trawl net on board that does not meet these requirements may not possess a rock shrimp in or from the South Atlantic EEZ off Georgia and Florida.

(k) *Pelagic sargassum*. The minimum allowable mesh size for a net used to fish for pelagic sargassum in the South Atlantic EEZ is 4.0 inches (10.2 cm), stretched mesh, and such net must be attached to a frame no larger than 4 ft by 6 ft (1.2 m by 1.8 m). A vessel in the South Atlantic EEZ with a net on board that does not meet these requirements may not possess any pelagic sargassum.

(l) *Atlantic dolphin and wahoo*—(1) *Authorized gear*. The following are the only authorized gear types in the fisheries for dolphin and wahoo in the Atlantic EEZ: Automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types other than authorized gear types may not possess a dolphin or wahoo.

(2) [Reserved]

(m) *Required gear in the Gulf reef fish fishery*. For a person on board a vessel to fish for Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (m)(1) through (m)(3) of this section.

(1) *Non-stainless steel circle hooks*. Non-stainless steel circle hooks are required when fishing with natural baits.

(2) *Dehooking device*. At least one dehooking device is required and must be used to remove hooks embedded in Gulf reef fish with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without reengaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the Gulf reef fish fishery.

(3) *Venting tool*. At least one venting tool is required and must be used to deflate the abdominal cavities of Gulf

reef fish to release the fish with minimum damage. This tool must be a sharpened, hollow instrument, such as a hypodermic syringe with the plunger removed, or a 16-gauge needle fixed to a hollow wooden dowel. A tool such as a knife or an ice-pick may not be used. The venting tool must be inserted into the fish at a 45-degree angle approximately 1 to 2 inches (2.54 to 5.08 cm) from the base of the pectoral fin. The tool must be inserted just deep enough to release the gases, so that the fish may be released with minimum damage.

(n) *Required gear in the South Atlantic snapper-grouper fishery*. For a person on board a vessel to harvest or possess South Atlantic snapper-grouper in or from the South Atlantic EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (n)(1) and (n)(2) of this section.

(1) *Dehooking device*. At least one dehooking device is required and must be used as needed to remove hooks embedded in South Atlantic snapper-grouper with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without reengaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(2) *Non-stainless steel circle hooks*. Non-stainless steel circle hooks are required to be used when fishing with hook-and-line gear and natural baits north of 28° N. lat.

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.41, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 622.42 Quotas.

Quotas apply for the fishing year for each species or species group, unless accountability measures are implemented during the fishing year pursuant to § 622.49, due to a quota overage occurring the previous year, in which case a reduced quota will be specified through notification in the FEDERAL REGISTER. Annual quota increases are contingent on the total allowable catch for the applicable species not being exceeded in the previous fishing year. If the total allowable catch is exceeded in the previous fishing year, the RA will file a notification with the Office of the Federal Register to maintain the quota for the applicable species from the previous fishing year for following fishing years, unless the best scientific information available determines maintaining the quota from the previous year is unnecessary. Except for the quotas for Gulf and South Atlantic coral, the quotas include species harvested from state waters adjoining the EEZ. Quotas for species managed under this part are as follows. (See § 622.32 for limitations on taking prohibited and limited-harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit or by a person subject to the bag limits.)

(a) *Gulf reef fish*—(1) *Commercial quotas*. The following quotas apply to persons who fish under commercial vessel permits for Gulf reef fish, as required under § 622.4(a)(2)(v).

(i) *Red snapper*. (A) For fishing year 2012—4.121 million lb (1.869 million kg), round weight.

(B) For fishing year 2013—4.432 million lb (2.010 million kg), round weight.

(ii) Deep-water groupers (DWG) have a combined quota, as specified in paragraphs (a)(1)(ii)(A) through (E) of this section. These quotas are specified in gutted weight, that is eviscerated, but otherwise whole.

(A) For fishing year 2012—1.127 million lb (0.511 million kg).

(B) For fishing year 2013—1.118 million lb (0.507 million kg).

(C) For fishing year 2014—1.110 million lb (0.503 million kg).

(D) For fishing year 2015—1.101 million lb (0.499 million kg).

(E) For fishing year 2016 and subsequent fishing years—1.024 million lb (0.464 million kg).

(iii) Shallow-water groupers (SWG) have separate quotas for gag and red grouper and a combined quota for other shallow-water grouper (Other SWG) species (including black grouper,

scamp, yellowfin grouper, and yellowmouth grouper), as specified in paragraphs (a)(1)(iii)(A) through (C) of this section. These quotas are specified in gutted weight, that is, eviscerated but otherwise whole.

(A) *Other SWG combined.* (*1*) For fishing year 2012—509,000 lb (230,879 kg).

(*2*) For fishing year 2013—518,000 lb (234,961 kg).

(*3*) For fishing year 2014—523,000 lb (237,229 kg).

(*4*) For fishing year 2015 and subsequent fishing years—525,000 lb (238,136 kg).

(B) *Gag.* (*1*) For fishing year 2012—0.567 million lb (0.257 million kg).

(*2*) For fishing year 2013—0.708 million lb (0.321 million kg).

(*3*) For fishing year 2014—0.835 million lb (0.378 million kg).

(*4*) For fishing year 2015 and subsequent fishing years—0.939 million lb (0.426 million kg).

(C) *Red grouper.* (*1*) For fishing year 2011—5.23 million lb (2.82 million kg).

(*2*) For fishing year 2012—5.37 million lb (2.37 million kg).

(*3*) For fishing year 2013—5.53 million lb (2.44 million kg).

(*4*) For fishing year 2014—5.63 million lb (2.51 million kg).

(*5*) For fishing year 2015 and subsequent fishing years—5.72 million lb (2.59 million kg).

(iv) Tilefishes (including goldface tilefish, blueline tilefish, and tilefish)—582,000 lb (263,991 kg), gutted weight, that is, eviscerated but otherwise whole.

(v) Greater amberjack—503,000 lb (228,157 kg), round weight.

(vi) Gray triggerfish—106,000 lb (48,081 kg), round weight.

(vii) Gray triggerfish—60,900 lb (27,624 kg), round weight.

(2) *Recreational quotas.* The following quotas apply to persons who fish for Gulf reef fish other than under commercial vessel permits for Gulf reef fish and the applicable commercial quotas specified in paragraph (a)(1) of this section.

(i) *Recreational quota for red snapper.* (A) For fishing year 2012, the recreational quota for red snapper is 3.959 million lb (1.796 million kg), round weight.

(B) For fishing year 2013, the recreational quota for red snapper is 4.258 million lb (1.931 million kg), round weight.

(ii) *Recreational quota for greater amberjack.* The recreational quota for greater amberjack is 1,368,000 lb (620,514 kg), round weight.

(b) [Reserved]

(c) *Coastal migratory pelagic fish.* King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv). Cobia quotas apply to persons who fish for cobia and sell their catch. A fish is counted against the quota for the area where it is caught.

(1) *Migratory groups of king mackerel*—(i) *Gulf migratory group.* For the 2012 to 2013 fishing year, the quota for the Gulf migratory group of king mackerel is 3.808 million lb (1.728 million kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota for the Gulf migratory group of king mackerel is 3.456 million lb (1.568 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31.1′ W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) *Eastern zone.* The eastern zone is divided into subzones with quotas as follows:

(*1*) *Florida east coast subzone.* For the 2012 to 2013 fishing year, the quota is 1,215,228 lb (551,218 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,102,896 lb (500,265 kg).

(*2*) *Florida west coast subzone.* (*i*) *Southern.* For the 2012 to 2013 fishing year, the quota is 1,215,228, (515,218 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,102,896 lb (500,265 kg), which is further divided into a quota for vessels fishing with hook-and-line and a quota for vessels fishing with run-around gillnets. For the 2012 to 2013 fishing year, the hook-and-line quota is 607,614 lb (275,609 kg) and the run-around gillnet quota is 607,614 lb (275,609 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the hook-and-line quota is 551,448 lb (250,133 kg) and the run-

around gillnet quota is 551,448 lb (250,133 kg).

(*ii*) *Northern*. For the 2012 to 2013 fishing year, the quota is 197,064 lb (89,387 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 178,848 lb (81,124 kg).

(*3*) Description of Florida subzones. From November 1 through March 31, the Florida east coast subzone is that part of the eastern zone south of 29°25′ N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary) and north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary). From April 1 through October 31, the Florida east coast subzone is no longer part of the Gulf migratory group king mackerel area; it is part of the Atlantic migratory group king mackerel area. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone that extends south and west from 25°20.4′ N. lat., north to 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL, boundary). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. and 25°48′ N. lat. (a line directly west from the Monroe/Collier County, FL, boundary). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. north and west to 87°31.1′ W. long. (a line directly south from the Alabama/Florida boundary) year round.

(B) *Western zone*. For the 2012 to 2013 fishing year, the quota is 1,180,480 lb (535,457 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,071,360 lb (485,961 kg).

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of king mackerel is 3.88 million lb (1.76 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel*—(i) *Gulf migratory group*. [Reserved]

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of Spanish mackerel is 3.13 million lb (1.42 million kg).

(3) *Migratory groups of cobia*—(i) *Gulf migratory group*. [Reserved]

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of cobia is 125,712 lb (57,022 kg).

(d) *Royal red shrimp in the Gulf*. The quota for all persons who harvest royal red shrimp in the Gulf is 392,000 lb (177.8 mt), tail weight.

(e) *South Atlantic snapper-grouper, excluding wreckfish*. The quotas apply to persons who are not subject to the bag limits. (See § 622.39(a)(1) for applicability of the bag limits.) The quotas are in gutted weight, that is, eviscerated but otherwise whole.

(1) *Snowy grouper*—82,900 lb (37,603 kg).

(2) *Golden tilefish*—282,819 lb (128,284 kg).

(3) *Greater amberjack*—769,388 lb (348,989 kg).

(4) *Vermilion snapper*. (i) For the period January through June each year—315,523 lb (143,119 kg).

(ii) For the period July through December each year—302,523 lb (137,222 kg).

(iii) Any unused portion of the quota specified in paragraph (e)(4)(i) of this section will be added to the quota specified in paragraph (e)(4)(ii) of this section. Any unused portion of the quota specified in paragraph (e)(4)(ii) of this section, including any addition of quota specified in paragraph (e)(4)(i) of this section that was unused, will become void and will not be added to any subsequent quota.

(5) *Black sea bass*—309,000 lb (140,160 kg), gutted weight; 364,620 lb (165,389 kg), round weight.

(6) *Red porgy*—190,050 lb (86,205 kg).

(7) *Gag*—352,940 lb (160,091 kg).

(f) *Wreckfish*. The quota for wreckfish applies to wreckfish shareholders, or their employees, contractors, or agents, and is 223,250 lb (101,264 kg), round weight. See § 622.15 for information on the wreckfish shareholder under the ITQ system.

(g) *Pelagic sargassum*. The quota for all persons who harvest pelagic sargassum in the South Atlantic EEZ is 5,000 lb (2,268 kg), wet, landed weight.

See § 622.35(g)(1) for area limitations on the harvest of pelagic sargassum.

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.42, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 77 FR 28310, May 14, 2012, § 622.42(a)(1)(vi) was suspended and (a)(1)(vii) was added, effective May 14, 2012, through Nov. 10, 2012.

§ 622.43 Closures.

(a) *Quota closures*. When a quota specified in § 622.42 is reached, or is projected to be reached, the Assistant Administrator will file a notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, the following closure restrictions apply (See § 622.49 for closure provisions when an ACL is reached or projected to be reached):

(1) *Gulf reef fish*—(i) *Commercial quotas*. The application of bag limits described in this paragraph (a)(1)(i) notwithstanding, bag limits of Gulf reef fish may not be possessed on board a vessel with commercial quantities of Gulf reef fish, i.e., Gulf reef fish in excess of applicable bag/possession limits, on board, as specified in § 622.39(a)(5).

(A) If the recreational fishery for the indicated species is open, the bag and possession limits specified in § 622.39(b) apply to all harvest or possession in or from the Gulf EEZ of the indicated species, and the sale or purchase of the indicated species taken from the Gulf EEZ is prohibited. In addition, the bag and possession limits for red snapper, when applicable, apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested.

(B) If the recreational fishery for the indicated species is closed, all harvest or possession in or from the Gulf EEZ of the indicated species is prohibited.

(ii) *Recreational quota for red snapper*. The bag and possession limit for red snapper in or from the Gulf EEZ is zero.

(iii) *Recreational quota for greater amberjack*. The bag and possession limit for greater amberjack in or from the Gulf EEZ is zero.

(2) *South Atlantic allowable octocoral*. Allowable octocoral may not be harvested or possessed in the South Atlantic EEZ and the sale or purchase of allowable octocoral in or from the South Atlantic EEZ is prohibited.

(3) *Coastal migratory pelagic fish*. (i) A person aboard a vessel for which a commercial permit for king or Spanish mackerel has been issued, as required under § 622.4(a)(2)(iii) or (iv), may not fish for king or Spanish mackerel in the EEZ or retain king or Spanish mackerel in or from the EEZ under a bag or possession limit specified in § 622.39(c) for the closed species, migratory group, zone, subzone, or gear, except as provided for under paragraph (a)(3)(ii) of this section.

(ii) A person aboard a vessel for which valid charter vessel/headboat permits for Gulf coastal migratory pelagic fish or South Atlantic coastal migratory pelagic fish and a valid commercial vessel permit for king or Spanish mackerel have been issued may continue to retain fish under a bag and possession limit specified in § 622.39(c), provided the vessel is operating as a charter vessel or headboat.

(iii) The sale or purchase of king mackerel, Spanish mackerel, or cobia of the closed species, migratory group, subzone, or gear type, is prohibited, including any king or Spanish mackerel taken under the bag limits, or cobia taken under the limited-harvest species possession limit specified in § 622.32(c)(1).

(4) *Royal red shrimp in the Gulf*. Royal red shrimp in or from the Gulf EEZ may not be retained, and the sale or purchase of royal red shrimp taken from the Gulf EEZ is prohibited.

(5) *South Atlantic gag, black grouper, red grouper, greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, red porgy, and wreckfish*. (i) The appropriate bag limits specified in § 622.39(d)(1) and the possession limits specified in § 622.39(d)(2) apply to all harvest or possession of the applicable species in or from the South Atlantic EEZ, and the sale or purchase of the applicable species

taken from or possessed in the EEZ is prohibited.

(ii) The bag and possession limits for the applicable species and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e., in state or Federal waters.

(iii) For gag, when the appropriate commercial quota is reached, the provisions of paragraphs (a)(5)(i) and (ii) of this section apply to gag and all other SASWG.

(6) [Reserved]

(7) *Pelagic sargassum.* Pelagic sargassum may not be fished for or possessed in the South Atlantic EEZ and the sale or purchase of pelagic sargassum in or from the South Atlantic EEZ is prohibited.

(b) *Exception to prohibition on sale/purchase.* (1) The prohibition on sale/purchase during a closure for Gulf reef fish, coastal migratory pelagic fish, royal red shrimp, or specified snapper-grouper species in paragraphs (a)(1), (a)(3)(iii), (a)(4), or (a)(5) and (a)(6), respectively, of this section does not apply to the indicated species that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

(2) The prohibition on sale/purchase during a closure for allowable octocoral in paragraph (a)(2) of this section or for pelagic sargassum in paragraph (a)(7) of this section does not apply to allowable octocoral or pelagic sargassum that was harvested and landed ashore prior to the effective date of the closure.

(c) *Reopening.* When a sector has been closed based on a projection of the quota specified in § 622.42, or the ACL specified in 622.49, being reached and subsequent data indicate that the quota or ACL was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the sector to provide an opportunity for the quota or ACL to be harvested.

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.43, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 622.44 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. For fisheries governed by this part, commercial trip limits apply as follows (all weights are round or eviscerated weights unless specified otherwise):

(a) *King mackerel*—(1) *Atlantic group.* The following trip limits apply to vessels for which commercial permits for king mackerel have been issued, as required under § 622.4(a)(2)(iii):

(i) North of 29°25′ N. lat., which is a line directly east from the Flagler/Volusia County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

(ii) In the area between 29°25′ N. lat. and 28°47.8′ N. lat., which is a line directly east from the Volusia/Brevard County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg) from April 1 through October 31.

(iii) In the area between 28°47.8′ N. lat. and 25°20.47′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 75 fish from April 1 through October 31.

(iv) In the area between 25°20.4′ N. lat. and 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel

in a day in amounts exceeding 1,250 lb (567 kg) from April 1 through October 31.

(2) *Gulf group*. Commercial trip limits are established in the eastern and western zones as follows. (See § 622.42(c)(1)(i) for specification of the eastern and western zones and § 622.42(c)(1)(i)(A)(*3*) for specifications of the subzones in the eastern zone.)

(i) *Eastern zone-Florida east coast subzone*. In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board at any time or landed in a day from a vessel with a commercial permit for king mackerel as required under § 622.4(a)(2)(iii) as follows:

(A) From November 1 through January 31—not to exceed 50 fish.

(B) Beginning on February 1 and continuing through March 31—

(*1*) If 75 percent or more of the Florida east coast subzone quota as specified in § 622.42(c)(1)(i)(A)(1) has been taken—not to exceed 50 fish.

(*2*) If less than 75 percent of the Florida east coast subzone quota as specified in § 622.42(c)(1)(i)(A)(1) has been taken—not to exceed 75 fish.

(ii) *Eastern zone-Florida west coast subzone*—(A) *Gillnet gear*. (*1*) In the southern Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued, as required under § 622.4(a)(2)(ii), in amounts not exceeding 25,000 lb (11,340 kg) per day, provided the gillnet fishery for Gulf group king mackerel is not closed under § 622.34(p) or § 622.43(a).

(*2*) In the southern Florida west coast subzone:

(*i*) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial vessel permit for king mackerel and a king mackerel gillnet permit.

(*ii*) King mackerel from the southern west coast subzone landed by a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(*2*)(*i*).

(*iii*) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued.

(B) *Hook-and-line gear*. In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king mackerel, as required by § 622.4(a)(2)(iii), and operating under the hook-and-line gear quotas in § 622.42(c)(1)(i)(A)(*2*)(*i*) or (c)(1)(i)(A)(*2*)(*ii*):

(*1*) From July 1, each fishing year, until 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(*2*) From the date that 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested, until a closure of the respective northern or southern subzone's fishery for vessels fishing with hook-and-line gear has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day.

(iii) *Notice of trip limit changes*. The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(2)(i) and (a)(2)(ii)(B) of this section when the requisite harvest level has been reached or is projected to be reached.

(iv) *Western zone*. In the western zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the western zone's fishery has been effected under § 622.43(a)—in amounts not exceeding 3,000 lb (1,361 kg) per day.

(b) *Spanish mackerel*. (1) Commercial trip limits are established for Atlantic migratory group Spanish mackerel as follows:

(i) North of 30°42′45.6″ N. lat., which is a line directly east from the Georgia/

Florida boundary, Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv), in amounts exceeding 3,500 lb (1,588 kg).

(ii) South of 30°42′45.6″ N. lat., Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv)—

(A) From March 1 through November 30, in amounts exceeding 3,500 lb (1,588 kg).

(B) From December 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(*1*) Mondays through Fridays—unlimited.

(*2*) Saturdays and Sundays—not exceeding 1,500 lb (680 kg).

(C) After 75 percent of the adjusted quota is taken until 100 percent of the adjusted quota is taken, in amounts not exceeding 1,500 lb (680 kg).

(D) After 100 percent of the adjusted quota is taken through the end of the fishing year, in amounts not exceeding 500 lb (227kg).

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 2.88 million (1.31 million kg). The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. Total commercial harvest is still subject to the annual catch limit and accountability measures. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or projected to be reached.

(3) For the purpose of paragraph (b)(1)(ii) of this section, a day starts at 6 a.m., local time, and extends for 24 hours. If a vessel terminates a trip prior to 6 a.m., but retains Spanish mackerel on board after that time, the Spanish mackerel retained on board will not be considered in possession during the succeeding day, provided the vessel is not underway between 6 a.m. and the time such Spanish mackerel are unloaded, and provided such Spanish mackerel are unloaded prior to 6 p.m.

(c) *South Atlantic snapper-grouper*. When a vessel fishes on a trip in the South Atlantic EEZ, the vessel trip limits specified in this paragraph (c) apply, provided persons aboard the vessel are not subject to the bag limits. See § 622.39(a) for applicability of the bag limits.

(1) *Trip-limited permits*. A vessel for which a trip-limited permit for South Atlantic snapper-grouper has been issued is limited to 225 lb (102.1 kg) of snapper-grouper.

(2) *Golden tilefish*. (i) Until 75 percent of the fishing year quota specified in § 622.42(e)(2) is reached—4,000 lb (1,814 kg).

(ii) After 75 percent of the fishing year quota specified in § 622.42(e)(2) is reached—300 lb (136 kg). However, if 75 percent of the fishing year quota has not been taken on or before September 1, the trip limit will not be reduced. The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect a trip limit change specified in this paragraph, (c)(2)(ii), when the applicable conditions have been taken.

(iii) See § 622.43(a)(5) for the limitations regarding golden tilefish after the fishing year quota is reached.

(3) *Snowy grouper*. Until the quota specified in § 622.42(e)(1) is reached—100 lb (45 kg). *See* § 622.43(a)(5) for the limitations regarding snowy grouper after the fishing year quota is reached.

(4) *Red porgy*. (i) From May 1 through December 31—120 fish.

(ii) From January 1 through April 30, the seasonal harvest limit specified in § 622.36(b)(5) applies.

(iii) See § 622.43(a)(5) for the limitations regarding red porgy after the fishing year quota is reached.

(5) *Greater amberjack*. Until the quota specified in § 622.42(e)(3) is reached—1,200 lb (544 kg). See § 622.43(a)(5) for limitations regarding greater amberjack after the quota is reached.

(6) *Vermilion snapper*. Until either quota specified in § 622.42(e)(4)(i) or (ii) is reached—1,500 lb (680 kg). See

§ 622.43(a)(5) for the limitations regarding vermilion snapper after either quota is reached.

(7) *Gag*. Until the quota specified in § 622.42(e)(7) is reached—1,000 lb (454 kg). See § 622.43(a)(5) for the limitations regarding gag after the quota is reached.

(8) *Black sea bass*. Until the applicable quota specified in § 622.42(e)(5) is reached, 1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight. See § 622.43(a)(5) for the limitations regarding black sea bass after the applicable quota is reached.

(9) *Red snapper*. For the duration of the commercial red snapper season, specified in § 622.35(l), the commercial trip limit is 50 lb (22.7 kg), gutted weight.

(d) [Reserved]

(e) *Caribbean queen conch*. A person who fishes in the Caribbean EEZ and is not subject to the bag limit may not possess in or from the Caribbean EEZ more than 150 queen conch per day.

(f) *Atlantic dolphin and wahoo*. (1) The trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(2) The trip limit for a vessel that does not have a Federal commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery is 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N. lat. (A charter vessel/headboat permit is not a commercial vessel permit.)

(g) [Reserved]

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.44, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 77 FR 51942, Aug. 28, 2012, § 622.44, paragraph (c)(9) was added, effective Aug. 28, 2012, through Dec. 31, 2012.

§ 622.45 Restrictions on sale/purchase.

In addition to restrictions on sale/purchase related to closures, as specified in § 622.43 (a) and (b), restrictions on sale and/or purchase apply as follows.

(a) *Caribbean coral reef resource*. (1) No person may sell or purchase a Caribbean prohibited coral harvested in the Caribbean EEZ.

(2) A Caribbean prohibited coral that is sold in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the Caribbean EEZ, unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(i) The information specified in subpart K of part 300 of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce.

(ii) The name and home port of the vessel, or the name and address of the individual, harvesting the Caribbean prohibited coral.

(iii) The port and date of landing the Caribbean prohibited coral.

(iv) A statement signed by the person selling the Caribbean prohibited coral attesting that, to the best of his or her knowledge, information, and belief, such Caribbean prohibited coral was harvested other than in the Caribbean EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

(b) *Caribbean reef fish*. A live red hind or live mutton snapper in or from the Caribbean EEZ may not be sold or purchased and used in the marine aquarium trade.

(c) *Gulf reef fish*. (1) A Gulf reef fish harvested in the EEZ on board a vessel that does not have a valid commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), or a Gulf reef fish possessed under the bag limits specified in § 622.39(b), may not be sold or purchased.

(2) A Gulf reef fish harvested on board a vessel that has a valid commercial permit for Gulf reef fish may be sold only to a dealer who has a valid permit for Gulf reef fish, as required under § 622.4(a)(4).

(3) A Gulf reef fish harvested in the EEZ may be purchased by a dealer who has a valid permit for Gulf reef fish, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for Gulf reef fish.

(d) *South Atlantic snapper-grouper*. (1) A South Atlantic snapper-grouper harvested or possessed in the EEZ on board a vessel that does not have a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi), or a South Atlantic snapper-grouper harvested in the EEZ and possessed under the bag limits specified in § 622.39(d), may not be sold or purchased. In addition, a South Atlantic snapper-grouper harvested or possessed by a vessel that is operating as a charter vessel or headboat with a Federal charter vessel/headboat permit for South Atlantic snapper-grouper may not be sold or purchased regardless of where harvested, i.e., in state or Federal waters.

(2) A person may sell South Atlantic snapper-grouper harvested in the EEZ only to a dealer who has a valid permit for South Atlantic snapper-grouper, as required under § 622.4(a)(4).

(3) A person may purchase South Atlantic snapper-grouper harvested in the EEZ only from a vessel that has a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi).

(4) A warsaw grouper or speckled hind in or from the South Atlantic EEZ may not be sold or purchased.

(5) No person may sell or purchase a snowy grouper, gag, golden tilefish, greater amberjack, vermilion snapper, black sea bass, or red porgy harvested from or possessed in the South Atlantic, i.e., in state or Federal waters, by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued for the remainder of the fishing year after the applicable commercial quota for that species specified in § 622.42(e) has been reached. The prohibition on sale/purchase during these periods does not apply to such of the applicable species that were harvested, landed ashore, and sold prior to the applicable commercial quota being reached and were held in cold storage by a dealer or processor.

(6) During January, February, March, and April, no person may sell or purchase a red porgy harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters. The prohibition on sale/purchase during January through April does not apply to red porgy that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(7) During April, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters. The prohibition on sale/purchase during April does not apply to greater amberjack that were harvested, landed ashore, and sold prior to April 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of greater amberjack harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(8) During January through April, no person may sell or purchase a gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, or coney harvested from or possessed in the South Atlantic EEZ or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, *i.e.*, in state or Federal waters. The prohibition on sale/purchase during January through April does not apply to such species that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's

purchase or sale of such species harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(9) The documentation supporting a dealer's purchase or sale of applicable species during the times specified in paragraphs (d)(6) through (d)(8) of this section must contain:

(i) The information specified in part 300, subpart K, of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the applicable species;

(iii) The port and date of offloading from the vessel harvesting the applicable species; and

(iv) A statement signed by the dealer attesting that the applicable species was harvested from an area other than the South Atlantic.

(10) No person may sell or purchase a red snapper harvested from or possessed in the South Atlantic, *i.e.*, State or Federal waters, by a vessel for which a Federal commercial permit for South Atlantic snapper-grouper has been issued.

(e) *Gulf and South Atlantic wild live rock*. Wild live rock in or from the Gulf EEZ or South Atlantic EEZ may not be sold or purchased. The prohibition on sale or purchase does not apply to wild live rock from the South Atlantic EEZ that was harvested and landed prior to January 1, 1996, or to wild live rock from the Gulf EEZ that was harvested and landed prior to January 1, 1997.

(f) *South Atlantic golden crab*. (1) A female golden crab in or from the South Atlantic EEZ may not be sold or purchased.

(2) A golden crab harvested in the South Atlantic EEZ on board a vessel that does not have a valid commercial permit for golden crab, as required under § 622.4(a)(2)(x), may not be sold or purchased.

(3) A golden crab harvested on board a vessel that has a valid commercial permit for golden crab may be sold only to a dealer who has a valid permit for golden crab, as required under § 622.4(a)(4).

(4) A golden crab harvested in the South Atlantic EEZ may be purchased by a dealer who has a valid permit for golden crab, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for golden crab.

(g) *South Atlantic rock shrimp*. (1) Rock shrimp harvested in the South Atlantic EEZ on board a vessel that does not have a valid commercial permit for rock shrimp, as required under § 622.4(a)(2)(viii), may not be transferred, received, sold, or purchased.

(2) Rock shrimp harvested on board a vessel that has a valid commercial permit for rock shrimp may be transferred or sold only to a dealer who has a valid permit for rock shrimp, as required under § 622.4(a)(4).

(3) Rock shrimp harvested in the South Atlantic EEZ may be received or purchased by a dealer who has a valid permit for rock shrimp, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for rock shrimp.

(h) *Cut-off (damaged) king or Spanish mackerel*. A person may not sell or purchase a cut-off (damaged) king or Spanish mackerel that does not comply with the minimum size limits specified in § 622.37(c)(2) or (c)(3), respectively, or that is in excess of the trip limits specified in § 622.44(a) or (b), respectively.

(i) *Atlantic dolphin and wahoo*. (1) A person may sell dolphin or wahoo harvested in the Atlantic EEZ only if it is harvested by a vessel that has a commercial permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(2)(xii)(A), or by a vessel authorized a 200-lb (91-kg) trip limit for dolphin or wahoo, as specified in § 622.44(f)(2), and only to a dealer who has a permit for Atlantic dolphin or wahoo, as required under § 622.4(a)(4).

(2) In addition to the provisions of paragraph (i)(1) of this section, a person may not sell dolphin or wahoo possessed under the bag limit harvested in the Atlantic EEZ by a vessel while it is operating as a charter vessel or headboat. A dolphin or wahoo harvested or possessed by a vessel that is operating as a charter vessel or headboat with a Federal charter vessel/

headboat permit for Atlantic dolphin and wahoo may not be purchased or sold if harvested from the Atlantic EEZ.

(3) Dolphin or wahoo harvested in the Atlantic EEZ may be purchased only by a dealer who has a permit for Atlantic dolphin and wahoo and only from a vessel authorized to sell dolphin or wahoo under paragraph (i)(1) of this section.

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.45, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 77 FR 51942, Aug. 28, 2012, § 622.45, paragraph (d)(5) was suspended, effective Aug. 28, 2012, through Dec. 31, 2012.

§ 622.46 Prevention of gear conflicts.

(a) No person may knowingly place in the Gulf EEZ any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and restrictions of the FMP for the Shrimp Fishery of the Gulf of Mexico, the RA may modify or establish separation zones for shrimp trawling and the use of fixed gear to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the FEDERAL REGISTER.

(c) In accordance with the procedures and restrictions of the FMP for Coastal Migratory Pelagic Resources, when the RA determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in the South Atlantic EEZ off the east coast of Florida between 27°00.6′ N. lat. and 27°50.0′ N. lat., the RA may prohibit or restrict the use of hook-and-line and/or gillnets in all or a portion of that area. Necessary prohibitions or restrictions will be published in the FEDERAL REGISTER.

[61 FR 34934, July 3, 1996, as amended at 64 FR 59126, Nov. 2, 1999]

§ 622.47 Gulf groundfish trawl fishery.

Gulf groundfish trawl fishery means fishing in the Gulf EEZ by a vessel that uses a bottom trawl, the unsorted catch of which is ground up for animal feed or industrial products.

(a) Other provisions of this part notwithstanding, the owner or operator of a vessel in the Gulf groundfish trawl fishery is exempt from the following requirements and limitations for the vessel's unsorted catch of Gulf reef fish:

(1) The requirement for a valid commercial vessel permit for Gulf reef fish in order to sell Gulf reef fish.

(2) Minimum size limits for Gulf reef fish.

(3) Bag limits for Gulf reef fish.

(4) The prohibition on sale of Gulf reef fish after a quota closure.

(b) Other provisions of this part notwithstanding, a dealer in a Gulf state is exempt from the requirement for a dealer permit for Gulf reef fish to receive Gulf reef fish harvested from the Gulf EEZ by a vessel in the Gulf groundfish trawl fishery.

§ 622.48 Adjustment of management measures.

In accordance with the framework procedures of the applicable FMPs, the RA may establish or modify the following items:

(a) *Caribbean coral reef resources*. Species for which management measures may be specified; prohibited species; harvest limitations, including quotas, trip, or daily landing limits; gear restrictions; closed seasons or areas; and marine conservation districts.

(b) *Caribbean reef fish*. Fishery management units (FMUs), quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing years, MSY, OY, TAC, maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), overfishing limit (OFL), acceptable biological catch (ABC) control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

(c) *Coastal migratory pelagic fish*. For a species or species group: Reporting and monitoring requirements, permitting

requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(d) *Gulf reef fish*. For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(e) *Gulf royal red shrimp*. Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait).

(f) *South Atlantic snapper-grouper and wreckfish*. Biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, annual catch limits (ACLs), target catch levels, accountability measures (AMs), trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, definitions of essential fish habitat, essential fish habitat, essential fish habitat HAPCs or Coral HAPCs, and restrictions on gear and fishing activities applicable in essential fish habitat and essential fish habitat HAPCs.

(g) *South Atlantic golden crab*. Biomass levels, age-structured analyses, MSY, ABC, TAC, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the RA to close the fishery when a quota is reached or is projected to be reached, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(h) *South Atlantic shrimp*. Biomass levels, age-structured analyses, BRD certification criteria, BRD specifications, BRD testing protocol, certified BRDs, nets required to use BRDs, times and locations when the use of BRDs is required, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(i) *Gulf shrimp*. For a species or species group: Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear

restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait), target effort and fishing mortality reduction levels, bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol, certified BRDs, and BRD specification.

(j) *Gulf red drum.* Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(k) *South Atlantic coral, coral reefs, and live/hard bottom habitats.* Definitions of essential fish habitat and essential fish habitat HAPCs or Coral HAPCs.

(l) *Atlantic dolphin and wahoo.* Biomass levels, age-structured analyses, MSY, OY, ABC, TAC, trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, overfishing definitions and other status determination criteria, time frame for recovery of Atlantic dolphin or wahoo if overfished, fishing year (adjustment not to exceed 2 months), authority for the RA to close a fishery when a quota is reached or is projected to be reached or reopen a fishery when additional quota becomes available, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(m) *Caribbean queen conch.* Quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing year, MSY, OY, TAC, MFMT, MSST, OFL, ABC control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

(n) *Caribbean spiny lobster.* Fishery management unit (FMU), quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing years, MSY, OY, TAC, maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), overfishing limit (OFL), acceptable biological catch (ABC) control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

(o) *Caribbean corals and reef associated plants and invertebrates.* Fishery management units (FMUs), quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing years, MSY, OY, TAC, MFMT, MSST, OFL, ABC control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

(p) *Gulf coral resources.* For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested corals.

[61 FR 34934, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 622.48, see the List of CFR

Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

(a) *Gulf reef fish*—(1) *Greater amberjack*—(i) *Commercial sector*. If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(v), the Assistant Administrator for Fisheries, NOAA, (AA) will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the quota, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the quota for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(2)(ii), the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. In addition, if despite such closure, recreational landings exceed the quota, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the quota for that following year by the amount of the overage in the prior fishing year, and to reduce the length of the recreational fishing season for the following fishing year by the amount necessary to recover the overage from the prior fishing year. Further, during that following year, if necessary, the AA may file additional notification with the Office of the Federal Register to readjust the reduced fishing season to ensure recreational harvest achieves but does not exceed the intended harvest level.

(2) *Gray triggerfish*—(i) *Commercial sector*. If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the applicable annual catch limit (ACL), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the quota for that following year by the amount the prior-year ACL was exceeded. The commercial ACL for 2010 and subsequent fishing years is 138,000 lb (62,596 kg).

(ii) *Recreational sector*. If recreational landings, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register reducing the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational target catch for that following fishing year. The recreational ACL for 2010 and subsequent fishing years is 457,000 lb (207,291 kg). The recreational ACT for 2010 and subsequent fishing years is 405,000 lb (183,705 kg). Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(3) *Other shallow-water grouper (Other SWG) combined (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper)*—(i) *Commercial sector*. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial Other SWG. The commercial ACL for Other SWG is equal to the applicable quota specified in § 622.42(a)(1)(iii)(A).

(ii) *Recreational sector*. If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(3)(iii) of this section, then during the following fishing year, if the sum of the commercial and recreational landings reaches or is projected to reach the applicable ACL specified in paragraph (a)(3)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACLs for Other SWG, in gutted weight, are 688,000 lb (312,072 kg) for 2012, 700,000 lb

(317,515 kg) for 2013, 707,000 lb (320,690 kg) for 2014, and 710,000 lb (322,051 kg) for 2015 and subsequent years.

(4) *Gag*. (i) *Commercial sector*. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial gag. The applicable commercial ACLs for gag, in gutted weight, are 0.788 million lb (0.357 million kg) for 2012, 0.956 million lb (0.434 million kg) for 2013, 1.100 million lb (0.499 million kg) for 2014, and 1.217 million lb (0.552 million kg) for 2015 and subsequent fishing years.

(ii) *Recreational sector*. (A) Without regard to overfished status, if gag recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACLs specified in paragraph (a)(4)(ii)(D)of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of gag in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational ACT in the following fishing year.

(B) If gag are not overfished, and in addition to the measures specified in paragraph (a)(4)(ii)(A) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (a)(4)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register to maintain the gag ACT, specified in paragraph (a)(4)(ii)(D) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary.

(C) In addition to the measures specified in paragraphs (a)(4)(ii)(A) and (B) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(4)(ii)(D) of this section, and gag are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL and the ACT for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(D) The applicable recreational ACLs for gag, in gutted weight, are 1.232 million lb (0.559 million kg) for 2012, 1.495 million lb (0.678 million kg) for 2013, 1.720 million lb (0.780 million kg) for 2014, and 1.903 million lb (0.863 million kg) for 2015 and subsequent fishing years. The recreational ACTs for gag, in gutted weight, are 1.031 million lb (0.468 million kg) for 2012, 1.287 million lb (0.584 million kg) for 2013, 1.519 million lb (0.689 million kg) for 2014, and 1.708 million lb (0.775 million kg) for 2015 and subsequent fishing years. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(5) *Red grouper*. (i) *Commercial sector*. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial red grouper. The applicable commercial ACL for red grouper, in gutted weight, for 2012 and subsequent fishing years is 6.03 million lb (2.735 million kg).

(ii) *Recreational sector*. (A) Without regard to overfished status, if red grouper recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACL specified in paragraph (a)(5)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of red grouper in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a

vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(B) If red grouper are not overfished, and in addition to the measures specified in paragraph (a)(5)(ii)(A) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(5)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register to maintain the red grouper ACT, specified in paragraph (a)(5)(ii)(D) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition, the notification will reduce the bag limit by one fish and reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year. The minimum red grouper bag limit for 2014 and subsequent fishing years is two fish.

(C) In addition to the measures specified in paragraphs (a)(5)(ii)(A) and (B) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(5)(ii)(D) of this section, and red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL and the ACT for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(D) The recreational ACL for red grouper, in gutted weight, is 1.90 million lb (0.862 million kg) for 2012 and subsequent fishing years. The recreational ACT for red grouper, in gutted weight, is 1.730 million lb (0.785 million kg) for 2012 and subsequent fishing years. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(6) *Deep-water grouper (DWG) combined (including yellowedge grouper, warsaw grouper, snowy grouper, and speckled hind)*—

(i) *Commercial sector*. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial DWG. The commercial ACL for DWG is equal to the applicable quota specified in § 622.42(a)(1)(ii).

(ii) *Recreational sector*. If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(6)(iii) of this section, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the applicable ACL specified in (a)(6)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACLs for DWG, in gutted weight, are 1.216 million lb (0.552 million kg) for 2012, 1.207 million lb (0.547 million kg) for 2013, 1.198 million lb (0.543 million kg) for 2014, 1.189 million lb (0.539 million kg) for 2015, and 1.105 million lb (0.501 million kg) for 2016 and subsequent years.

(7) *Tilefishes combined (including goldface tilefish, blueline tilefish, and tilefish)*—(i) *Commercial sector*. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial tilefishes. The commercial ACL for tilefishes is equal to the applicable quota specified in § 622.42(a)(1)(iv).

(ii) *Recreational sector*. If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(7)(iii) of this section, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the applicable ACL specified in (a)(7)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACL for tilefishes is 608,000 lb (275,784 kg), gutted weight.

(8) *Lesser amberjack, almaco jack, and banded rudderfish, combined.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock complex ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock complex ACL for lesser amberjack, almaco jack, and banded rudderfish, is 312,000 lb (141,521 kg), round weight.

(9) *Silk snapper, queen snapper, blackfin snapper, and wenchman, combined.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock complex ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock complex ACL for silk snapper, queen snapper, blackfin snapper, and wenchman, is 166,000 lb (75,296 kg), round weight.

(10) *Vermilion snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. The stock ACL for vermilion snapper is 3.42 million lb (1.55 million kg), round weight.

(11) *Lane snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for lane snapper is 301,000 lb (136,531 kg), round weight.

(12) *Gray snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for gray snapper is 2.42 million lb (1.10 million kg), round weight.

(13) *Cubera snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for cubera snapper is 5,065 lb (2,297 kg), round weight.

(14) *Yellowtail snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for yellowtail snapper is 725,000 lb (328,855 kg), round weight.

(15) *Mutton snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for mutton snapper is 203,000 lb (92,079 kg), round weight.

(16) *Hogfish.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the

stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for hogfish is 208,000 lb (94,347 kg), round weight.

(17) *Gray triggerfish*—(i) *Commercial sector*. If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACT (commercial quota) specified in § 622.42(a)(1)(vii), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the commercial ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACT (commercial quota) for that following year by the amount the prior-year ACL was exceeded. The commercial ACL is 64,100 lb (29,075 kg), round weight.

(ii) *Recreational sector*. If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACT, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. In addition, if despite such closure, recreational landings exceed the recreational ACL, the AA will file a notification with the Office of the Federal Register to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACT for that following fishing year. The recreational ACT is 217,100 lb (98,475 kg), round weight. The recreational ACL is 241,200 lb (109,406 kg), round weight.

(b) *South Atlantic snapper-grouper*. (1) *Golden tilefish*—(i) *Commercial fishery*. If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(2), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for the remainder of the fishing year.

(ii) *Recreational fishery*. If recreational landings, as estimated by the SRD, exceed the recreational annual catch limit (ACL) of 1,578 fish, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. Recreational landings will be evaluated relative to the ACL as follows. For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

(2) *Snowy grouper*—(i) *Commercial fishery*. If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(1), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for the remainder of the fishing year.

(ii) *Recreational fishery*. If recreational landings, as estimated by the SRD, exceed the recreational ACL of 523 fish, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. Recreational landings will be evaluated relative to the ACL as follows. For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

(3) *Gag*—(i) *Commercial fishery*. If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(7), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for gag and all

other SASWG for the remainder of the fishing year.

(ii) *Recreational fishery*. (A) If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 340,060 lb (154,249 kg), gutted weight, and gag are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the gag recreational fishery for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit for gag in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in State or Federal waters.

(B) Without regard to overfished status, if gag recreational landings exceed the ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the overage.

(C) Recreational landings will be evaluated relative to the ACL as follows. For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

(4) *Red grouper*—(i) *Commercial sector*. (A) If commercial landings for red grouper, as estimated by the SRD, reach or are projected to reach the applicable ACL in paragraph (b)(4)(i)(C) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of red grouper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(B) If commercial landings exceed the ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(C) The applicable commercial ACLs, in round weight, are 284,680 lb (129,129 kg) for 2012, 315,920 lb (143,299 kg) for 2013, and 343,200 lb (155,673 kg) for 2014 and subsequent fishing years.

(ii) *Recreational sector*. (A) If recreational landings for red grouper, as estimated by the SRD, are projected to reach the applicable ACL in paragraph (b)(4)(ii)(C) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(B) If recreational landings for red grouper, as estimated by the SRD, exceed the applicable ACL, the AA will file a notification with the Office of the Federal Register, to reduce the recreational ACL the following fishing year by the amount of the overage in the prior fishing year.

(C) The applicable recreational ACLs, in round weight, are 362,320 lb (164,346 kg) for 2012, 402,080 lb (182,380 kg) for 2013, and 436,800 lb (198,129 kg) for 2014 and subsequent fishing years.

(iii) Without regard to overfished status, if the combined commercial and recreational sector ACL (total ACL), as estimated by the SRD, is exceeded in a fishing year, then during the following fishing year, an automatic increase will not be applied to the commercial and recreational sector ACLs. The SRD will evaluate the landings data to determine whether or not an increase in

the respective sector ACLs will be applied. The applicable combined commercial and recreational sector ACLs, in round weight are 647,000 lb (293,474 kg) for 2012, 718,000 lb (325,679 kg) for 2013, and 780,000 lb (353,802 kg) for 2014 and subsequent fishing years.

(A) Following an overage of the total ACL, if there is no overage the following fishing year, the SRD will evaluate the landings data to determine whether or not an increase in the respective sector ACLs will be applied.

(B) [Reserved]

(5) *Black sea bass*—(i) *Commercial sector*. (A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(5), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) If commercial landings exceed the quota specified in § 622.42(e)(5), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year, unless the SRD determines that no overage is necessary based on the best scientific information available.

(ii) *Recreational sector*. (A) If recreational landings for black sea bass, as estimated by the SRD, are projected to reach the recreational ACL of 409,000 lb (185,519 kg), gutted weight; 482,620 lb (218,913 kg), round weight; the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If recreational landings for black sea bass, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register, to reduce the recreational ACL the following fishing year by the amount of the overage in the prior fishing year, unless the SRD determines that no overage is necessary based on the best scientific information available.

(6) *Vermilion snapper*—(i) *Commercial fishery*. If commercial landings, as estimated by the SRD, reach or are projected to reach a quota specified in § 622.42(e)(4)(i) or (ii), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for that portion of the fishing year applicable to the respective quota.

(ii) *Recreational fishery*. (A) If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 307,315 lb (139,396 kg), gutted weight, and vermilion snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the recreational fishery for vermilion snapper for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit of vermilion snapper in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in State or Federal waters.

(B) Without regard to overfished status, if vermilion snapper recreational landings exceed the ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the overage.

(C) Recreational landings will be evaluated relative to the ACL as follows. For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

(7) *Black grouper*—(i) *Commercial sector*—(A) If commercial landings for black grouper, as estimated by the

SRD, reach or are projected to reach the applicable ACL in paragraph (b)(7)(i)(C) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of black grouper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If commercial landings exceed the ACL, and black grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(C) The applicable commercial ACLs, in round weight, are 90,575 lb (41,084 kg) for 2012, 94,571 lb (42,897 kg) for 2013, and 96,844 lb (43,928 kg) for 2014 and subsequent fishing years.

(ii) *Recreational sector*. If recreational landings for black grouper, as estimated by the SRD, exceed the applicable ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary. The applicable recreational ACLs, in round weight, are 155,020 lb (70,316 kg) for 2012, 161,859 lb (73,418 kg) for 2013, and 165,750 lb (75,183 kg) for 2014 and subsequent fishing years.

(iii) Without regard to overfished status, if the combined commercial and recreational sector ACLs, as estimated by the SRD, are exceeded in a fishing year, then during the following fishing year, the AA will file a notification with the Office of the Federal Register stating that both the commercial and recreational sectors will not have an increase in their respective sector ACLs during that following fishing year. The applicable combined commercial and recreational sector ACLs, in round weight are 245,595 lb (111,400 kg) for 2012, 256,430 lb (116,315 kg) for 2013, and 262,594 lb (119,111 kg) for 2014 and subsequent fishing years.

(8) *Deep-water complex (including yellowedge grouper, blueline tilefish, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper)*—(i) *Commercial sector*—(A) If commercial landings for the deep-water complex, as estimated by the SRD, reach or are projected to reach the commercial ACL of 343,869 lb (155,976 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of deep-water complex species is prohibited and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If commercial landings exceed the ACL, and at least one of the species in the deep-water complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for the deep-water complex, as estimated by the SRD, exceed the recreational ACL of 332,039 lb (150,610 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(9) *Scamp*—(i) *Commercial sector*—(A) If commercial landings for scamp, as estimated by the SRD, reach or are projected to reach the commercial ACL of 341,636 lb (154,963 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of scamp is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If commercial landings exceed the ACL, and scamp are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for scamp, as estimated by the SRD, exceed the recreational ACL of 150,936 lb (68,463 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(10) *Other SASWG combined (including red hind, rock hind, yellowmouth grouper, yellowfin grouper, coney, and graysby)*—(i) *Commercial sector*—(A) If commercial landings for other SASWG, as estimated by the SRD, reach or are projected to reach the commercial ACL of 49,488 lb (22,447 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of other SASWG is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If commercial landings exceed the ACL, and at least one of the species in the other SASWG complex is overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for other SASWG, as estimated by the SRD, exceed the recreational ACL of 48,329 lb (21,922 kg),

round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(11) *Greater amberjack*—(i) *Commercial sector*—(A) If commercial landings for greater amberjack, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(3), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) If commercial landings exceed the ACL, and greater amberjack are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for greater amberjack, as estimated by the SRD, exceed the recreational ACL of 1,167,837 lb (529,722 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(12) *Lesser amberjack, almaco jack, and banded rudderfish complex, combined*—(i) *Commercial sector*—(A) If commercial landings for lesser amberjack, almaco jack, and banded rudderfish, combined, as estimated by the SRD, reach or are projected to reach their combined commercial ACL of 193,999 lb (87,996 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of lesser amberjack, almaco jack, and banded rudderfish is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If the combined commercial landings for the complex exceed the ACL, and at least one of the species in the complex (lesser amberjack, almaco jack, and banded rudderfish) is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for the complex (lesser amberjack, almaco jack, and banded rudderfish), combined, as estimated by the SRD, exceed the recreational ACL of 261,490 lb (118,610 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year

if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(13) *Bar jack*—(i) *Commercial sector*—(A) If commercial landings for bar jack, as estimated by the SRD, reach or are projected to reach the commercial ACL of 6,686 lb (3,033 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of bar jack is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If commercial landings exceed the ACL, and bar jack is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for bar jack, as estimated by the SRD, exceed the recreational ACL of 13,834 lb (6,275 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(14) *Yellowtail snapper*—(i) *Commercial sector*—(A) If commercial landings for yellowtail snapper, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,142,589 lb (518,270 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of yellowtail snapper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If commercial landings exceed the ACL, and yellowtail snapper is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for yellowtail snapper, as estimated by the SRD, exceed the recreational ACL of 1,031,286 lb (467,783 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(15) *Mutton snapper*—(i) *Commercial sector*—(A) If commercial landings for mutton snapper, as estimated by the SRD, reach or are projected to reach the commercial ACL of 157,743 lb (71,551 kg), round weight, the AA will file a

notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of mutton snapper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If commercial landings exceed the ACL, and mutton snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for mutton snapper, as estimated by the SRD, exceed the recreational ACL of 768,857 lb (348,748 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(16) *Other snappers combined (including cubera snapper, gray snapper, lane snapper, dog snapper, and mahogany snapper) complex*—(i) *Commercial sector*—(A) If commercial landings combined for this other snappers complex, as estimated by the SRD, reach or are projected to reach the combined complex commercial ACL of 204,552 lb (92,783 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of the snappers in this complex is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If the combined commercial landings for this complex exceed the ACL, and at least one of the species in the other snappers complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If the combined recreational landings for this snappers complex, as estimated by the SRD, exceed the recreational ACL of 882,388 lb (400,244 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL for this complex in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(17) *Gray triggerfish*—(i) *Commercial sector*—(A) If commercial landings for gray triggerfish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 305,262 lb (138,465 kg), round weight, the AA will file a notification with the Office of the

Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of gray triggerfish is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If commercial landings exceed the ACL, and gray triggerfish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for gray triggerfish, as estimated by the SRD, exceed the recreational ACL of 367,303 lb (166,606 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(18) *Wreckfish*—(i) *Commercial sector*. The ITQ program for wreckfish in the South Atlantic serves as the accountability measures for commercial wreckfish. The commercial ACL for wreckfish is equal to the commercial quota specified in § 622.42(f).

(ii) *Recreational sector*. If recreational landings for wreckfish, as estimated by the SRD, exceed the recreational ACL of 11,750 lb (5,330 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(19) *Blue runner*—(i) *Commercial sector*—(A) If commercial landings for blue runner, as estimated by the SRD, reach or are projected to reach the commercial ACL of 188,329 lb (85,425 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of blue runner is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If commercial landings exceed the ACL, and blue runner are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for blue runner, as estimated by the SRD, exceed the recreational ACL of 1,101,612 lb (499,683 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce

the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(20) *Atlantic spadefish*—(i) *Commercial sector*—(A) If commercial landings for Atlantic spadefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 36,476 lb (16,545 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic spadefish is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If commercial landings exceed the ACL, and Atlantic spadefish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for Atlantic spadefish, as estimated by the SRD, exceed the recreational ACL of 246,365 lb (111,749 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(21) *Hogfish*—(i) *Commercial sector*—(A) If commercial landings for hogfish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 48,772 lb (22,123 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of hogfish is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If commercial landings exceed the ACL, and hogfish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for hogfish, as estimated by the SRD, exceed the recreational ACL of 98,866 lb (44,845 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a

reduction in the length of the following fishing season is unnecessary.

(22) *Red porgy*—(i) *Commercial sector*—(A) If commercial landings for red porgy, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(6), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) If commercial landings exceed the ACL, and red porgy are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for red porgy, as estimated by the SRD, exceed the recreational ACL of 197,652 lb (89,653 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(23) *Jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy complex*—(i) *Commercial sector*—(A) If commercial landings for jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, combined, as estimated by the SRD, reach or are projected to reach the commercial complex ACL of 35,129 lb (15,934 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If the combined commercial landings for this complex exceed the ACL, and at least one of the species in the complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, combined, as estimated by the SRD, exceed the recreational ACL of 112,485 lb (51,022 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season for this complex by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(24) *White grunt, sailor's choice, tomtate, and margate complex*—(i) *Commercial sector*—(A) If commercial landings for white grunt, sailor's choice, tomtate, and margate, combined, as estimated by the SRD, reach or are projected to reach the commercial complex ACL of 214,624 lb (97,352 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this

complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of white grunt, sailor's choice, tomtate, and margate, is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(B) If the combined commercial landings for this complex exceed the ACL, and at least one of the species in the complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(ii) *Recreational sector*. If recreational landings for white grunt, sailor's choice, tomtate, and margate, as estimated by the SRD, exceed the recreational ACL of 562,151 lb (254,987 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season for this complex by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(25) *Red snapper*—(i) *Commercial sector*. The commercial season for red snapper specified in § 622.35(l) and the commercial trip limit specified in § 622.44(c)(9) serve as the commercial AMs for red snapper. The Southeast Fisheries Science Center (SEFSC) will monitor commercial landings in-season to determine if the ACL has been harvested. If the SEFSC determines the ACL has not been harvested in the first 7-day opening, the RA may reopen the commercial sector for an additional limited time. The commercial ACL for red snapper is 20,818 lb (9,443 kg), gutted weight.

(ii) *Recreational sector*. The recreational season specified in § 622.35(l) and the recreational bag limit specified in § 622.39(d)(1)(xi) serve as the recreational AMs for red snapper. The recreational ACL for red snapper is 9,399 fish.

(c) *Caribbean island management areas/ Caribbean EEZ*. If landings from a Caribbean island management area, as specified in Appendix E to part 622, except for landings of queen conch (see § 622.33(d)), or landings from the Caribbean EEZ for tilefish and aquarium trade species, are estimated by the SRD to have exceeded the applicable ACL, as specified in paragraph (c)(1) for Puerto Rico management area species or species groups, paragraph (c)(2) for St. Croix management area species or species groups, paragraph (c)(3) for St. Thomas/St. John management area species or species groups, or paragraph (c)(4) for the Caribbean EEZ, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species groups that year by the amount necessary to ensure landings do not exceed the applicable ACL. If NMFS determines the ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMP. With the exceptions of Caribbean queen conch in Puerto Rico and St. Thomas/St. John management areas, goliath grouper, Nassau grouper, midnight parrotfish, blue parrotfish, and rainbow parrotfish, ACLs are based on

the combined Caribbean EEZ and territorial landings for each management area. The ACLs specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this section are given in round weight. (See § 622.32 for limitations on taking prohibited and limited harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands or by a person subject to the bag limits.)

(1) *Puerto Rico*—(i) *Commercial ACLs.* The following ACLs apply to commercial landings of Puerto Rico management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—52,737 lb (23,915 kg).

(C) *Snapper Unit 1*—284,685 lb (129,131 kg).

(D) *Snapper Unit 2*—145,916 lb (66,186 kg).

(E) *Snapper Unit 3*—345,775 lb (156,841 kg).

(F) *Snapper Unit 4*—373,295 lb (169,324 kg).

(G) *Groupers*—177,513 lb (80,519 kg).

(H) *Angelfish*—8,984 lb (4,075 kg).

(I) *Boxfish*—86,115 lb (39,061 kg).

(J) *Goatfishes*—17,565 lb (7,967 kg).

(K) *Grunts*—182,396 lb (82,733 kg).

(L) *Wrasses*—54,147 lb (24,561 kg).

(M) *Jacks*—86,059 lb (39,036 kg).

(N) *Scups and porgies, combined*—24,739 lb (11,221 kg).

(O) *Squirrelfish*—16,663 lb (7,558 kg).

(P) *Surgeonfish*—7,179 lb (3,256 kg).

(Q) *Triggerfish and filefish, combined*—58,475 lb (26,524 kg).

(R) *Spiny lobster*—327,920 lb (148,742 kg).

(ii) *Recreational ACLs.* The following ACLs apply to recreational landings of Puerto Rico management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—15,263 lb (6,921 kg).

(C) *Snapper Unit 1*—95,526 lb (43,330 kg).

(D) *Snapper Unit 2*—34,810 lb (15,790 kg).

(E) *Snapper Unit 3*—83,158 lb (37,720 kg).

(F) *Snapper Unit 4*—28,509 lb (12,931 kg).

(G) *Groupers*—77,213 lb (35,023 kg).

(H) *Angelfish*—4,492 lb (2,038 kg).

(I) *Boxfish*—4,616 lb (2,094 kg).

(J) *Goatfishes*—362 lb (164 kg).

(K) *Grunts*—5,028 lb (2,281 kg).

(L) *Wrasses*—5,050 lb (2,291 kg).

(M) *Jacks*—51,001 lb (23,134 kg).

(N) *Scups and porgies, combined*—2,577 lb (1,169 kg).

(O) *Squirrelfish*—3,891 lb (1,765 kg).

(P) *Surgeonfish*—3,590 lb (1,628 kg).

(Q) *Triggerfish and filefish, combined*—21,929 lb (9,947 kg).

(2) *St. Croix.* (i) *ACLs.* The following ACLs apply to landings of St. Croix management area species or species groups.

(A) *Queen conch*—50,000 lb (22,680 kg).

(B) *Parrotfishes*—240,000 lb (108,863 kg).

(C) *Snappers*—102,946 lb (46,696 kg).

(D) *Groupers*—30,435 lb (13,805 kg).

(E) *Angelfish*—305 lb (138 kg).

(F) *Boxfish*—8,433 lb (3,825 kg).

(G) *Goatfishes*—3,766 lb (1,708 kg).

(H) *Grunts*—36,881 lb (16,729 kg).

(I) *Wrasses*—7 lb (3 kg).

(J) *Jacks*—15,489 lb (7,076 kg).

(K) *Scups and porgies, combined*—4,638 lb (2,104 kg).

(L) *Squirrelfish*—121 lb (55 kg).

(M) *Surgeonfish*—33,603 lb (15,242 kg).

(N) *Triggerfish and filefish, combined*—24,980 lb (11,331 kg).

(O) *Spiny lobster*—107,307 lb (48,674 kg).

(ii) [Reserved]

(3) *St. Thomas/St. John.* (i) *ACLs.* The following ACLs apply to landings of St. Thomas/St. John management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—42,500 lb (19,278 kg).

(C) *Snappers*—133,775 lb (60,679 kg).

(D) *Groupers*—51,849 lb (23,518 kg).

(E) *Angelfish*—7,897 lb (3,582 kg).

(F) *Boxfish*—27,880 lb (12,646 kg).

(G) *Goatfishes*—320 lb (145 kg).

(H) *Grunts*—37,617 lb (17,063 kg).

(I) *Wrasses*—585 lb (265 kg).

(J) *Jacks*—52,907 lb (23,998 kg).

(K) *Scups and porgies, combined*—21,819 lb (9,897 kg).

(L) *Squirrelfish*—4,241 lb (1,924 kg).

(M) *Surgeonfish*—29,249 lb (13,267 kg).

(N) *Triggerfish and filefish, combined*—74,447 lb (33,769 kg).

(O) *Spiny lobster*—104,199 lb (47,264 kg).

(ii) [Reserved]

(4) *Caribbean EEZ*. (i) *ACLs*. The following ACLs apply to landings of species or species groups throughout the Caribbean EEZ.

(A) *Tilefish*—14,642 lb (6,641 kg).

(B) *Aquarium trade species*—8,155 lb (3,699 kg).

(ii) [Reserved]

(d) *Royal red shrimp in the Gulf*. (1) *Commercial sector*. If commercial landings, as estimated by the SRD, exceed the commercial ACL, then during the following fishing year, if commercial landings reach or are projected to reach the commercial ACL, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of that fishing year. The commercial ACL for royal red shrimp is 334,000 lb (151,500 kg), tail weight.

(2) [Reserved]

(e) *Atlantic dolphin*—(1) *Commercial sector*. If commercial landings for Atlantic dolphin, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,065,524 lb (483,314 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic dolphin is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(2) *Recreational sector*. If recreational landings for Atlantic dolphin, as estimated by the SRD, exceed the recreational ACL of 13,530,692 lb (6,137,419 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(f) *Atlantic wahoo*—(1) *Commercial sector*. If commercial landings for Atlantic wahoo, as estimated by the SRD, reach or are projected to reach the commercial ACL of 64,147 lb (29,097 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic wahoo is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(2) *Recreational sector*. If recreational landings for Atlantic wahoo, as estimated by the SRD, exceed the recreational ACL of 1,427,638 lb (647,566 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(g) *South Atlantic golden crab*—(1) *Commercial sector*—(i) If commercial landings for golden crab, as estimated by the SRD, reach or are projected to reach the ACL of 2 million lb (907,185 kg), round weight, the AA will file a

notification with the Office of the Federal Register to close the golden crab fishery for the remainder of the fishing year. On and after the effective date of such a notification, all harvest, possession, sale or purchase of golden crab in or from the South Atlantic EEZ is prohibited.

(ii) If commercial landings exceed the ACL, and golden crab are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) [Reserved]

(h) *Coastal migratory pelagic fish*—(1) *Gulf migratory group king mackerel*—(i) *Commercial sector*. If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in §622.42(c)(1)(i) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that zone, subzone, or gear type for the remainder of the fishing year.

(ii) *Recreational sector*. If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 8.092 million lb (3.670 million kg), the AA will file a notification with the Office of the Federal Register to implement a bag and possession limit for Gulf migratory group king mackerel of zero, unless the best scientific information available determines that a bag limit reduction is unnecessary. This bag and possession limit would also apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(iii) For purposes of tracking the ACL, recreational landings will be monitored based on the commercial fishing year, July 1 through June 1.

(2) *Atlantic migratory group king mackerel*—(i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in §622.42(c)(1)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (h)(2)(i)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(2)(iii) of this section, and Atlantic migratory group king mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(ii) *Recreational sector*. (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the bag limit by the amount necessary to ensure recreational landings may achieve the recreational annual catch target (ACT), but do not exceed the recreational ACL, in the following fishing year. The recreational ACT is 6.11 million lb (2.77 million kg). The recreational ACL is 6.58 million lb (2.99 million lb).

(B) In addition to the measures specified in paragraph (h)(2)(ii)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(2)(iii) of this section, and Atlantic migratory group king mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACL and ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(C) For purposes of tracking the ACL, recreational landings will be evaluated based on the commercial fishing year,

March through February. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group king mackerel is 10.46 million lb (4.75 million kg).

(3) *Gulf migratory group Spanish mackerel*—(i) If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, as specified in paragraph (h)(3)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group Spanish mackerel is prohibited and the harvest and possession limit of this species in or from the Gulf EEZ is zero. This possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) For purposes of tracking the ACL, recreational landings will be evaluated based on the commercial fishing year, April through March.

(iii) The stock ACL for Gulf migratory group Spanish mackerel is 5.15 million lb (4.75 million kg).

(4) *Atlantic migratory group Spanish mackerel*—(i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(c)(2)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (h)(4)(i)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(4)(iii), and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(ii) *Recreational sector*. (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(4)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the bag limit by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL, in the following fishing year. The recreational ACT is 2.32 million lb (1.05 million kg). The recreational ACL is 2.56 million lb (1.16 million kg).

(B) In addition to the measures specified in paragraph (h)(4)(ii)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(4)(iii) of this section, and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(C) For purposes of tracking the ACL and ACT, recreational landings will be evaluated based on the commercial fishing year, March through February. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group Spanish mackerel is 5.69 million lb (2.58 million kg).

(5) *Gulf migratory group cobia*—(i) If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACT, as specified in paragraph (h)(5)(ii) of this section, the AA will file a notification with the Office of the Federal Register to close the

commercial and recreational sectors for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group cobia is prohibited and the harvest and possession limit of this species in or from the Gulf EEZ is zero. This bag and possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal water.

(ii) The stock ACT for Gulf migratory group cobia is 1.31 million lb (0.59 million kg). The stock ACL for Gulf migratory group cobia is 1.46 million lb (0.66 million kg).

(6) *Atlantic migratory group cobia*—(i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(c)(3)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (h)(6)(i)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(6)(iii) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(ii) *Recreational sector*. (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(6)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. Further, during that following year, if necessary, the AA may file additional notification with the Office of the Federal Register to readjust the reduced fishing season to ensure recreational harvest achieves but does not exceed the intended harvest level. The recreational ACT is 1,184,688 lb (537,365 kg). The recreational ACL is 1,445,687 (655,753 kg).

(B) In addition to the measures specified in paragraph (h)(6)(ii)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(6)(iii) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACL and ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(C) Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group cobia is 1,571,399 lb (712,775 kg).

[73 FR 31843, July 3, 2008, as amended at 74 FR 17610, Apr. 16, 2009; 75 FR 9118, Mar. 1, 2010; 75 FR 74660, Dec. 1, 2010; 75 FR 82293, Dec. 30, 2010; 76 FR 82053, 82067, Dec. 28, 2011; 76 FR 82410, 82418, Dec. 30, 2011; 77 FR 6998, Feb. 10, 2012; 77 FR 15927, Mar. 16, 2012; 77 FR 28310, May 14, 2012; 77 FR 32420, June 1, 2012; 77 FR 34259, June 11, 2012; 77 FR 45272, July 31, 2012]

EFFECTIVE DATE NOTES: 1. At 77 FR 28310, May 14, 2012, § 622.49(a)(2) was suspended and (a)(17) was added, effective May 14, 2012, through Nov. 10, 2012.

2. At 77 FR 51942, Aug. 28, 2012, § 622.49, paragraph (b)(25) was added, effective Aug. 28, 2012, through Dec. 31, 2012.

§ 622.50 Caribbean spiny lobster import prohibitions.

(a) *Minimum size limits for imported spiny lobster*. There are two minimum size limits that apply to importation of spiny lobster into the United States -one that applies any place subject to

the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and a more restrictive minimum size limit that applies to Puerto Rico and the U.S. Virgin Islands.

(1) No person may import a Caribbean spiny lobster with less than a 6-ounce (170-gram) tail weight into Puerto Rico or the U.S. Virgin Islands. For the purposes of paragraph (a) of this section, a 6-ounce (170-gram) tail weight is defined as a tail that weighs 5.9-6.4 ounces (167-181 grams). If the documentation accompanying an imported Caribbean spiny lobster (including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices) indicates that the product does not satisfy the minimum tail-weight, the person importing such Caribbean spiny lobster has the burden to prove that such Caribbean spiny lobster actually does satisfy the minimum tail-weight requirement or that such Caribbean spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such Caribbean spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such Caribbean spiny lobster has the burden to prove that such Caribbean spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such Caribbean spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the burden is satisfied such Caribbean spiny lobster will be considered to be in compliance with the minimum 6-ounce (170-gram) tail-weight requirement.

(2) See § 640.27 of this chapter regarding the minimum size limit that applies to spiny lobster imported into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands.

(b) *Additional Caribbean spiny lobster import prohibitions*—(1) *Prohibition related to tail meat*. No person may import into any place subject to the jurisdiction of the United States Caribbean spiny lobster tail meat that is not in whole tail form with the exoskeleton attached.

(2) *Prohibitions related to egg-bearing spiny lobster*. No person may import into any place subject to the jurisdiction of the United States Caribbean spiny lobster with eggs attached or Caribbean spiny lobster from which eggs or pleopods (swimmerets) have been removed or stripped. Pleopods (swimmerets) are the first five pairs of abdominal appendages.

[74 FR 1151, Jan. 12, 2009]

APPENDIX A TO PART 622—SPECIES TABLES

TABLE 1 OF APPENDIX A TO PART 622—CARIBBEAN CORAL REEF RESOURCES

I. Coelenterates—Phylum Coelenterata
A. Hydrocorals—Class Hydrozoa
1. Hydroids—Order Athecatae
Family Milleporidae
Millepora spp., Fire corals
Family Stylasteridae
Stylaster roseus, Rose lace corals
B. Anthozoans—Class Anthozoa
1. Soft corals—Order Alcyonacea
Family Anthothelidae
Erythropodium caribaeorum, Encrusting gorgonian
Iciligorgia schrammi, Deepwater sea fan
Family Briaridae
Briareum asbestinum, Corky sea finger
Family Clavulariidae
Carijoa riisei
Telesto spp.
2. Gorgonian corals—Order Gorgonacea
Family Ellisellidae
Ellisella spp., Sea whips
Family Gorgoniidae
Gorgonia flabellum, Venus sea fan
G. mariae, Wide-mesh sea fan
G. ventalina, Common sea fan
Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip
Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis spp.
M. flavida, Rough sea plume
M. sulphurea

Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari
3. Hard Corals—Order Scleractinia
Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agaricidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce
Leptoseris cucullata, Sunray lettuce
Family Astrocoeniidae
Stephanocoenia michelinii, Blushing star
Family Caryophyllidae
Eusmilia fastigiata, Flower coral
Tubastrea aurea, Cup coral
Family Faviidae
Cladocora arbuscula, Tube coral
Colpophyllia natans, Boulder coral
Diploria clivosa, Knobby brain coral
D. labyrinthiformis, Grooved brain
D. strigosa, Symmetrical brain
Favia fragum, Golfball coral
Manicina areolata, Rose coral
M. mayori, Tortugas rose coral
Montastrea annularis, Boulder star coral
M. cavernosa, Great star coral
Solenastrea bournoni, Smooth star coral
Family Meandrinidae
Dendrogyra cylindrus, Pillar coral
Dichocoenia stellaris, Pancake star
D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isophyllastrea rigida, Rough star coral
Isophyllia sinuosa, Sinuous cactus
Mussa angulosa, Large flower coral
Mycetophyllia aliciae, Thin fungus coral
M. danae, Fat fungus coral
M. ferox, Grooved fungus
M. lamarckiana, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Oculinidae
Oculina diffusa, Ivory bush coral
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Poritidae
Porites astreoides, Mustard hill coral
P. branneri, Blue crust coral
P. divaricata, Small finger coral
P. porites, Finger coral
Family Rhizangiidae
Astrangia solitaria, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Siderastreidae
Siderastrea radians, Lesser starlet
S. siderea, Massive starlet
4. Black Corals—Order Antipatharia
Antipathes spp., Bushy black coral
Stichopathes spp., Wire coral
II. Sea grasses—Phylum Angiospermae
Halodule wrightii, Shoal grass
Halophila spp., Sea vines
Ruppia maritima, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudium, Turtle grass

Aquarium Trade Species in the Coral FMP—The following species are included for data collection purposes only.

I. Sponges—Phylum Porifera
A. Demosponges—Class Demospongiae
Aphimedon compressa, Erect rope sponge
Chondrilla nucula, Chicken liver sponge
Cynachirella alloclada
Geodia neptuni, Potato sponge
Haliclona spp., Finger sponge
Myriastra spp.
Niphates digitalis, Pink vase sponge
N. erecta, Lavender rope sponge
Spinosella policifera
S. vaginalis
Tethya crypta
II. Coelenterates—Phylum Coelenterata
A. Anthozoans—Class Anthozoa
1. Anemones—Order Actiniaria
Aiptasia tagetes, Pale anemone
Bartholomea annulata, Corkscrew anemone
Condylactis gigantea, Giant pink-tipped anemone
Hereractis lucida, Knobby anemone
Lebrunia spp., Staghorn anemone
Stichodactyla helianthus, Sun anemone
2. Colonial Anemones—Order Zoanthidea
Zoanthus spp., Sea mat
3. False Corals—Order Corallimorpharia
Discosoma spp. (formerly *Rhodactis*), False coral
Ricordia florida, Florida false coral
III. Annelid Worms—Phylum Annelida
A. Polychaetes—Class Polychaeta
Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifica, Magnificent duster
Family Serpulidae
Spirobranchus giganteus, Christmas tree worm
IV. Mollusks—Phylum Mollusca
A. Gastropods—Class Gastropoda
Family Elysiidae
Tridachia crispata, Lettuce sea slug
Family Olividae
Oliva reticularis, Netted olive
Family Ovulidae
Cyphoma gibbosum, Flamingo tongue
B. Bivalves—Class Bivalvia
Family Limidae
Lima spp., Fileclams
L. scabra, Rough fileclam
Family Spondylidae
Spondylus americanus, Atlantic thorny oyster

C. Cephalopods—Class Cephalopoda
1. Octopuses—Order Octopoda
Family Octopodidae
Octopus spp. (except the Common octopus, *O. vulgaris*)
V. Arthropods—Phylum Arthropoda
A. Crustaceans—Subphylum Crustacea
1. Decapods—Order Decapoda
Family Alpheidae
Alpheaus armatus, Snapping shrimp
Family Diogenidae
Paguristes spp., Hermit crabs
P. cadenati, Red reef hermit
Family Grapsidae
Percnon gibbesi, Nimble spray crab
Family Hippolytidae
Lysmata spp., Peppermint shrimp
Thor amboinensis, Anemone shrimp
Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus, Green clinging
Stenorhynchus seticornis, Yellowline arrow
Family Palaemonida
Periclimenes spp., Cleaner shrimp
Family Squillidae, Mantis crabs
Gonodactylus spp.
Lysiosquilla spp.
Family Stenopodidae, Coral shrimp
Stenopus hispidus, Banded shrimp
S. scutellatus, Golden shrimp
VI. Echinoderms—Phylum Echinodermata
A. Feather stars—Class Crinoidea
Analcidometra armata, Swimming crinoid
Davidaster spp., Crinoids
Nemaster spp., Crinoids
B. Sea stars—Class Asteroidea
Astropecten spp., Sand stars
Linckia guildingii, Common comet star
Ophidiaster guildingii, Comet star
Oreaster reticulatus, Cushion sea star
C. Brittle and basket stars—Class Ophiuroidea
Astrophyton muricatum, Giant basket star
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
O. rubicundum, Ruby brittlestar
D. Sea Urchins—Class Echinoidea
Diadema antillarum, Long-spined urchin
Echinometra spp., Purple urchin
Eucidaris tribuloides, Pencil urchin
Lytechinus spp., Pin cushion urchin
Tripneustes ventricosus, Sea egg
E. Sea Cucumbers—Class Holothuroidea
Holothuria spp., Sea cucumbers
VII. Chordates—Phylum Chordata
A. Tunicates—Subphylum Urochordata

TABLE 2 OF APPENDIX A TO PART 622—CARIBBEAN REEF FISH

Lutjanidae—Snappers
Unit 1
Black snapper, *Apsilus dentatus*
Blackfin snapper, *Lutjanus buccanella*
Silk snapper, *Lutjanus vivanus*
Vermilion snapper, *Rhomboplites aurorubens*
Wenchman, *Pristipomoides aquilonaris*
Unit 2
Cardinal, *Pristipomoides macrophthalmus*
Queen snapper, *Etelis oculatus*
Unit 3
Gray snapper, *Lutjanus griseus*
Lane snapper, *Lutjanus synagris*
Mutton snapper, *Lutjanus analis*
Dog snapper, *Lutjanus jocu*
Schoolmaster, *Lutjanus apodus*
Mahogany snapper, *Lutjanus mahogani*
Unit 4
Yellowtail snapper, *Ocyurus chrysurus*
Serranidae—Sea basses and Groupers
Unit 1
Nassau Grouper, *Epinephelus striatus*
Unit 2
Goliath grouper, *Epinephelus itajara*
Unit 3
Coney, *Epinephelus fulvus*
Graysby, *Epinephelus cruentatus*
Red hind, *Epinephelus guttatus*
Rock hind, *Epinephelus adscensionis*
Unit 4
Black grouper, *Mycteroperca bonaci*
Red grouper, *Epinephelus morio*
Tiger grouper, *Mycteroperca tigris*
Yellowfin grouper, *Mycteroperca venenosa*
Unit 5
Misty grouper, *Epinephelus mystacinus*
Yellowedge grouper, *Epinephelus flavolimbatus*
Haemulidae—Grunts
White grunt, *Haemulon plumieri*
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
Bluestriped grunt, *Haemulon sciurus*
French grunt, *Haemulon flavolineatum*
Porkfish, *Anisotremus virginicus*
Mullidae—Goatfishes
Spotted goatfish, *Pseudupeneus maculatus*
Yellow goatfish, *Mulloidichthys martinicus*
Sparidae—Porgies
Jolthead porgy, *Calamus bajonado*
Sea bream, *Archosargus rhomboidalis*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*
Holocentridae—Squirrelfishes
Blackbar soldierfish, *Myripristis jacobus*
Bigeye, *Priacanthus arenatus*
Longspine squirrelfish, *Holocentrus rufus*
Squirrelfish, *Holocentrus adscensionis*
Malacanthidae—Tilefishes
Blackline tilefish, *Caulolatilus cyanops*
Sand tilefish, *Malacanthus plumieri*
Carangidae—Jacks
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Almaco jack, *Seriola rivoliana*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Yellow jack, *Caranx bartholomaei*
Scaridae—Parrotfishes
Blue parrotfish, *Scarus coeruleus*
Midnight parrotfish, *Scarus coelestinus*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*

Rainbow parrotfish, *Scarus guacamaia*
Redfin parrotfish, *Sparisoma rubripinne*
Redtail parrotfish, *Sparisoma chrysopterum*
Stoplight parrotfish, *Sparisoma viride*
Redband parrotfish, *Sparisoma aurofrenatum*
Striped parrotfish, *Scarus croicensis*
Acanthuridae—Surgeonfishes
Blue tang, *Acanthurus coeruleus*
Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Balistidae—Triggerfishes
Ocean triggerfish, *Canthidermis sufflamen*
Queen triggerfish, *Balistes vetula*
Sargassum triggerfish, *Xanthichthys rigens*
Monacanthidae—Filefishes
Scrawled filefish, *Aluterus scriptus*
Whitespotted filefish, *Cantherhines macrocerus*
Black durgon, *Melichthys niger*
Ostraciidae—Boxfishes
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Spotted trunkfish, *Lactophrys bicaudalis*
Smooth trunkfish, *Lactophrys triqueter*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Puddingwife, *Halichoeres radiatus*
Spanish hogfish, *Bodianus rufus*
Pomacanthidae—Angelfishes
Queen angelfish, *Holacanthus ciliaris*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*

Aquarium Trade—The following aquarium trade species are included for data collection purposes only:
Frogfish, *Antennarius* spp.
Flamefish, *Apogon maculatus*
Conchfish, *Astrapogen stellatus*
Redlip blenny, *Ophioblennius atlanticus*
Peacock flounder, *Bothus lunatus*
Longsnout butterflyfish, *Chaetodon aculeatus*
Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*
Redspotted hawkfish, *Amblycirrhitus pinos*
Flying gurnard, *Dactylopterus volitans*
Atlantic spadefish, *Chaetodipterus faber*
Neon goby, *Gobiosoma oceanops*
Rusty goby, *Priolepis hipoliti*
Royal gramma, *Gramma loreto*
Creole wrasse, *Clepticus parrae*
Yellowcheek wrasse, *Halichoeres cyanocephalus*
Yellowhead wrasse, *Halichoeres garnoti*
Clown wrasse, *Halichoeres maculipinna*
Pearly razorfish, *Hemipteronotus novacula*
Green razorfish, *Hemipteronotus splendens*
Bluehead wrasse, *Thalassoma bifasciatum*
Chain moray, *Echidna catenata*
Green moray, *Gymnothorax funebris*
Goldentail moray, *Gymnothorax miliaris*
Batfish, *Ogcocepahalus* spp.
Goldspotted eel, *Myrichthys ocellatus*
Yellowhead jawfish, *Opistognathus aurifrons*
Dusky jawfish, *Opistognathus whitehursti*
Cherubfish, *Centropyge argi*
Rock beauty, *Holacanthus tricolor*
Sergeant major, *Abudefduf saxatilis*
Blue chromis, *Chromis cyanea*
Sunshinefish, *Chromis insolata*
Yellowtail damselfish, *Microspathodon chrysurus*
Dusky damselfish, *Pomacentrus fuscus*
Beaugregory, *Pomacentrus leucostictus*
Bicolor damselfish, *Pomacentrus partitus*
Threespot damselfish, *Pomacentrus planifrons*
Glasseye snapper, *Priacanthus cruentatus*
High-hat, *Equetus acuminatus*
Jackknife-fish, *Equetus lanceolatus*
Spotted drum, *Equetus punctatus*
Scorpaenidae—Scorpionfishes
Butter hamlet, *Hypoplectrus unicolor*
Swissguard basslet, *Liopropoma rubre*
Greater soapfish, *Rypticus saponaceus*
Orangeback bass, *Serranus annularis*
Lantern bass, *Serranus baldwini*
Tobaccofish, *Serranus tabacarius*
Harlequin bass, *Serranus tigrinus*
Chalk bass, *Serranus tortugarum*
Caribbean tonguefish, *Symphurus arawak*
Seahorses, *Hippocampus* spp.
Pipefishes, *Syngnathus* spp.
Sand diver, *Synodus intermedius*
Sharpnose puffer, *Canthigaster rostrata*
Porcupinefish, *Diodon hystrix*

TABLE 3 OF APPENDIX A TO PART 622—GULF REEF FISH

Balistidae—Triggerfishes
Gray triggerfish, *Balistes capriscus*
Carangidae—Jacks
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Lutjanidae—Snappers
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray (mangrove) snapper, *Lutjanus griseus*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Goldface tilefish, *Caulolatilus chrysops*
Blueline tilefish, *Caulolatilus microps*
Tilefish, *Lopholatilus chamaeleonticeps*
Serranidae—Groupers
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Goliath grouper, *Epinephelus itajara*

Red grouper, *Epinephelus morio*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER

Balistidae—Triggerfishes:
Gray triggerfish, *Balistes capriscus*
Carangidae—Jacks:
Blue runner, *Caranx bartholomaei*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Ephippidae—Spadefishes:
Spadefish, *Chaetodipterus faber*
Haemulidae—Grunts:
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
Sailor's choice, *Haemulon parrai*
White grunt, *Haemulon plumieri*
Labridae—Wrasses:
Hogfish, *Lachnolaimus maximus*
Lutjanidae—Snappers:
Black snapper, *Apsilus dentatus*
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray snapper, *Lutjanus griseus*
Mahogany snapper, *Lutjanus mahogoni*
Dog snapper, *Lutjanus jocu*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes:
Blueline tilefish, *Caulolatilus microps*
Golden tilefish, *Lopholatilus chamaeleonticeps*
Sand tilefish, *Malacanthus plumieri*
Percichthyidae—Temperate basses:
Wreckfish, *Polyprion americanus*
Serranidae—Groupers:
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Goliath grouper, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*
Serranidae—Sea Basses:
Black sea bass, *Centropristis striata*
Sparidae—Porgies:
Grass porgy, *Calamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Saucereye porgy, *Calamus calamus*
Whitebone porgy, *Calamus leucosteus*
Knobbed porgy, *Calamus nodosus*
Red porgy, *Pagrus pagrus*
Scup, *Stenotomus chrysops*
The following species are designated as ecosystem component species:
Cottonwick, *Haemulon melanurum*
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Longspine porgy, *Stenotomus caprinus*
Ocean triggerfish, *Canthidermis sufflamen*
Schoolmaster, *Lutjanus apodus*

TABLE 5 OF APPENDIX A TO PART 622—CARIBBEAN CONCH RESOURCES

Queen conch, *Strombus gigas*
The following species are included for data collection purposes only:
Atlantic triton's trumpet, *Charonia variegata*
Cameo helmet, *Cassis madagascarensis*
Green star shell, *Astrea tuber*
Hawkwing conch, *Strombus raninus*
Milk conch, *Strombus costatus*
Roostertail conch, *Strombus gallus*
West Indian fighting conch, *Strombus pugilis*
True tulip, *Fasciolaria tulipa*

[61 FR 34934, July 3, 1996, as amended at 62 FR 13988, Mar. 25, 1997; 62 FR 67723, Dec. 30, 1997; 64 FR 57404, Oct. 25, 1999; 70 FR 62082, Oct. 28, 2005; 70 FR 73389, Dec. 12, 2005; 76 FR 82054, Dec. 29, 2011; 76 FR 82411, 82419, Dec. 30, 2011; 77 FR 15932, Mar. 16, 2012]

APPENDIX B TO PART 622—GULF AREAS

TABLE 1 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No. and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters north of Dry Tortugas	24°48.0′	82°48.0′

TABLE 1 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA—Continued

Point No. and reference location [1]	North lat.	West long.
2 North of Rebecca Shoal	25°07.5′	82°34.0′
3 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
4 West of Egmont Key	27°30.0′	83°21.5′
5 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
6 Southeast corner of Florida Middle Ground	28°11.0′	84°00.0′
7 Southwest corner of Florida Middle Ground	28°11.0′	84°07.0′
8 West corner of Florida Middle Ground	28°26.6′	84°24.8′
9 Northwest corner of Florida Middle Ground	28°42.5′	84°24.8′
10 South of Carrabelle	29°05.0′	84°47.0′
11 South of Cape St. George	29°02.5′	85°09.0′
12 South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0′	85°30.0′
13 South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7′	85°30.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Pensacola	29°46.0′	87°19.0′
16 South of Perdido Bay	29°29.0′	87°27.5′
17 East of North Pass of the Mississippi River	29°14.5′	88°28.0′
18 South of Southwest Pass of the Mississippi River	28°46.5′	89°26.0′
19 Northwest tip of Mississippi Canyon	28°38.5′	90°08.5′
20 West side of Mississippi Canyon	28°34.5′	89°59.5′
21 South of Timbalier Bay	28°22.5′	90°02.5′
22 South of Terrebonne Bay	28°10.5′	90°31.5′
23 South of Freeport	27°58.0′	95°00.0′
24 Off Matagorda Island	27°43.0′	96°02.0′
25 Off Aransas Pass	27°30.0′	96°23.5′
26 Northeast of Port Mansfield	27°00.0′	96°39.0′
27 East of Port Mansfield	26°44.0′	96°37.5′
28 Northeast of Port Isabel	26°22.0′	96°21.0′
29 U.S./Mexico EEZ boundary	26°00.5′	96°24.5′
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE STRESSED AREA

Point No. and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters northeast of Dry Tortugas	24°45.5′	82°41.5′
2 North of Marquesas Keys	24°48.0′	82°06.5′
3 Off Cape Sable	25°15.0′	82°02.0′
4 Off Sanibel Island—Inshore	26°26.0′	82°29.0′
5 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
6 West of Egmont Key	27°30.0′	83°21.5′
7 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
8 Off Anclote Keys—Inshore	28°10.0′	83°14.0′
9 Off Deadman Bay	29°38.0′	84°00.0′
10 Seaward limit of Florida's waters east of Cape St. George	29°35.5′	84°38.6′
Thence westerly along the seaward limit of Florida's waters to:		
11 Seaward limit of Florida's waters south of Cape San Blas	29°32.2′	85°27.1′
12 Southwest of Cape San Blas	29°30.5′	85°52.0′
13 Off St. Andrew Bay	29°53.0′	86°10.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Florida/Alabama border	29°34.5′	87°38.0′
16 Off Mobile Bay	29°41.0′	88°00.0′
17 South of Alabama/Mississippi border	30°01.5′	88°23.7′
18 Horn/Chandeleur Islands	30°01.5′	88°40.5′
19 Chandeleur Islands	29°35.5′	88°37.0′
20 Seaward limit of Louisiana's waters off North Pass of the Mississippi River	29°16.3′	89°00.0′
Thence southerly and westerly along the seaward limit of Louisiana's waters to:		
21 Seaward limit of Louisiana's waters off Southwest Pass of the Mississippi River	28°57.3′	89°28.2′
22 Southeast of Grand Isle	29°09.0′	89°47.0′
23 Quick flashing horn buoy south of Isles Dernieres	28°32.5′	90°42.0′
24 Southeast of Calcasieu Pass	29°10.0′	92°37.0′
25 South of Sabine Pass—10 fathoms	29°09.0′	93°41.0′
26 South of Sabine Pass—30 fathoms	28°21.5′	93°28.0′
27 East of Aransas Pass	27°49.0′	96°19.5′
28 East of Baffin Bay	27°12.0′	96°51.0′
29 Northeast of Port Mansfield	26°46.5′	96°52.0′
30 Northeast of Port Isabel	26°21.5′	96°35.0′
31 U.S./Mexico EEZ boundary	26°00.5′	96°36.0′

TABLE 2 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE STRESSED AREA—Continued

Point No. and reference location [1]	North lat.	West long.
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

APPENDIX C TO PART 622—FISH LENGTH MEASUREMENTS

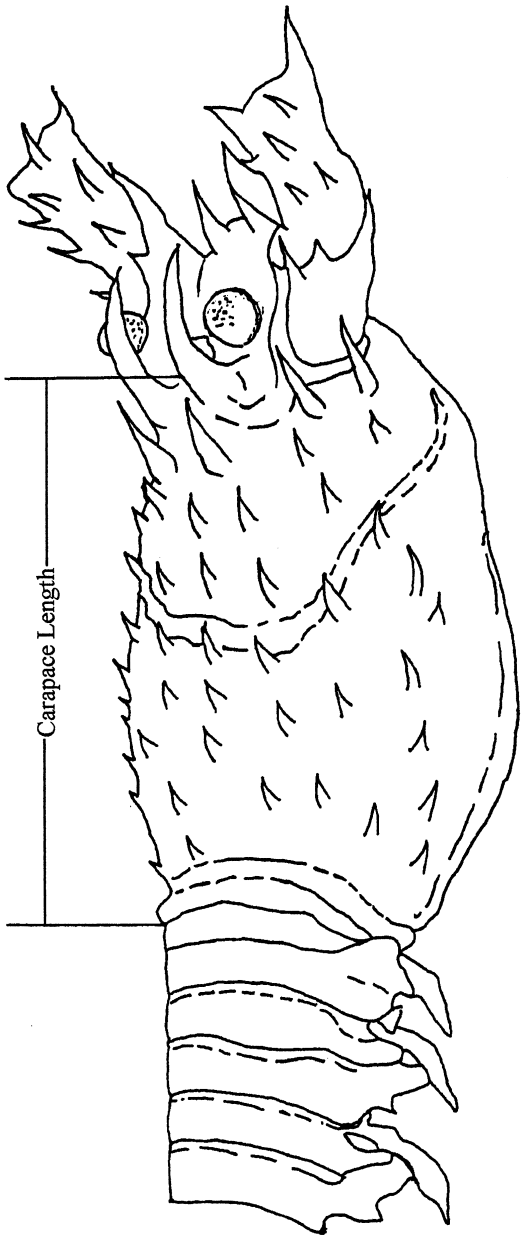


FIGURE 1 OF APPENDIX C TO PART 622—CARAPACE LENGTH

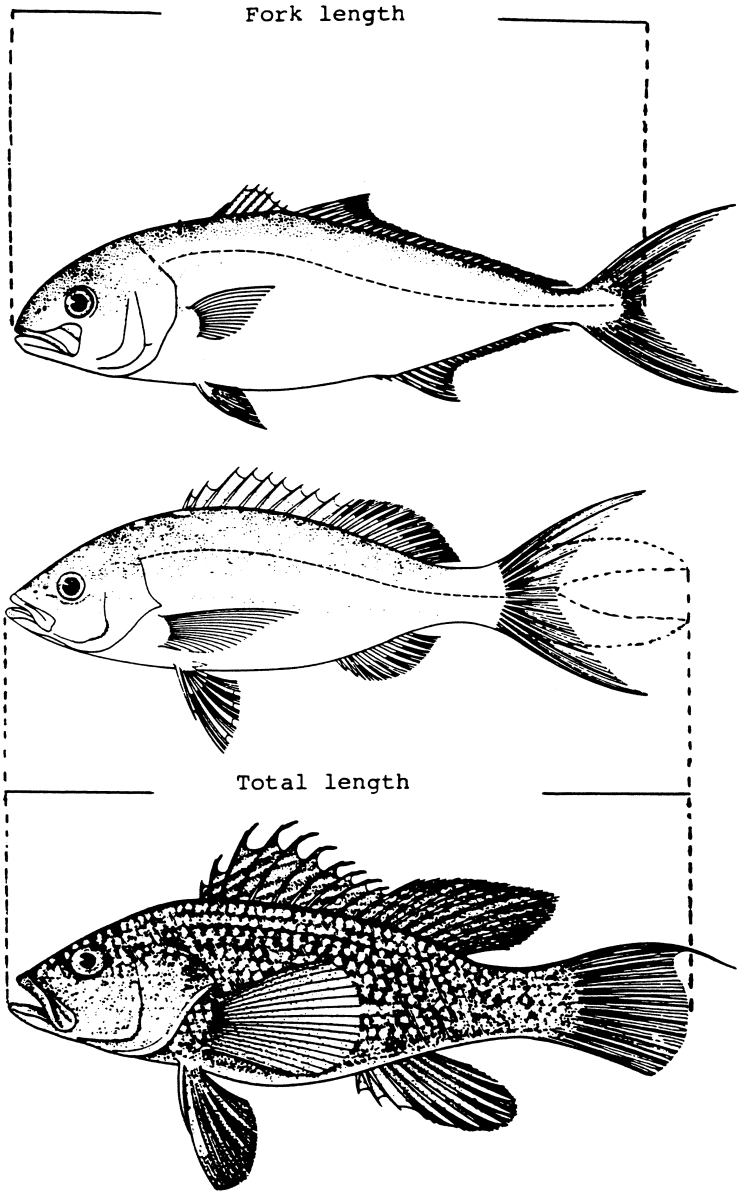


FIGURE 2 OF APPENDIX C TO PART 622—ILLUSTRATION OF LENGTH MEASUREMENTS

[61 FR 34934, July 3, 1996, as amended at 64 FR 3630, Jan. 25, 1999]

APPENDIX D TO PART 622—SPECIFICATIONS FOR CERTIFIED BRDS

A. *Extended Funnel.*

1. *Description*. The extended funnel BRD consists of an extension with large-mesh webbing in the center (the large-mesh escape section) and small-mesh webbing on each end held open by a semi-rigid hoop. A funnel of small-mesh webbing is placed inside the extension to form a passage for shrimp to the codend. It also creates an area of reduced water flow to allow for fish escapement through the large mesh. One side of the funnel is extended vertically to form a lead panel and area of reduced water flow. There are two sizes of extended funnel BRDs, a standard size and an inshore size for small trawls.

2. *Minimum Construction and Installation Requirements for Standard Size*.

(a) *Extension Material*. The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅝ inch (4.13 cm), No. 30 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section*. The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) in length by 95 inches (241.3 cm) in circumference. The leading edge is attached to the 6 1/2-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel*. The funnel is constructed of 1½ inch (3.81 cm), stretched mesh, No. 30 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 34 to 36 inches (86.4 to 91.4 cm) long and the opposite side of the funnel extends an additional 22 to 24 inches (55.9 to 61.0 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop*. A 30-inch (76.2-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large-mesh escape section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation*. The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.2.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

3. *Minimum Construction and Installation Requirements for Inshore Size*.

(a) *Extension Material*. The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅜ inch (3.5 cm), No. 18 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section*. The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) by 75 inches (190.5 cm) in circumference. The leading edge is attached to the 6 1/2-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel*. The funnel is constructed of 1⅜ inch (3.5 cm), stretched mesh, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches (76.2 to 81.3 cm) long and the opposite side of the funnel extends an additional 20 to 22 inches (50.8 to 55.9 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop*. A 24-inch (61.0-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large mesh section. The extension webbing must

be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation*. The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.3.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

B. *Expanded Mesh*. The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

C. *Fisheye*.

1. *Description*. The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch (6.35-mm) diameter, which is inserted into the cod end to form an escape opening.

2. *Minimum Construction and Installation Requirements*. The fisheye has a minimum escape opening dimension of 5 inches (12.7 cm) and a minimum total escape opening area of 36 in^2 (91.4 cm^2). When the fisheye BRD is installed, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the cod end) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the cod end retrieval system.

(a) In the Gulf EEZ, the fisheye BRD must be installed at the top center of the cod end of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 9 ft (2.7 m) from the cod end drawstring (tie-off rings).

(b) In the South Atlantic EEZ, the fisheye BRD must be installed at the top center of the cod end of the trawl to create an escape opening in the trawl facing the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the cod end tie-off rings.

D. *Gulf fisheye*.

1. *Description*. The Gulf fisheye is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch (6.35-mm) diameter, which is inserted into the top center of the cod end, and is offset not more than 15 meshes perpendicular to the top center of the cod end to form an escape opening.

2. *Minimum Construction and Installation Requirements*. The Gulf fisheye has a minimum escape opening dimension of 5 inches (12.7 cm) and a minimum total escape opening area of 36 in^2 (91.4 cm^2). To be used in the South Atlantic EEZ, the Gulf fisheye BRD must be installed in the cod end of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no less than 8.5 ft (2.59 m) and no further forward than 12.5 ft (3.81 m) from the cod end tie-off rings, and may be offset no more than 15 meshes perpendicular to the top center of the cod end. When the Gulf fisheye BRD is installed, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the cod end) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the cod end retrieval system.

E. *Jones-Davis*.

1. *Description*. The Jones-Davis BRD is similar to the expanded mesh and the extended funnel BRDs except that the fish escape openings are windows cut around the funnel rather than large-mesh sections. In addition, a webbing cone fish deflector is installed behind the funnel.

2. *Minimum Construction and Installation Requirements*. The Jones-Davis BRD must contain all of the following.

(a) *Webbing extension*. The webbing extension must be constructed from a single piece of 1 5/8-inch (3.5-cm) stretch mesh number 30 nylon 42 meshes by 120 meshes. A tube is formed from the extension webbing by sewing the 42-mesh side together.

(b) *28-inch (71.1-cm) cable hoop*. A single hoop must be constructed of ½-inch (1.3-cm) steel cable 88 inches (223.5 cm) in length. The cable must be joined at its ends by a 3-inch (7.6-cm) piece of ½-inch (1.3-cm) aluminum pipe and pressed with a ⅜-inch (0.95-cm) die to form a hoop. The inside diameter of this hoop must be between 27 and 29 inches (68.6 and 73.7 cm). The hoop must be attached to the extension webbing 17½ meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with ⅜-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(c) *24-inch (61.0-cm) hoop*. A single hoop must be constructed of either number 60 twine 80 inches (203.2 cm) in length or ⅜-inch (0.95-cm) steel cable 75½ inches (191.8 cm) in length. If twine is used, the twine must be laced in and out of the extension webbing 39 meshes behind the leading edge, and the ends must be tied together. If cable is used, the cable must be joined at its ends by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe and pressed together with a ¼-inch (0.64-cm) die to form a hoop. The inside diameter of this hoop must be between 23 and 25 inches (58.4 and 63.4 cm). The hoop must be attached to the extension webbing 39 meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with ⅜-inch (0.95-

cm) polypropylene or polyethylene rope for chaffing.

(d) *Funnel*. The funnel must be constructed from four sections of 1 1/2-inch (3.8-cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 29½ meshes on the leading edge by 23 meshes deep. The top and bottom sections are 29½ meshes on the leading edge by 23 meshes deep and tapered 1 point 2 bars on both sides down to 8 meshes across the back. The four sections must be sewn together down the 23-mesh edge to form the funnel.

(e) *Attachment of the funnel in the webbing extension*. The funnel must be installed two meshes behind the leading edge of the extension starting at the center seam of the extension and the center mesh of the funnel's top section leading edge. On the same row of meshes, the funnel must be sewn evenly all the way around the inside of the extension. The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cable hoop (front hoop). Starting at the top center seam, the back edge of the top funnel section must be attached four meshes each side of the center. Counting around 60 meshes from the top center, the back edge of the bottom section must be attached 4 meshes on each side of the bottom center. Clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position.

(f) *Cutting the escape openings*. The leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. The area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). Two escape openings 10 meshes wide by 13 meshes deep must be cut 6 meshes apart in the extension webbing, starting at the top center extension seam, 3 meshes back from the leading edge and 16 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.

(g) *Alternative Method for Constructing the Funnel and Escape Openings*. The following method for constructing the funnel and escape openings may be used instead of the method described in paragraphs F.2.d., F.2.e., and F.2.f. of this section. With this alternative method, the funnel and escape openings are formed by cutting a flap in each side of the extension webbing; pushing the flaps inward; and attaching the top and bottom edges along the bars of the extension webbing to form the v-shape of the funnel. Minimum requirements applicable to this method include: (1) The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cable hoop (front hoop); (2) clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position; (3) the leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid; and, (4) the area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). To construct the funnel and escape openings using this method, begin 3½ meshes from the leading edge of the extension, at the top center seam, count over 18 meshes on each side, and cut 13 meshes toward the back of the extension. Turn parallel to the leading edge, and cut 26 meshes toward the bottom center of the extension. Next, turn parallel to the top center seam, and cut 13 meshes forward toward the leading edge, creating a flap of webbing 13 meshes by 26 meshes by 13 meshes. Lengthen the flap to 18 meshes by adding a 4½-mesh by 26-mesh rectangular section of webbing to the 26-mesh edge. Attach the 18-mesh edges to the top and bottom of the extension by sewing 2 bars of the extension to 1 mesh on the flap in toward the top center and bottom center of the extension, forming the exit opening and the funnel. Connect the two flaps together in the center with a 7-inch piece of number 42 twine to allow adequate clearance for fish escapement between the flaps and the side openings. On each side, sew a 6-mesh by 10 1/2-mesh section of webbing to 6 meshes of the center of the 26-mesh cut on the extension and 6 meshes centered between the 13-mesh cuts 3½ meshes from the leading edge. This forms two 10-mesh by 13-mesh openings on each side.

(h) *Cone fish deflector*. The cone fish deflector is constructed of 2 pieces of 1 5/8-inch (4.13-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 10-14 inches (25.4-35.6 cm) of the posterior edge of the funnel.

(i) *11-inch (27.9-cm) cable hoop for cone deflector*. A single hoop must be constructed of 5/16-inch (0.79-cm) or 3/8-inch (0.95-cm) cable 34½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of 3/8-inch (0.95-cm) aluminum pipe pressed together with a 1/4-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(j) *Installation of the cone in the extension*. The cone must be installed in the extension 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine 4 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine must be attached to the 28-inch (71.1-cm) cable hoop at the center of each of its sides; the points

of attachment for the two pieces of twine must be measured 20 inches (50.8 cm) from the midpoint attachment. Two 8-inch (20.3-cm) pieces of number 60 twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the 24-inch (61-cm) cable hoop; the points of attachment for the two pieces of twine must be measured 4 inches (10.2 cm) from the points where they are tied to the 11-inch (27.9-cm) cone hoop.

F. *Modified Jones-Davis.*

1. *Description.* The Modified Jones-Davis BRD is a variation to the alternative funnel construction method of the Jones-Davis BRD except the funnel is assembled by using depth-stretched and heat-set polyethylene webbing instead of the flaps formed from the extension webbing. In addition, no hoops are used to hold the BRD open.

2. *Minimum Construction and Installation Requirements.* The Modified Jones-Davis BRD must contain all of the following.

(a) *Webbing extension.* The webbing extension must be constructed from a single rectangular piece of 1⅝-inch (4.1-cm) stretch mesh number 30 nylon with dimensions of 39½ meshes by 150 meshes. A tube is formed from the extension webbing by sewing the 39 1/2-mesh-sides together.

(b) *Funnel.* The funnel must be constructed from two sections of 1 5/8-inch (4.1-cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 25 meshes on the leading edge by 21 meshes deep. The 25-mesh leading edge of each polyethylene webbing section must be sewn evenly two meshes in from the front of the extension webbing starting 25 meshes from the top center on each side. The 21-mesh edge must be sewn to the extension webbing on a 9-bar and 1-mesh angle in the top and bottom, forming a V-shape funnel.

(c) *Cutting the escape opening.* The leading edge of the escape openings must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. The area of the escape opening must total at least 635 in2 (4,097 cm2). Two escape openings, 6 meshes wide by 12 meshes deep, must be cut 4 meshes apart in the extension webbing, starting at the top center extension seam, 7 meshes back from the leading edge, and 30 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.

(d) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1 5/8-inch (4.1-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 12 inches (30.5 cm) of the posterior edge of the funnel.

(e) *11-inch (27.9-cm) cable hoop for cone deflector.* A single hoop must be constructed of 5/16-inch (0.79-cm) or 3/8-inch (0.95-cm) cable 34 ½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of 3/8-inch (0.95-cm) aluminum pipe pressed together with a 1/4-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(f) *Installation of the cone in the extension.* The apex of the cone must be installed in the extension within 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine (or at least 4-mesh wide strip of number 21 or heavier webbing) 3 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine or webbing must be attached within 5 meshes of the aft edge of the funnel at the center of each of its sides. Two 12-inch (30.5-cm) pieces of number 60 (or heavier) twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the extension webbing to keep the cone from inverting into the funnel.

G. [Reserved]

H. *Cone Fish Deflector Composite Panel.*

1. *Description.* The Cone Fish Deflector Composite Panel BRD is a variation to the alternative funnel construction method of the Jones-Davis BRD, except the funnel is assembled by using depth-stretched and heat-set polyethylene webbing with square mesh panels on the inside instead of the flaps formed from the extension webbing. In addition, no hoops are used to hold the BRD open.

2. *Minimum Construction and Installation Requirements.* The Cone Fish Deflector Composite Panel BRD must contain all of the following:

(a) *Webbing extension.* The webbing extension must be constructed from a single rectangular piece of 1 1/2-inch to 1 3/4-inch (3.8-cm to 4.5-cm) stretch mesh with dimensions of 24½ meshes by 150 to 160 meshes. A tube is formed from the extension webbing piece by sewing the 24 1/2-mesh sides together. The leading edge of the webbing extension must be attached no more than 4 meshes from the posterior edge of the TED grid.

(b) *Funnel.* The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2-ply in design, each with an inner layer of 1 1/2-inch to 1 5/8-inch (3.8-cm to 4.1-cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no

larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1½ meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18-inch (45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

(c) *Cutting the escape opening*. There are two escape openings on each side of the funnel. The leading edge of the escape openings must be located on the same row of meshes in the extension webbing as the leading edge of the composite panels. The lower openings are formed by starting at the first attachment point of the composite panels and cutting 9 meshes in the extension webbing on an even row of meshes toward the top of the extension. Next, turn 90 degrees and cut 15 points on an even row toward the back of the extension webbing. At this point turn and cut 18 bars toward the bottom front of the extension webbing. Finish the escape opening by cutting 6 points toward the original starting point. The top escape openings start 5 meshes above and mirror the lower openings. Starting at the leading edge of the composite panel and 5 meshes above the lower escape opening, cut 9 meshes in the extension on an even row of meshes toward the top of the extension. Next, turn 90 degrees, and cut 6 points on an even row toward the back of the extension webbing. Then cut 18 bars toward the bottom back of the extension. To complete the escape opening, cut 15 points forward toward the original starting point. The area of each escape opening must total at least 212 in^2 (1,368 cm^2). The four escape openings must be double selvaged for strength.

(d) *Cone fish deflector*. The cone fish deflector is constructed of 2 pieces of 1 5/8-inch (4.1-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 12 inches (30.5 cm) of the posterior edge of the funnel.

(e) *11-inch (27.9-cm) cable hoop for cone deflector*. A single hoop must be constructed of 5/16-inch (0.79-cm) or 3/8-inch (0.95-cm) cable 34½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of 3/8-inch (0.95-cm) aluminum pipe pressed together with a ¼-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(f) *Installation of the cone in the extension*. The apex of the cone must be installed in the extension within 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine (or at least 4-mesh wide strip of number 21 or heavier webbing) 3 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine or webbing must be attached within 5 meshes of the aft edge of the funnel at the center of each of its sides. Two 12-inch (30.5-cm) pieces of number 60 (or heavier) twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the extension webbing to keep the cone from inverting into the funnel.

I. *Square Mesh Panel (SMP) Composite Panel*.

1. *Description*. The SMP is a panel of square mesh webbing placed in the top of the cod end to provide finfish escape openings.

2. *Minimum Construction and Installation Requirements*. The SMP Composite Panel BRD must contain all of the following:

(a) *Webbing extension*. The webbing extension must be constructed from a single rectangular piece of 1 1/2-inch to 1 3/4-inch (3.8-cm to 4.5-cm) stretch mesh with dimensions of 24½ meshes by 150 to 160 meshes. A tube is formed from the extension webbing piece by sewing the 24 1/2-mesh sides together. The leading edge of the webbing extension must be attached no more than 4 meshes from the posterior edge of the TED grid.

(b) *Funnel*. The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2-ply in design, each with an inner layer of 1

1/2-inch to 15/8-inch (3.8-cm to 4.1-cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1½ meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18-inch (45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

(c) *Cutting the escape opening*. There are two escape openings on each side of the funnel. The leading edge of the escape openings must be located on the same row of meshes in the extension webbing as the leading edge of the composite panels. The lower openings are formed by starting at the first attachment point of the composite panels and cutting 9 meshes in the extension webbing on an even row of meshes toward the top of the extension. Next, turn 90 degrees and cut 15 points on an even row toward the back of the extension webbing. At this point turn and cut 18 bars toward the bottom front of the extension webbing. Finish the escape opening by cutting 6 points toward the original starting point. The top escape openings start 5 meshes above and mirror the lower openings. Starting at the leading edge of the composite panel and 5 meshes above the lower escape opening, cut 9 meshes in the extension on an even row of meshes toward the top of the extension. Next, turn 90 degrees, and cut 6 points on an even row toward the back of the extension webbing. Then cut 18 bars toward the bottom back of the extension. To complete the escape opening, cut 15 points forward toward the original starting point. The area of each escape opening must total at least 212 in^2 (1,368 cm^2). The four escape openings must be double selvaged for strength.

(d) *SMP*. The SMP is constructed from a single piece of square mesh webbing with a minimum dimension of 5 squares wide and 12 squares in length with a minimum mesh size of 3-inch (76-mm) stretched mesh. The maximum twine diameter of the square mesh is number 96 twine (4 mm).

(e) *Cutting the SMP escape opening*. The escape opening is a rectangular hole cut in the top center of the cod end webbing. The posterior edge of the escape opening must be placed no farther forward that 8 ft (2.4 m) from the cod end drawstring (tie-off rings). The width of the escape opening, as measured across the cod end, must be four cod end meshes per square of the SMP (*i.e.*, a cut of 20 cod end meshes for a SMP that is 5 meshes wide). The stretched mesh length of the escape opening must be equal to the total length of the SMP. No portion of the SMP escape opening may be covered with additional material or netting such as chaffing webbing, which might impede or prevent fish escapement.

(f) *Installation of the SMP*. The SMP must be attached to the edge of the escape opening evenly around the perimeter of the escape opening cut with heavy twine.

NOTE: The ''Bycatch Reduction Device Testing Manual'' is published, excluding the Manual's appendices, as an appendix to this document. See the contact under **ADDRESSES** to obtain a complete Manual.

[62 FR 18539, Apr. 16, 1997, as amended at 64 FR 37694, July 13, 1999; 73 FR 8224, Feb. 13, 2008; 73 FR 68361, Nov. 18, 2008; 75 FR 28761, May 24, 2010; 77 FR 21681, Apr. 11, 2012]

APPENDIX E TO PART 622—CARIBBEAN ISLAND/ISLAND GROUP MANAGEMENT AREAS

Table 1 of Appendix E to Part 622—*Coordinates of the Puerto Rico Management Area*.

The Puerto Rico management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′57″
B (intersects with the EEZ/Territorial boundary)	18°25′46.3015″	65°06′31.866″

Point	North lat.	West long.
From Point B, proceed southerly along the EEZ/Territorial boundary to Point C		
C (intersects with the EEZ/Territorial boundary)	18°13′59.0606″	65°05′33.058″
D	18°01′16.9636″	64°57′38.817″
E	17°30′00.000″	65°20′00.1716″
F	16°02′53.5812″	65°20′00.1716″
From Point F, proceed southwesterly, then northerly, then easterly, and finally southerly along the International/EEZ boundary to Point A		
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′57″

Table 2 of Appendix E to Part 622—*Coordinates of the St. Croix Management Area.*

The St. Croix management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
G	18°03′03″	64°38′03″
From Point G, proceed easterly, then southerly, then southwesterly along the EEZ/Territorial boundary to Point F		
F	16°02′53.5812″	65°20′00.1716″
E	17°30′00.000″	65°20′00.1716″
D	18°01′16.9636″	64°57′38.817″
G	18°03′03″	64°38′03″

Table 3 of Appendix E to Part 622—*Coordinates of the St. Thomas/St. John Management Area.*

The St. Thomas/St. John management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′57″
From Point A, proceed southeasterly along the EEZ/Territorial boundary to Point G		
G	18°03′03″	64°38′03″
D	18°01′16.9636″	64°57′38.817″
C (intersects with the EEZ/Territorial boundary)	18°13′59.0606″	65°05′33.058″
From Point C, proceed northerly along the EEZ/Territorial boundary to Point B		
B (intersects with the EEZ/Territorial boundary)	18°25′46.3015″	65°06′31.866″
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′57″

[76 FR 82411, Dec. 30, 2011]

APPENDIX F TO PART 622—SPECIFICATIONS FOR SEA TURTLE MITIGATION GEAR AND SEA TURTLE HANDLING AND RELEASE REQUIREMENTS

A. *Sea turtle mitigation gear.*

1. *Long-handled line clipper or cutter.* Line cutters are intended to cut high test monofilament line as close as possible to the hook, and assist in removing line from entangled sea turtles to minimize any remaining gear upon release. NMFS has established minimum design standards for the line cutters. The LaForce line cutter and the Arceneaux line clipper are models that meet these minimum design standards, and may be purchased or fabricated from readily available and low-cost materials. One long-handled line clipper or cutter and a set of replacement blades are required to be onboard. The minimum design standards for line cutters are as follows:

(a) *A protected and secured cutting blade.* The cutting blade(s) must be capable of cutting 2.0–2.1 mm (0.078 in.–0.083 in.) monofilament line (400-lb test) or polypropylene multistrand material, known as braided or tarred mainline, and must be maintained in working order. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and be easily replaceable. One extra set of replacement blades meeting these standards must also be carried on board to replace all cutting surfaces on the line cutter or clipper.

(b) *An extended reach handle.* The line cutter blade must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

2. *Long-handled dehooker for internal hooks.* A long-handled dehooking device is intended to remove internal hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the barb of the hook and prevent it from re-engaging during the removal process. One long-handled device to remove internal hooks is required onboard. The minimum design standards are as follows:

(a) *Hook removal device.* The hook removal device must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel or similar material and have a dehooking end no larger than 1⅞ inches (4.76 cm) outside diameter. The device must securely engage and control the leader while shielding the barb to prevent the hook from re-engaging during removal. It may not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Extended reach handle.* The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

3. *Long-handled dehooker for external hooks.* A long-handled dehooker is required for use on externally-hooked sea turtles that cannot be boated. The long-handled dehooker for internal hooks described in paragraph 2. of this appendix F would meet this requirement. The minimum design standards are as follows:

(a) *Construction.* A long-handled dehooker must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel rod and have a dehooking end no larger than 1 ⅞-inches (4.76 cm) outside diameter. The design should be such that a fish hook can be rotated out, without pulling it out at an angle. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Extended reach handle.* The handle must be a minimum length equal to the freeboard of the vessel or 6 ft (1.83 m), whichever is greater.

4. *Long-handled device to pull an ''inverted V''.* This tool is used to pull a ''V'' in the fishing line when implementing the ''inverted V'' dehooking technique, as described in the document entitled ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' for disentangling and dehooking entangled sea turtles. One long-handled device to pull an ''inverted V'' is required onboard. If a 6-ft (1.83 m) J-style dehooker is used to comply with paragraph 4. of this Appendix F, it will also satisfy this requirement. Minimum design standards are as follows:

(a) *Hook end.* This device, such as a standard boat hook, gaff, or long-handled J-style dehooker, must be constructed of stainless steel or aluminum. The semicircular or ''J'' shaped end must be securely attached to a handle. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and should never contact the sea turtle.

(b) *Extended reach handle.* The handle must have a minimum length equal to the freeboard of the vessel, or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

5. *Dipnet.* One dipnet is required onboard. Dipnets are to be used to facilitate safe handling of sea turtles by allowing them to be brought onboard for fishing gear removal, without causing further injury to the animal. Turtles must not be brought onboard without the use of a dipnet or hoist. The minimum design standards for dipnets are as follows:

(a) *Size of dipnet.* The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft (0.914 m) carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) by 3 inches (7.62 cm). There must be no sharp edges or burrs on the hoop, or where it is attached to the handle. There is no requirement for the hoop to be circular as long as it meets the minimum specifications.

(b) *Extended reach handle.* The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or at least 6 ft (1.83 m), whichever is greater. The handle must be made of a rigid material strong enough to facilitate the sturdy attachment of the net hoop and be able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending

or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

6. *Cushion/support device.* A standard automobile tire (free of exposed steel belts), a boat cushion, a large turtle hoist, or any other comparable cushioned elevated surface, is required for supporting a turtle in an upright orientation while the turtle is onboard. The cushion/support device must be appropriately sized to fully support a range of turtle sizes.

7. *Short-handled dehooker for internal hooks.* One short-handled device for removing internal hooks is required onboard. This dehooker is designed to remove ingested hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(a) *Hook removal device.* The hook removal device must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel, and must allow the hook to be secured and the barb shielded without reengaging during the removal process. It must be no larger than 1⅞ inches (4.76 cm) outside diameter. It may not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a ¾-inch (1.91 cm) inside diameter high impact plastic cylinder (e.g., Schedule 80 PVC) that is 4 to 6 inches (10.2 to 15.2 cm) long to allow for 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Handle length.* The handle should be approximately 16 to 24 inches (40.64 cm to 60.69 cm) in length, with approximately a 4 to 6-inch (10.2 to 15.2-cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

8. *Short-handled dehooker for external hooks.* One short-handled dehooker for external hooks is required onboard. The short-handled dehooker for internal hooks required to comply with paragraph 7. of this Appendix F will also satisfy this requirement. Minimum design standards are as follows:

(a) *Hook removal device.* The dehooker must be constructed of approximately 3/16-inch (4.76 cm) to 5/16-inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Handle length.* The handle should be approximately 16 to 24 inches (40.64 to 60.69 cm) long with approximately a 5-inch (12.7 cm) long tube T-handle, wire loop handle or similar, of approximately 1 inch (2.54 cm) in diameter.

9. *Long-nose or needle-nose pliers.* One pair of long-nose or needle-nose pliers is required on board. Required long-nose or needle-nose pliers can be used to remove deeply embedded hooks from the turtle's flesh that must be twisted during removal or for removing hooks from the front of the mouth. They can also hold PVC splice couplings, when used as mouth openers, in place. Minimum design standards are as follows:

(a) *General.* They must be approximately 12 inches (30.48 cm) in length, and should be constructed of stainless steel material.

(b) [Reserved]

10. *Bolt cutters.* One pair of bolt cutters is required on board. Required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or barb of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed. Minimum design standards are as follows:

(a) *General.* They must be approximately 14 to 17 inches (35.56 to 43.18 cm) in total length, with approximately 4-inch (10.16 cm) long blades that are 2¼ inches (5.72 cm) wide, when closed, and with approximately 10- to 13-inch (25.4 to 33.02-cm) long handles. Required bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to ¼-inch (6.35 mm) diameter.

(b) [Reserved]

11. *Monofilament line cutters.* One pair of monofilament line cutters is required on board. Required monofilament line cutters must be used to remove fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed. Minimum design standards are as follows:

(a) *General.* Monofilament line cutters must be approximately 7½ inches (19.05 cm) in length. The blades must be 1 inch (4.45 cm) in length and ⅝ inches (1.59 cm) wide, when closed.

(b) [Reserved]

12. *Mouth openers/mouth gags.* Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing internal hooks from boated turtles. They must allow access to the hook or line without causing further injury to the turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth openers/gags described below are required:

(a) *A block of hard wood.* Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (e.g. maple) with rounded edges should be sanded smooth, if necessary, and

soaked in water to soften the wood. The dimensions should be approximately 11 inches (27.94 cm) by 1 inch (2.54 cm) by 1 inch (2.54 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements.

(b) *A set of three canine mouth gags.* Canine mouth gags are highly recommended to hold a turtle's mouth open, because the gag locks into an open position to allow for hands-free operation after it is in place. These tools are only for use on small and medium sized turtles, as larger turtles may be able to crush the mouth gag. A set of canine mouth gags must include one of each of the following sizes: small (5 inches) (12.7 cm), medium (6 inches) (15.24 cm), and large (7 inches) (17.78 cm). They must be constructed of stainless steel. The ends must be covered with clear vinyl tubing, friction tape, or similar, to pad the surface.

(c) *A set of two sturdy dog chew bones.* Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5½–8 inches (13.97 cm–20.32 cm) in length), and one small (3½–4½ inches (8.89 cm–11.43 cm) in length) canine chew bones.

(d) *A set of two rope loops covered with protective tubing.* A set of two pieces of poly braid rope covered with light duty garden hose or similar flexible tubing each tied or spliced into a loop to provide a one-handed method for keeping the turtle's mouth open during hook and/or line removal. A required set consists of two 3-ft (0.91 m) lengths of poly braid rope (⅜-inch (9.52 mm) diameter suggested), each covered with an 8-inch (20.32 cm) section of ½ inch (1.27 cm) or ¾ inch (1.91 cm) tubing, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(e) *A hank of rope.* Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6-ft (1.83 m) lanyard of approximately 3/16-inch (4.76 mm) braided nylon rope may be folded to create a hank, or looped bundle, of rope. Any size soft-braided nylon rope is allowed, however it must create a hank of approximately 2–4 inches (5.08 cm–10.16 cm) in thickness.

(f) *A set of four PVC splice couplings.* PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1¼ inch (3.18 cm), 1½ inch (3.81 cm), and 2 inches (5.08 cm).

(g) *A large avian oral speculum.* A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9 inches (22.86 cm) long, and constructed of 3/16-inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (5/16-inch (7.9 mm) outside diameter, 3/16-inch (4.76 mm) inside diameter), friction tape, or similar to pad the surface.

B. *Sea turtle handling and release requirements.* Sea turtle bycatch mitigation gear, as specified in paragraphs A.1. through 4. of this Appendix F, must be used to disengage any hooked or entangled sea turtles that cannot be brought onboard. Sea turtle bycatch mitigation gear, as specified in paragraphs A.5. through 12. of this Appendix F, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought onboard, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in § 622.10(c)(1), and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1)of this title.

1. *Boated turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet as specified in paragraph A.5. of this appendix F. All turtles less than 3 ft (.91 m) carapace length should be boated, if sea conditions permit.

(a) A boated turtle should be placed on a cushioned/support device, as specified in paragraph A.6. of this appendix F, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using monofilament cutters as specified in paragraph A.11. of this appendix F, and the hook should be cut as close as possible to the insertion point before releasing the turtle, using bolt cutters as specified in paragraph A.10. of this appendix F. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide

the hook out. When the hook is visible in the front of the mouth, a mouth-opener, as specified in paragraph A.12. of this appendix F, may facilitate opening the turtle's mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for internal hooks, or long-nose or needle-nose pliers, as specified in paragraphs A.7. and A.8. of this appendix F, respectively, should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in §622.10(c)(1), and the handling and resuscitation requirements specified in §223.206(d)(1) of this title, for additional information.

(b) [Reserved]

2. *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear specified in paragraphs A.1. through 4. of this appendix F must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in §622.10(c)(1).

(a) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as specified in paragraph A.1. of this appendix F. If the hook can be removed, it must be removed using a long-handled dehooker as specified in paragraphs A.2. and A.3. of this Appendix F. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in §622.10(c)(1), and the handling and resuscitation requirements specified in §223.206(d)(1) for additional information.

(b) [Reserved]

[77 FR 4494, Jan. 30, 2012]

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

Subpart A—General

Sec.
635.1 Purpose and scope.
635.2 Definitions.
635.3 Relation to other laws.
635.4 Permits and fees.
635.5 Recordkeeping and reporting.
635.6 Vessel and gear identification.
635.7 At-sea observer coverage.
635.8 Workshops.

Subpart B—Limited Access

635.16 [Reserved]

Subpart C—Management Measures

635.20 Size limits.
635.21 Gear operation and deployment restrictions.
635.22 Recreational retention limits.
635.23 Retention limits for BFT.
635.24 Commercial retention limits for sharks and swordfish.
635.25 Fishing areas.
635.26 Catch and release.
635.27 Quotas.
635.28 Closures.
635.29 Transfer at sea.
635.30 Possession at sea and landing.
635.31 Restrictions on sale and purchase.
635.32 Specifically authorized activities.
635.33 Archival tags.
635.34 Adjustment of management measures.

Subpart D—Restrictions on Imports

635.40 Restrictions to enhance conservation.
635.41 Products denied entry.

Subpart E—International Port Inspection

635.50 Basis and purpose.
635.51 Authorized officer.
635.52 Vessels subject to inspection.
635.53 Reports.

Subpart F—Enforcement

635.69 Vessel monitoring systems.
635.70 Penalties.
635.71 Prohibitions.

APPENDIX A TO PART 635—SPECIES TABLES

AUTHORITY: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

SOURCE: 64 FR 29135, May 28, 1999, unless otherwise noted.

Subpart A—General

§ 635.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of Atlantic tunas, Atlantic billfish, Atlantic sharks, and Atlantic swordfish under the authority of the Magnuson-Stevens Act and ATCA. They implement the 2006 Consolidated Highly Migratory Species Fishery Management Plan and its amendments. The Atlantic tunas regulations govern conservation and management of Atlantic tunas in the management unit. The Atlantic billfish regulations govern conservation and management of Atlantic billfish in the management unit. The Atlantic swordfish regulations govern conservation and management of North and South Atlantic swordfish in the management unit. North Atlantic swordfish are managed under the authority of both ATCA and the Magnuson-Stevens Act. South Atlantic swordfish are managed under the sole authority of ATCA. The shark regulations govern conservation and management of sharks in the management unit, under the authority of the Magnuson-Stevens Act.

(b) Under section 9(d) of ATCA, NMFS has determined that the regulations contained in this part with respect to Atlantic tunas are applicable within the territorial sea of the United States adjacent to, and within the boundaries of, the States of New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana and Texas, and the Commonwealths of Puerto Rico and the Virgin Islands. NMFS will undertake a continuing review of State regulations to determine if regulations applicable to Atlantic tunas, swordfish or billfish are at least as restrictive as regulations contained in this part and if such regulations are effectively enforced. In such case, NMFS will file with the Office of the Federal Register for publication notification of the basis for the determination and of the specific regulations that shall or shall not apply in the territorial sea of the identified State.

[64 FR 29135, May 28, 1999, as amended at 75 FR 30524, June 1, 2010]

§ 635.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, ATCA, and § 600.10 of this chapter, the terms used in this part have following meanings. If applicable, the terms used in this part supercede those used in § 600.10:

Archival tag means a device that is implanted or affixed to a fish to electronically record scientific information about the migratory behavior of that fish.

ATCA Certificate of Eligibility (COE) means the certificate that must accompany any applicable shipment of fish pursuant to a finding under 16 U.S.C. 971d (c)(4) or (c)(5).

Atlantic HMS means Atlantic tunas, billfish, sharks, and swordfish.

Atlantic Ocean, as used in this part, includes the North and South Atlantic Oceans, the Gulf of Mexico, and the Caribbean Sea.

Atlantic shark identification workshop certificate means the document issued by NMFS, or its designee, indicating that the person named on the certificate has successfully completed the Atlantic shark identification workshop.

BAYS means Atlantic bigeye, albacore, yellowfin, and skipjack tunas as defined in § 600.10 of this part.

BFT landings quota means the portion of the ICCAT BFT catch quota allocated to the United States against which landings of BFT are counted.

Billfish Certificate of Eligibility (COE) means a certificate that accompanies a shipment of billfish indicating that the billfish or related species, or parts thereof, are not from the respective Atlantic Ocean management units.

Bottom longline means a longline that is deployed with enough weights and/or anchors to maintain contact with the ocean bottom.

BSD tag means a numbered tag affixed to a BFT issued by any country in conjunction with a catch statistics information program and recorded on a BSD.

Buoy gear means a fishing gear consisting of one or more floatation devices supporting a single mainline to

which no more than two hooks or gangions are attached.

Caudal keel means the horizontal ridges along each side of a fish at the base of the tail fin.

CFL (curved fork length) means the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

Charleston Bump closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 34°00′ N. lat. near Wilmington Beach, NC, and proceeding due east to connect by straight lines the following coordinates in the order stated: 34°00′ N. lat., 76°00′ W. long.; 31°00′ N. lat., 76°00′ W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 31°00′ N. lat. near Jekyll Island, GA.

Circle hook means a fishing hook originally designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.

CK means the length of a fish measured along the body contour, i.e., a curved measurement, from the point on the cleithrum that provides the shortest possible measurement along the body contour to the anterior portion of the caudal keel. The cleithrum is the semicircular bony structure at the posterior edge of the gill opening.

Convention means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil, on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

Conventional tag means a numbered, flexible ribbon that is implanted or affixed to a fish that is released back into the ocean that allows for the identification of that fish in the event it is recaptured.

Corrodible Hook means a fishing hook composed of any material other than stainless steel.

Dealer tag means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of BFT sold to a permitted dealer as required under § 635.5(b)(2)(ii).

Dehooking device means a device intended to remove a hook embedded in a fish in order to release the fish with minimum damage.

Designated by NMFS means the address or location indicated in a letter to permit holders or in a letter accompanying reporting forms.

DeSoto Canyon closed area means the area within the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 30°00′ N. lat., 88°00′ W. long.; 30°00′ N. lat., 86°00′ W. long.; 28°00′ N. lat., 86°00′ W. long.; 28°00′ N. lat., 84°00′ W. long.; 26°00′ N. lat., 84°00′ W. long.; 26°00′ N. lat., 86°00′ W. long.; 28°00′ N. lat., 86°00′ W. long.; 28°00′ N. lat., 88°00′ W. long.; 30°00′ N. lat., 88°00′ W. long.

Display permit means a permit issued in order to catch and land HMS for the purpose of public display pursuant to § 635.32.

Division Chief means the Chief, Highly Migratory Species Management Division, NMFS (F/SF1), 1315 East-West Highway, Silver Spring, MD, 20910; (301) 713–2347.

Downrigger means a piece of equipment attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling. The downrigger has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line gear.

Dress, for swordfish, tunas, and billfish, means to process a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass. For sharks, dress means to process a fish by removal of head and viscera, but does not include removal of the fins, backbone, halving, quartering, or otherwise further reducing the carcass.

Dressed weight (dw), for swordfish, tunas, and billfish, means the weight of a fish after it has been dressed. For sharks, dressed weight means the weight of a fish after it has been dressed and had its fins, including the tail, removed.

East Florida Coast closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a

point intersecting the inner boundary of the U.S. EEZ at 31°00′ N. lat. near Jekyll Island, GA, and proceeding due east to connect by straight lines the following coordinates in the order stated: 31°00′ N. lat., 78°00′ W. long.; 28°17′10″ N. lat., 79°11′24″ W. long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00′ N. lat.; then proceeding due west to 24°00′ N. lat., 81°47′ W. long.; and then proceeding due north to intersect the inner boundary of the U.S. EEZ at 81°47′ W. long. near Key West, FL.

Edges 40 Fathom Contour closed area means a parallelogram-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28° 51' N. lat., 85° 16' W. long.; 28° 51' N. lat., 85° 04' W. long.; 28° 14' N. lat., 84° 42' W. long.; 28° 14' N. lat., 84° 54' W. long.

EFP means an exempted fishing permit issued pursuant to § 600.745 of this chapter or to § 635.32.

Eviscerated means a fish that has only the alimentary organs removed.

Export, for purposes of this subpart, means to effect exportation.

Exportation has the same general meaning as 19 CFR 101.1 and generally refers to a severance of goods from the mass of things belonging to one country with the intention of uniting them to the mass of things belonging to some foreign country. For purposes of this subpart, a shipment between the United States and its insular possessions is not an export.

Exporter, for purposes of this subpart, is the principal party in interest, meaning the party that receives the primary benefit, monetary or otherwise, of the export transaction. For exports from the United States, the exporter is the U.S. principal party in interest, as identified in Part 30 of title 15 of the CFR. An exporter is subject to the requirements of this subpart, even if exports are exempt from statistical reporting requirements under Part 30 of title 15 of the CFR.

Federal Atlantic Commercial Shark Permit means any of the commercial shark permits issued pursuant to § 635.4.

Finlet means one of the small individual fins on a tuna located behind the second dorsal and anal fins and forward of the tail fin.

First receiver means any entity, person, or company that takes, for commercial purposes (other than solely for transport), immediate possession of the fish, or any part of the fish, as the fish are offloaded from a fishing vessel of the United States, as defined under § 600.10 of this chapter, whose owner or operator has been issued, or should have been issued, a valid permit under this part.

First transaction in the United States means the time and place at which a fish is filleted, cut into steaks, or processed in any way that physically alters it after being landed in or imported into the United States.

Fishing record means all records of navigation and operations of a fishing vessel, as well as all records of catching, harvesting, transporting, landing, purchasing, or selling a fish.

Fishing vessel means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

Fishing year means—

(1) For Atlantic tunas and swordfish, before January 1, 2008 — June 1 through May 31. On or after January 1, 2008 — January 1 through December 31.

(2) For Atlantic billfish, On or after January 1, 2007 — January 1 through December 31.

(3) For sharks — January 1 through December 31.

Floatation device means any positively buoyant object rigged to be attached to a fishing gear.

Floatline means a line attached to a buoyant object that is used to support the mainline of a longline at a specific target depth.

For-hire trip means a recreational fishing trip taken by a vessel with an Atlantic HMS Charter/Headboat permit during which paying passenger(s) are aboard; or, for uninspected vessels, trips during which there are more than three persons aboard, including operator and crew; or, for vessels that have been issued a Certificate of Inspection by the U.S. Coast Guard to carry passengers for hire, trips during which there are more persons aboard than the number of crew specified on the vessel's Certificate of Inspection.

Freeboard is defined as the working distance between the top rail of the

gunwale to the water's surface, and will vary based on the vessel design.

Gangion means a line that serves to attach a hook, suspended at a specific target depth, to the mainline of a longline.

Giant BFT means an Atlantic BFT measuring 81 inches (206 cm) CFL or greater.

Green-stick gear means an actively trolled mainline attached to a vessel and elevated or suspended above the surface of the water with no more than 10 hooks or gangions attached to the mainline. The suspended line, attached gangions and/or hooks, and catch may be retrieved collectively by hand or mechanical means. Green-stick does not constitute a pelagic longline or a bottom longline as defined in this section or as described at § 635.21(c) or § 635.21(d), respectively.

Handgear means handline, harpoon, rod and reel, bandit gear, buoy gear, or speargun gear.

Handline means fishing gear that is attached to, or in contact with, a vessel; that consists of a mainline to which no more than two hooks or gangions may be attached; and that is released and retrieved by hand rather than by mechanical means.

High-flyer means a flag, radar reflector or radio beacon transmitter, suitable for attachment to a longline to facilitate its location and retrieval.

Highly migratory species (HMS) means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in appendix A to this part); white marlin; blue marlin; sailfish; longbill spearfish; and roundscale spearfish.

Importer, for purposes of this subpart, means the principal party responsible for the import of product into a country. For imports into the United States, and for purposes of this subpart, ''importer'' means the consignee as identified on entry documentation or any authorized, equivalent electronic medium required for release of shipments, or any authorized equivalent entry documentation from the customs authority of the United States or the separate customs territory of a U.S. insular possession. If a consignee is not declared, then the importer of record is considered to be the consignee.

LAP means a limited access permit issued pursuant to § 635.4.

Large coastal shark (LCS) means one of the species, or a part thereof, listed in paragraph (a) of table 1 in appendix A to this part.

Large medium BFT means a BFT measuring at least 73 inches (185 cm) and less than 81 inches (206 cm) CFL.

Large school BFT means a BFT measuring at least 47 inches (119 cm) and less than 59 inches (150 cm) CFL.

LJFL (lower jaw-fork length) means the straight-line measurement of a fish from the anterior tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

Longline means fishing gear that is set horizontally, either anchored, floating, or attached to a vessel, and that consists of a mainline or groundline with three or more leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

Madison-Swanson closed area means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 29°17′ N. lat., 85°50′ W. long.; 29°17′ N. lat., 85°38′ W. long.; 29°06′ N. lat., 85°38′ W. long.; 29°06′ N. lat., 85°50′ W. long.; and 29°17′ N. lat., 85°50′ W. long.

Management unit means in this part:

(1) For Atlantic tunas, longbill spearfish, roundscale spearfish, blue marlin, and white marlin, means all fish of these species in the Atlantic Ocean;

(2) For sailfish, means all fish of this species in the Atlantic Ocean west of 30° W. long.;

(3) For North Atlantic swordfish, means all fish of this species in the Atlantic Ocean north of 5° N. lat.;

(4) For South Atlantic swordfish, means all fish of this species in the Atlantic Ocean south of 5° N. lat.; and

(5) For sharks, means all fish of the species listed in Table 1 of Appendix A to this part, in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

Mid-Atlantic Bight means the area bounded by straight lines connecting

the mid-Atlantic states' internal waters and extending to 71° W. long. between 35° N. lat. and 43° N. lat.

Mid-Atlantic shark closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 35°41′ N. lat. just south of Oregon Inlet, North Carolina, and connecting by straight lines the following coordinates in the order stated: 35°41′ N. lat., 75°25′ W. long. proceeding due east to 35°41′ N. lat., 74°51′ W. long.; then proceeding southeast to 35°30′ N. lat., 74°46′ W. long.; then proceeding southwest, roughly following the 55 fathom mark, to 33°51′ N. lat., 76°24′ W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 33°51′ N. lat., 77°53′ W. long. near Cape Fear, North Carolina.

Naturally attached, as it is used to describe shark fins, refers to shark fins that remain attached to the shark carcass via at least some portion of uncut skin. As used to describe the head of a swordfish, naturally attached refers to the whole head remaining fully attached to the carcass except for the bill, which may be removed provided it has been removed forward of the anterior tip of the lower jaw.

Net check refers to a visual inspection of a shark gillnet where the vessel operator transits the length of the gear and inspects it either with a spotlight or by pulling up the gear.

Non-blacknose SCS means one of the species, or part thereof, listed in section B of table 1 in appendix A to this part other than the blacknose shark (*Carcharhinus acronotus*).

Non-ridgeback large coastal shark means one of the species, or a part thereof, listed in paragraph (a)(2) of table 1 in appendix A to this part.

Non-sandbar LCS means one of the species, or part thereof, listed under heading A of Table 1 in appendix A of this part other than the sandbar shark (*Carcharhinus plumbeus*).

North Atlantic swordfish or North Atlantic swordfish stock means those swordfish occurring in the Atlantic Ocean north of 5° N. lat.

Northeast Distant gear restricted area means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 60°00′ W. long.

Northeastern United States closed area means the area bounded by straight lines connecting the following coordinates in the order stated: 40°00′ N. lat., 74°00′ W. long.; 40°00′ N. lat., 68°00′ W. long.; 39°00′ N. lat., 68°00′ W. long.; and 39°00′ N. lat., 74°00′ W. long.

Offset circle hook means a circle hook originally designed and manufactured so that the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

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

Pectoral fin means the fin located behind the gill cover on either side of a fish.

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

Pelagic shark means one of the species, or a part thereof, listed in paragraph (c) of table 1 in appendix A to this part.

PFCFL (pectoral fin curved fork length) means the length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

Prohibited shark means one of the species, or a part thereof, listed in paragraph (d) of table 1 in appendix A to this part.

Protected species safe handling, release, and identification workshop certificate means the document issued by NMFS, or its designee, indicating that the person named on the certificate has successfully completed the Atlantic HMS protected species safe handling, release, and identification workshop.

Restricted-fishing day (RFD) means a day, beginning at 0000 hours and ending at 2400 hours local time, during which a person aboard a vessel for which a General category permit for Atlantic Tunas has been issued may not fish for, possess, or retain a BFT.

Ridgeback large coastal shark means one of the species, or a part thereof, listed in paragraph (a)(1) of table 1 in appendix A to this part.

Round wire stock means round metal wire, typically used in the manufacturing of fishing hooks, that has not been forged, or otherwise modified or treated in any way to increase the original factory tensile strength set by the hook manufacturer.

School BFT means a BFT measuring at least 27 inches (69 cm) and less than 47 inches (119 cm) CFL.

Shark means one of the oceanic species, or a part thereof, listed in Table 1 of Appendix A to this part.

Shark research permit means a permit issued to catch and land a limited number of sharks to maintain time series for stock assessments and for other scientific research purposes. These permits may be issued only to the owner of a vessel who has been issued either a directed or incidental shark LAP. The permit is specific to the commercial shark vessel and owner combination and is valid only per the terms and conditions listed on the permit.

Small coastal shark (SCS) means one of the species, or a part thereof, listed in paragraph (b) of table 1 in appendix A to this part.

Small medium BFT means a BFT measuring at least 59 inches (150 cm) and less than 73 inches (185 cm) CFL.

South Atlantic swordfish or south Atlantic swordfish stock means those swordfish occurring in the Atlantic Ocean south of 5° N. lat.

Speargun fishing gear means a muscle-powered speargun equipped with a trigger mechanism, a spear with a tip designed to penetrate and retain fish, and terminal gear. Terminal gear may include, but is not limited to, trailing lines, reels, and floats. The term ''muscle-powered speargun'' for the purposes of this part means a speargun that stores potential energy provided from the operator's muscles, and that releases only the amount of energy that the operator has provided to it from his or her own muscles. Common energy storing methods for muscle-powered spearguns include compressing air and springs, and the stretching of rubber bands.

Steamboat Lumps closed area means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28°14′ N. lat., 84°48′ W. long.; 28°14′ N. lat., 84°37′ W. long.; 28°03′ N. lat., 84°37′ W. long.; 28°03′ N. lat., 84°48′ W. long.; and 28°14′ N. lat., 84°48′ W. long.

Tournament means any fishing competition involving Atlantic HMS in which participants must register or otherwise enter or in which a prize or award is offered for catching or landing such fish.

Tournament operator means a person or entity responsible for maintaining records of participants and results used for awarding tournament points or prizes, regardless of whether fish are retained.

Trip limit means the total allowable take from a single trip as defined in § 600.10 of this chapter.

Tuna or tuna-like means the Scombriformes (with the exception of families Trichiuridae and Gempylidae and the genus Scomber) and such other species of fishes that are regulated by ICCAT in the Atlantic Ocean.

Weighout slip means a document provided to the owner or operator of the vessel by a person who weighs fish or parts thereof that are landed from a fishing vessel. A document, such as a ''tally sheet,'' ''trip ticket,'' or ''sales receipt,'' that contains such information is considered a weighout slip.

Young school BFT means an Atlantic BFT measuring less than 27 inches (69 cm) CFL.

[64 FR 29135, May 28, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 635.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 77 FR 47315, Aug. 8, 2012, § 635.2 was amended by removing the definition for ''First receiver'' and adding the definitions for ''First receive'' and ''Reporting week'', effective Jan. 1, 2013. For the convenience of the user, the added text is set forth as follows:

§ 635.2 Definitions.

* * * * *

First receive means to take possession for commercial purposes of any fish or any part thereof by purchasing, trading or bartering for it from the fishing vessel owner or operator once it is offloaded, where the vessel has been issued, or should have been issued, a valid permit under this part. First receive does not mean to take possession solely for transport.

* * * * *

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

* * * * *

§ 635.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and in paragraphs (b) and (c) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in fisheries for HMS in the Atlantic Ocean, unless the vessel owner or authorized representative has complied with specified requirements including, but not limited to, registration, exemption certificates, decals, and reports, as contained in part 229 of this title.

(c) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and § 600.740 of this chapter, respectively.

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing or exempted educational activity, or for public display, as specified in § 635.32.

[64 FR 29135, May 28, 1999, as amended at 68 FR 74784, Dec. 24, 2003]

§ 635.4 Permits and fees.

Information on permits and permit requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *General*—(1) *Authorized activities.* Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part. In certain cases, additional permits may be required to authorize these same or related activities under federal, state or local jurisdictions.

(2) *Vessel permit inspection.* The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic HMS when engaged in recreational fishing and to fish for, take, retain or possess Atlantic tunas, swordfish, or sharks when engaged in commercial fishing. The vessel operator must make such permit available for inspection upon request by NMFS or by a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection all required vessel permits.

(3) *Property rights.* Limited access vessel permits or any other permit issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, limited access vessel permits represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

(4) *Dealer permit inspection.* A dealer permit issued under this section, or a copy thereof, must be available at each of the dealer's places of business. A dealer must present the permit or a copy for inspection upon the request of a NMFS-authorized officer.

(5) *Display upon offloading.* Upon offloading of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit; Atlantic tunas, shark, or swordfish permit; Incidental HMS squid trawl; and/or the shark research permit to the first receiver. The permit(s) must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

(6) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(7) *Alteration.* A vessel or dealer permit that is altered, erased, mutilated, or otherwise modified is invalid.

(8) *Replacement.* NMFS may issue a replacement permit upon the request of the permittee. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (b) of this section, may be charged for issuance of the replacement permit.

(9) *Fees.* NMFS may charge a fee for each application for a permit or for each transfer or replacement of a permit. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified in the instructions provided with each application form. Each applicant must include the appropriate fee with each application or request for transfer or replacement. A permit will not be issued to anyone who fails to pay the fee.

(10) *Permit condition.* An owner of a vessel with a valid swordfish, shark, HMS Angling, HMS Charter/Headboat, or Incidental HMS squid trawl permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

(b) *HMS Charter/Headboat permits.* (1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit. A vessel issued an HMS Charter/Headboat permit for a fishing year shall not be issued an HMS Angling permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) While persons aboard a vessel that has been issued an HMS Charter/Headboat permit are fishing for or are in possession of Atlantic HMS, the operator of the vessel must have a valid Merchant Marine License or Uninspected Passenger Vessel License, as applicable, issued by the U.S. Coast Guard pursuant to regulations at 46 CFR part 10. Such Coast Guard license must be carried on board the vessel.

(c) *HMS Angling permits.* (1) The owner of any vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed recreationally, must obtain an HMS Angling permit, except as provided in § 635.4(c)(2). Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) A vessel with a valid Atlantic Tunas General category permit issued under paragraph (d) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS' HMS Management Division as required under § 635.5(d). When a vessel issued a valid Atlantic Tunas General category permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in paragraph (c)(3) of this section.

(3) A vessel issued an Atlantic Tunas General category permit fishing in a tournament, as authorized under § 635.4(c)(2), shall comply with Atlantic Tunas General category regulations

when fishing for, retaining, possessing, or landing Atlantic tunas.

(d) *Atlantic Tunas vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit issued under paragraph (b) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit or a valid HMS Charter/Headboat permit.

(3) A vessel issued an Atlantic Tunas permit in any category for a fishing year shall not be issued an HMS Angling permit, HMS Charter/Headboat permit, or an Atlantic Tunas permit in any other category for that same fishing year, regardless of a change in the vessel's ownership.

(4) A person can obtain a limited access Atlantic Tunas Longline category permit for a vessel only if the vessel has been issued both a limited access permit for shark and a limited access permit, other than handgear, for swordfish. Limited access Atlantic Tunas Longline category permits may only be obtained through transfer from current owners consistent with the provisions under paragraph (l)(2) of this section.

(5) An owner of a vessel with an Atlantic Tunas permit in the Purse Seine category may transfer the permit to another purse seine vessel that he or she owns. In either case, the owner must submit a written request for transfer to NMFS, to an address designated by NMFS, and attach an application for the new vessel and the existing permit. NMFS will issue no more than 5 Atlantic Tunas Purse Seine category permits.

(e) *Shark vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, at least one of the Federal Atlantic commercial shark permits described below. A Federal Atlantic commercial shark permit is not required if the vessel is recreationally fishing and retains no more sharks than the recreational retention limit specified in § 635.22(c), is operating pursuant to the conditions of a shark display or EFP issued pursuant to § 635.32, or fishes exclusively within State waters. It is a rebuttable presumption that the owner or operator of a vessel without a permit issued pursuant to this part on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(2) The owner of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in sections A, B, or C of Table 1 of Appendix A with an intention to sell must obtain either a Federal Atlantic commercial shark directed or shark incidental limited access permit. The only valid Federal commercial shark directed and shark incidental limited access permits are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(3) A vessel owner issued or required to be issued a Federal Atlantic commercial shark directed or shark incidental limited access permit may harvest, consistent with the other regulations in this part, any shark species listed in sections A, B, or C of table 1 of appendix A.

(4) [Reserved]

(f) *Swordfish vessel LAPs.* (1) Except as specified in paragraph (n) of this section, the owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained or possessed with an intention to sell or from which Atlantic swordfish are sold must obtain, in addition to any other required permits, only one of three types of commercial limited

access swordfish permits: Swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section, or those issued under paragraph (n) of this section.

(3) A commercial Federal permit for swordfish is not required if the vessel is recreational fishing.

(4) Unless the owner has been issued a swordfish handgear permit, a limited access permit for swordfish is valid only when the vessel has on board a valid limited access permit for shark and a valid Atlantic Tunas Longline category permit issued for such vessel.

(g) *Dealer permits*—(1) *Atlantic tunas*. A person that receives, purchases, trades for, or barters for Atlantic tunas from a fishing vessel of the United States, as defined under § 600.10 of this chapter, must possess a valid dealer permit.

(2) *Shark*. A first receiver, as defined in § 635.2, of any Atlantic shark listed in Table 1 of Appendix A of this part must possess a valid dealer permit.

(3) *Swordfish*. A person that receives, purchases, trades for, or barters for Atlantic swordfish from a fishing vessel of the United States, as defined under § 600.10 of this chapter, must possess a valid dealer permit.

(h) *Applications for permits*. An owner of a vessel or a dealer must submit to NMFS, at an address designated by NMFS, a complete application and required supporting documents at least 30 days before the date on which the permit is to be made effective. Application forms and instructions for their completion are available from NMFS.

(1) *Atlantic Tunas, HMS Angling, HMS Charter/Headboat, and Incidental HMS squid trawl vessel permits*. (i) An applicant must provide all information concerning his or her identification, vessel, gear used, fishing areas, fisheries participated in, the corporation or partnership owning the vessel, and income requirements requested by NMFS and included on the application form.

(ii) An applicant must also submit a copy of the vessel's valid U.S. Coast Guard documentation or, if not documented, a copy of its valid state registration and any other information that may be necessary for the issuance or administration of the permit as requested by NMFS. The owner must submit such information to an address designated by NMFS.

(iii) NMFS may require an applicant to provide documentation supporting the application before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (a)(7) of this section.

(iv) An applicant for an incidental HMS squid trawl permit must submit, in addition to all other information specified in § 635.4(h)(1), a copy of a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(i) of this chapter.

(2) *Limited access permits for swordfish and shark*. See paragraph (l) of this section for transfers of LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

(3) *Dealer permits*. (i) An applicant for a dealer permit must provide all the information requested on the application form necessary to identify the company, its principal place of business, and mechanisms by which the company can be contacted.

(ii) An applicant must also submit a copy of each state wholesaler's license held by the dealer and, if a business is owned by a corporation or partnership, the corporate or partnership documents requested on the application form.

(iii) An applicant must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(i) *Change in application information*. A vessel owner or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in a manner and/or to a location designated by

NMFS. For certain information changes, a new permit may be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

(j) *Permit issuance.* (1) NMFS will issue a permit within 30 days of receipt of a complete and qualifying application. An application is complete when all requested forms, information, and documentation have been received, including all reports and fishing or catch information required to be submitted under this part.

(2) NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required to be submitted under this part. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) A vessel owner issued an Atlantic tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit once within 10 calendar days of the date of issuance of the permit. After 10 calendar days from the date of issuance of the permit, the vessel owner may not change the permit category until the following fishing season, except during the period of January 1, 2008, through May 31, 2008, when one additional change is authorized.

(k) *Duration.* A permit issued under this section will be valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904, the vessel or dealership is sold, or any other information previously submitted on the application changes, as specified in paragraph (i) of this section.

(l) *Transfer*— 1) *General.* A permit issued under this section is not transferable or assignable to another vessel or owner or dealer; it is valid only for the vessel or owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section or, if the acquired vessel is permitted in either the shark, swordfish, or tuna longline fishery, in accordance with paragraph (l)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit, by a copy of a signed bill of sale or equivalent acquisition papers, and the appropriate workshop certificates as specified in § 635.8.

(2) *Shark, swordfish, and tuna longline LAPs.* (i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraphs (l)(2)(ii) or (x) of this section, as applicable, and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Incidental catch LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii),(iii), and (x) of this section.

(ii) Except as specified in paragraph (l)(2)(x) of this section, an owner may upgrade a vessel with a shark, swordfish, or tuna longline limited access permit, or transfer the limited access permit to another vessel, and be eligible to retain or renew a limited access permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

(A) The vessel baseline specifications are the respective specifications (length overall, gross registered tonnage, net tonnage, horsepower) of the first vessel that was issued an initial

limited access permit or, if applicable, of that vessel's replacement owned as of May 28, 1999.

(B) Subsequent to the issuance of a limited access permit, the vessel's horsepower may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel initially issued the LAP.

(C) Subsequent to the issuance of a limited access permit, the vessel's length overall, gross registered tonnage, and net tonnage may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. An increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel initially issued the LAP. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) No person or entity may own or control more than 5 percent of the vessels for which swordfish directed, shark directed or tuna longline limited access permits have been issued.

(iv) In order to transfer a swordfish, shark or tuna longline limited access permit to a replacement vessel, the owner of the vessel issued the limited access permit must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit to another vessel, subject to requirements specified in paragraphs (l)(2)(ii) or (x) of this section, if applicable. The owner must return the current valid limited access permit to NMFS with a complete application for a limited access permit, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For swordfish, shark, and tuna longline limited access permit transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii), (iii), and (x) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s) and the bill of sale for the permit(s). A person must include copies of both vessels' U.S. Coast Guard documentation or state registration for limited access permit transfers involving vessels.

(vi) For limited access permit transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and limited access permit(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii), (iii), and (x) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s), the bill of sale for the limited access permit(s) and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

(vii) The owner of a vessel issued a limited access permit(s) who sells the permitted vessel but retains the limited access permit(s) must notify NMFS within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner wishes to transfer the limited access permit(s) to a replacement vessel, he/she must apply according to the procedures in paragraph (l)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain swordfish for commercial purposes. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic tunas Longline category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an

Atlantic Tunas Longline category permit are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

(x) The owner of a vessel that, on August 6, 2007, concurrently possesses, or is eligible to renew, a directed or incidental swordfish limited access permit, a directed or incidental shark limited access permit, and an Atlantic Tunas Longline category permit is eligible to upgrade that vessel, or transfer its limited access permits to another vessel, subject to the following restrictions:

(A) For eligible vessels, as defined in paragraph (l)(2)(x), any increase in the three specifications of vessel size (length overall, gross registered tonnage, and net tonnage), whether through refitting, replacement, or transfer, may not exceed 35 percent of the vessel baseline specifications, as defined in paragraph (l)(2)(ii)(A) of this section. Horsepower for eligible vessels is not limited for purposes vessel upgrades or permit transfers under paragraph (l)(2)(x).

(B) If a vessel owner wants to request a transfer of limited access permits in order to be eligible for the upgrading restrictions under paragraph (l)(2)(x), the transferee must submit a complete application(s), as specified in paragraphs (h),(i),(j), and (l)(1) of this section, according to the procedures at paragraphs (l)(2)(iv), (v), or (vi) of this section, as applicable, to an address designated by NMFS, so that the completed application(s) are received by NMFS by August 6, 2007. Vessels will not be eligible for the upgrading restrictions under paragraph (l)(2)(x) if applications are incomplete or received after August 6, 2007.

(C) Owners of directed or incidental swordfish limited access permit(s), directed or incidental shark limited access permit(s), and Atlantic Tunas Longline category permit(s) that are not assigned to a specific vessel may request transfer of these permits to a vessel in order to be eligible for the upgrading restrictions under paragraph (l)(2)(x). The transferee must submit complete applications, as specified in paragraphs (h),(i),(j), and (l)(1) of this section, according to the procedures at paragraphs (l)(2)(iv), (v), or (vi) of this section, as applicable, to an address designated by NMFS, so that the completed applications are received by NMFS by August 6, 2007. Vessels will not be eligible for the upgrading restrictions under paragraph (l)(2)(x) if applications are incomplete or received by NMFS after August 6, 2007.

(m) *Renewal*—(1) *General*. Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, swordfish, or Incidental HMS squid trawl vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraphs (h)(1)(iv) and (l)(2) of this section; all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5 and § 300.185 of this title; the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section; and the workshop requirements specified in § 635.8 are met.

(2) *Shark and swordfish LAPs*. The owner of a vessel of the U.S. that fishes for, possesses, lands or sells shark or swordfish from the management unit, or that takes or possesses such shark or swordfish as incidental catch, must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, except as specified in paragraph (n) of this section. Only persons holding non-expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s). Transferors may not renew limited access permits

that have been transferred according to the procedures in paragraph (l) of this section.

(n) *Incidental HMS Squid Trawl permits*.—(1) The owner of a vessel in the squid trawl fishery, as described at § 635.24(b)(2), on which Atlantic swordfish are retained, or possessed with an intention to sell, or from which Atlantic swordfish are sold must obtain, in addition to any other required permits, an Incidental HMS squid trawl permit.

(2) An Incidental HMS squid trawl permit is valid only when the vessel has on board a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(i) of this chapter, and no commercial fishing gear other than trawl gear.

[64 FR 29135, May 28, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 635.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 77 FR 47315, Aug. 8, 2012, § 635.2 was amended by revising paragraph (g)(1), (2), and (3), effective Jan. 1, 2013. For the convenience of the user, the revised text is set forth follows:

§ 635.4 Permit and fees.

* * * * *

(g) * * *

(1) *Atlantic tunas*. A dealer, as defined under § 600.10 of this chapter, must possess a valid federal Atlantic tunas dealer permit to purchase, trade, or barter any Atlantic tunas.

(2) *Shark*. A dealer, as defined in § 600.10 of this chapter, must possess a valid federal Atlantic shark dealer permit to purchase, trade, or barter any Atlantic shark listed in Table 1 of Appendix A of this part.

(3) *Swordfish*. A dealer, as defined under § 600.10 of this chapter, must possess a valid federal Atlantic swordfish dealer permit to purchase, trade, or barter any Atlantic swordfish.

* * * * *

2. At 77 FR 59849, Oct. 1, 2012, § 635.4 was amended by revising paragraphs (a)(5), (a)(10), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (f)(1), (f)(2), (g)(1), (g)(2), (g)(3), (h)(1) introductory text, (m)(1), and (m)(2), and by adding paragraph (o), effective Jan. 2, 2012. For the convenience of the user, the revised and added text is set forth as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

(5) *Display upon offloading*. Upon offloading of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit; Atlantic tunas, shark, or swordfish permit; Incidental HMS squid trawl; HMS Commercial Caribbean Small Boat permit; and/or the shark research permit to the first receiver. The permit(s) must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

* * * * *

(10) *Permit condition*. An owner of a vessel with a valid swordfish, shark, HMS Angling, HMS Charter/Headboat, Incidental HMS squid trawl, or HMS Commercial Caribbean Small Boat permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

* * * * *

(d) *Atlantic Tunas vessel permits*. (1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit issued under paragraph (b) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, HMS Charter/Headboat, or an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit or permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit, a valid HMS

Charter/Headboat, or an HMS Commercial Caribbean Small Boat permit.

(3) A vessel issued an Atlantic Tunas permit in any category for a fishing year shall not be issued an HMS Angling permit, HMS Charter/Headboat permit, or an Atlantic Tunas permit in any other category for that same fishing year, regardless of a change in the vessel's ownership. A vessel issued an Atlantic Tunas permit may be issued an HMS Commercial Caribbean Small Boat permit, subject to restrictions set forth at § 635.4(o), within that same fishing year; however, a vessel may not hold any other HMS fishing permit simultaneously with the HMS Commercial Caribbean Small Boat permit.

* * * * *

(e) * * *

(1) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, at least one of the Federal Atlantic commercial shark permits described below or an HMS Commercial Caribbean Small Boat permit. A Federal Atlantic commercial shark permit or HMS Commercial Caribbean Small Boat permit is not required if the vessel is recreationally fishing and retains no more sharks than the recreational retention limit specified in § 635.22(c), is operating pursuant to the conditions of a shark display or EFP issued pursuant to § 635.32, or fishes exclusively within State waters. It is a rebuttable presumption that the owner or operator of a vessel without a permit issued pursuant to this part, on which sharks are possessed in excess of the recreational retention limits, intends to sell the sharks.

(2) The owner of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in sections A, B, or C of Table 1 of Appendix A with an intention to sell must obtain a Federal Atlantic commercial shark directed or incidental limited access permit or an HMS Commercial Caribbean Small Boat permit. The only valid Federal commercial shark directed and shark incidental limited access permits are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

* * * * *

(f) * * *

(1) Except as specified in paragraphs (n) and (o) of this section, the owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained or possessed with an intention to sell or from which Atlantic swordfish are sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: Swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section, or those issued under paragraphs (n) and (o) of this section.

* * * * *

(g) * * *

(1) *Atlantic tunas.* A dealer, as defined under § 600.10 of this chapter, must possess a valid federal Atlantic tunas dealer permit to purchase, trade, or barter any Atlantic tunas except as noted under paragraph (o) of this section.

(2) *Shark.* A dealer, as defined in § 600.10 of this chapter, must possess a valid federal Atlantic shark dealer permit to purchase, trade, or barter any Atlantic shark listed in Table 1 of Appendix A of this part except as noted under paragraph (o) of this section.

(3) *Swordfish.* A dealer, as defined under § 600.10 of this chapter, must possess a valid federal Atlantic swordfish dealer permit to purchase, trade, or barter any Atlantic swordfish except as noted under paragraph (o) of this section.

(h) * * *

(1) Atlantic Tunas, HMS Angling, HMS Charter/Headboat, Incidental HMS squid trawl, and HMS Commercial Caribbean Small Boat vessel permits.

* * * * *

(m) * * *

(1) *General.* Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, swordfish, Incidental HMS squid trawl, or HMS Commercial Caribbean Small Boat vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraphs (h)(1)(iv) and (l)(2) of this section;

all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in §§ 635.5 and 300.185 of this title; the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section; and the workshop requirements specified in § 635.8 are met.

(2) *Shark and swordfish LAPs.* The owner of a vessel of the U.S. that fishes for, possesses, lands or sells shark or swordfish from the management unit, or that takes or possesses such shark or swordfish as incidental catch, must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, except as specified in paragraphs (n) and (o) of this section. Only persons holding non-expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures in paragraph (l) of this section.

* * * * *

(o) *HMS Commercial Caribbean Small Boat permits.* (1) The owner of a vessel who fishes in the U.S. Caribbean, as defined at § 622.2 of this chapter, possesses handgear or greenstick gear and retains, with the intention to sell, any BAYS tunas, Atlantic swordfish, or Atlantic sharks may obtain an HMS Commercial Caribbean Small Boat permit. An HMS Commercial Caribbean Small Boat permit is valid only within the U.S. Caribbean, as defined at § 622.2 of this chapter.

(2) To be eligible for an HMS Commercial Caribbean Small Boat permit, vessel owners must provide documentation that the vessel is less than or equal to 13.7 m (45 ft) in length overall.

(3) A vessel issued an HMS Commercial Caribbean Small Boat permit may not be issued any other HMS fishing permit, except those issued under § 635.32, as long as the HMS Commercial Caribbean Small Boat permit is valid.

(4) The owner of a vessel issued an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess only BAYS tunas, Atlantic swordfish, and Atlantic sharks, subject to the trip limits specified at § 635.24 and may possess unauthorized gears onboard as stated at § 635.21(b).

(5) HMS landed under an HMS Commercial Caribbean Small Boat permit may be sold by the owner or operator to individuals who do not possess a valid HMS dealer permit otherwise required under § 635.4(g). HMS Commercial Caribbean Small Boat permit holders may not sell HMS harvested or landed by another vessel or purchase, barter, or trade for HMS harvested by other vessels with the intent to sell.

§ 635.5 Recordkeeping and reporting.

Information on HMS vessel and dealer reporting requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *Vessels*—(1) *Logbooks.* If an owner of an HMS charter/headboat vessel, an Atlantic tunas vessel, a shark vessel, a swordfish vessel, or a vessel in the squid trawl fishery for which a permit has been issued under § 635.4(b), (d), (e), (f), or (n) is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook form specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the logbook form within 48 hours of completing that day's activities or before offloading, whichever is sooner. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS. If no fishing occurred during a calendar month, a no-fishing form so stating must be submitted postmarked no later than 7 days after the end of that month. If an owner of an HMS charter/headboat vessel, Atlantic tunas vessel, shark vessel, swordfish vessel, or a vessel in the squid trawl fishery permitted under § 635.4(b), (d), (e), (f), or (n) is selected in writing by NMFS to complete the cost-earnings portion of the logbook(s), the owner or operator must maintain and submit the cost-earnings portion of the logbook postmarked no later than 30 days after completing the offloading for each trip fishing for Atlantic HMS during that calendar year, and submit the Atlantic Highly Migratory Species Annual Expenditures form(s) postmarked no later than the date specified on the form of the following year.

(2) *Weighout slips.* If an owner of a permitted vessel is required to maintain and submit logbooks under paragraph (a)(1) of this section, and Atlantic HMS harvested on a trip are sold, the owner or operator must obtain and submit copies of weighout slips for those fish. Each weighout slip must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual weights are

normally recorded. For fish that are not individually weighed, a weighout slip must record total weights by species and market category. A weighout slip for sharks prior to or as part of a commercial transaction involving shark carcasses or fins must record the weights of carcasses and any detached fins. The owner or operator must also submit copies of weighout slips with the logbook forms required to be submitted under paragraph (a)(1) of this section.

(3) *BFT not sold.* If a person who catches and lands a large medium or giant BFT from a vessel issued a permit in any of the commercial categories for Atlantic tunas does not sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas, the person must contact a NMFS enforcement agent, at a number designated by NMFS, immediately upon landing such BFT, provide the information needed for the reports required under paragraph (b)(2)(i) of this section, and, if requested, make the tuna available so that a NMFS enforcement agent or authorized officer may inspect the fish and attach a tag to it. Alternatively, such reporting requirement may be fulfilled if a dealer who has a dealer permit for Atlantic tunas affixes a dealer tag as required under paragraph (b)(2)(ii) of this section and reports the BFT as being landed but not sold on the reports required under paragraph (b)(2)(i) of this section. If a vessel is placed on a trailer, the person must contact a NMFS enforcement agent, or the BFT must have a dealer tag affixed to it by a permitted Atlantic tunas dealer, immediately upon the vessel being removed from the water. All BFT landed but not sold will be applied to the quota category according to the permit category of the vessel from which it was landed.

(4) *Chartering arrangements.* (i) For the purposes of this section, a chartering arrangement means any contract, agreement, or commitment between a U.S. vessel owner and a foreign entity (e.g., government, company, person) by which the control, use, possession, or services of a vessel are secured, for a period of time for fishing targeting Atlantic HMS. Chartering arrangements under this part do not include bareboat charters under which a vessel enters into a fishing agreement with a foreign entity, changes registration to fish under another country's registration then, once the agreed-upon fishing is completed, reverts back to the vessel's original registration.

(ii) Before fishing under a chartering arrangement, the owner of a fishing vessel subject to U.S. jurisdiction must apply for, and obtain, a chartering permit as specified in §635.32 (e) and (f). If a chartering permit is obtained, the vessel owner must submit catch information as specified in the terms and conditions of that permit. All catches will be recorded and counted against the applicable quota of the Contracting Party to which the chartering foreign entity is a member and, unless otherwise provided in the chartering permit, must be offloaded in the ports of the chartering foreign entity or offloaded under the direct supervision of the chartering foreign entity.

(iii) If the chartering arrangement terminates before the expiration of the charter permit, the vessel owner must notify NMFS immediately and in writing, upon termination of the chartering arrangement. Such notification requirements shall also apply to situations where the chartering arrangement is temporarily suspended and during intermittent periods where the vessel may be fishing under U.S. quotas for Atlantic HMS.

(b) *Dealers.* Persons who have been issued a dealer permit under §635.4 must submit reports to NMFS, to an address designated by NMFS, and maintain records as follows:

(1) *Atlantic HMS.* (i) Dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or sharks dealer permit under §635.4 must submit to NMFS all reports required under this section. All reports must be species-specific and must include information about all HMS landed regardless of where harvested or whether the vessel is Federally permitted under §635.4. For sharks, each report must specify both the total fin weight and the total dressed weight of the carcass(es) separately from each other. In cases where different dealers handle the fins and the shark meat, either the report required in this section or the

weighout slip required in paragraph (a)(2) of this section must indicate which part of the sharks being landed (*e.g.*, fins or meat) was handled by the dealer submitting the report. As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in the existing dealer permit being revoked, suspended, or modified, and in the denial of any permit applications.

(ii) Reports of Atlantic tunas, swordfish, and/or sharks received by dealers from U.S. vessels, as defined under § 600.10 of this chapter, on the first through the 15th of each month, must be received by NMFS not later than the 25th of that month. Reports of Atlantic tunas, swordfish, and/or sharks received on the 16th through the last day of each month must be received by NMFS not later than the 10th of the following month. If a dealer issued an Atlantic tunas, swordfish, or sharks dealer permit under § 635.4 has not received any Atlantic HMS from U.S. vessels during a reporting period as specified in this section, he or she must still submit the report required under paragraph (b)(1)(i) of this section stating that no Atlantic HMS were received. This negative report must be received by NMFS for the applicable reporting period as specified in this section. This negative reporting requirement does not apply for bluefin tuna.

(iii) The reporting requirement of paragraph (b)(1)(i) of this section may be satisfied by a dealer if he or she provides a copy of each appropriate weighout slip or sales record, provided such weighout slip or sales record by itself or combined with the form available from NMFS includes all of the required information and identifies each fish by species.

(iv) The dealer may mail or fax such report to an address designated by NMFS or may hand-deliver such report to a state or Federal fishery port agent designated by NMFS. If the dealer hand-delivers the report to a port agent, the dealer must deliver such report for Atlantic tunas, swordfish, or sharks no later than the prescribed received-by date for the reporting period, as required in paragraphs (b)(1)(i) and (ii) of this section.

(2) *Requirements for bluefin tuna*—(i) *Dealer reports*—(A) *Landing reports.* Each dealer with a valid Atlantic tunas permit issued under § 635.4 must submit a completed landing report on a form available from NMFS for each BFT received from a U.S. fishing vessel. Such report must be submitted by electronic facsimile (fax) or, once available, via the Internet, to a number or a web address designated by NMFS not later than 24 hours after receipt of the BFT. A landing report must indicate the name and permit number of the vessel that landed the BFT and must be signed by the permitted vessel's owner or operator immediately upon transfer of the BFT. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report and to verify that the vessel permit has not expired.

(B) *Bi-weekly reports.* Each dealer with a valid Atlantic tunas permit under § 635.4 must submit a complete bi-weekly report on forms available from NMFS for BFT received from U.S. vessels. For BFT received from U.S. vessels on the 1st through the 15th of each month, the dealer must submit the bi-weekly report form to NMFS, to be received by NMFS, not later than the 25th of that month. Reports of BFT received on the 16th through the last day of each month must be received by NMFS not later than the 10th of the following month.

(ii) *Dealer tags.* NMFS will issue numbered dealer tags to each person issued a dealer permit for Atlantic tunas under § 635.4. A dealer tag is not transferable and is usable only by the dealer to whom it is issued. Dealer tags may not be reused once affixed to a tuna or recorded on a package, container, or report.

(A) *Affixing dealer tags.* A dealer or a dealer's agent must affix a dealer tag to each BFT purchased or received from a U.S. vessel immediately upon offloading the BFT. If a vessel is placed on a trailer, the dealer or dealer's agent must affix the dealer tag to the BFT immediately upon the vessel being removed from the water. The dealer tag must be affixed to the BFT

between the fifth dorsal finlet and the caudal keel.

(B) *Removal of dealer tags.* A dealer tag affixed to any BFT under paragraph (b)(2)(ii)(A) of this section or a BSD tag affixed to an imported bluefin tuna must remain on the fish until it is cut into portions. If the bluefin tuna or bluefin tuna parts subsequently are packaged for transport for domestic commercial use or for export, the number of the dealer tag or the BSD tag must be written legibly and indelibly on the outside of any package containing the tuna. Such tag number also must be recorded on any document accompanying the shipment of bluefin tuna for commercial use or export.

(3) *Recordkeeping.* Dealers must retain at their place of business a copy of each report required under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(i) of this section for a period of 2 years from the date on which each report was required to be submitted.

(c) *Anglers.* All bluefin tuna, billfish, and North Atlantic swordfish non-tournament landings must be reported as specified under paragraphs (c)(1) or (c)(2) of this section, unless an alternative recreational catch reporting system has been established as specified under paragraph (c)(3) of this section. Tournament landings must be reported as specified under paragraph (d) of this section.

(1) *Bluefin tuna.* The owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all BFT landings under the Angling category quota designated at § 635.27(a) through the NMFS automated catch reporting system within 24 hours of the landing. Such reports may be made by calling 1–888–872–8862 or by submitting the required information over the Internet at: *www.nmfspermits.com.*

(2) The owner, or the owner('s) designee, of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, roundscale spearfish, and Atlantic sailfish, and all non-tournament and non-commercial landings of North Atlantic swordfish to NMFS by telephone to a number designated by NMFS, or electronically via the internet to an internet website designated by NMFS, or by other means as specified by NMFS, within 24 hours of that landing. For telephone landing reports, the owner, or the owner(s designee, must provide a contact phone number so that a NMFS designee can call the vessel owner, or the owner(s designee, for follow up questions and to confirm the reported landing. Regardless of how submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner(s designee, has received a confirmation number from NMFS or a NMFS designee.

(3) *Alternative recreational catch reporting.* Alternative recreational catch reporting procedures may be established by NMFS with cooperation from states which may include such methodologies as telephone, dockside or mail surveys, mail in or phone-in reports, tagging programs, catch cards, or mandatory check-in stations. A census or a statistical sample of persons fishing under the recreational fishing regulations of this part may be used for these alternative reporting programs (after the programs have received Paperwork Reduction Act approval from OMB). Persons or vessel owners selected for reporting will be notified by NMFS or by the cooperating state agency of the requirements and procedures for reporting recreational catch. Each person so notified must comply with those requirements and procedures. Additionally, NMFS may determine that recreational landing reporting systems implemented by the states, if mandatory, at least as restrictive, and effectively enforced, are sufficient for recreational landing monitoring as required under this part. In such case, NMFS will file with the Office of the Federal Register for publication notification indicating that compliance with the state system satisfies the reporting requirements of paragraph (c) of this section.

(d) *Tournament operators.* For all tournaments that are conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, a tournament operator must register with the NMFS' HMS

Management Division, at least 4 weeks prior to commencement of the tournament by submitting information on the purpose, dates, and location of the tournament to NMFS. A tournament is not registered unless the tournament operator has received a confirmation number from the NMFS' HMS Management Division. NMFS will notify the tournament operator in writing when a tournament has been selected for reporting. Tournament operators that are selected to report must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit the completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament, and must attach a copy of the tournament rules.

(e) *Inspection.* Any person authorized to carry out enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under § 635.4 or § 635.32 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a permit under this part, or anyone responsible for offloading, storing, packing, or selling regulated HMS for such permittee, shall be subject to the inspection provisions of this section.

(f) *Additional data and inspection.* Additional data on fishing effort directed at Atlantic HMS or on catch of Atlantic HMS, regardless of whether retained, may be collected by contractors and statistical reporting agents, as designees of NMFS, and by authorized officers. A person issued a permit under § 635.4 is required to provide requested information about fishing activity, and a person, regardless of whether issued a permit under § 635.4, who possesses an Atlantic HMS is required to make such fish or parts thereof available for inspection by NMFS or its designees upon request.

[64 FR 29135, May 28, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 635.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 77 FR 47315, Aug. 8, 2012, § 635.5 was amended by revising paragraphs (b)(1)(i) through (iii) and removing paragraph (b)(1)(iv), effective Jan. 1, 2013. For the convenience of the user, the revised text is set forth as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) * * *

(i) Dealers that have been issued or should have been issued a Federal Atlantic BAYS tunas, swordfish, and/or shark dealer permit under § 635.4 must submit to NMFS all reports required under this section within the timeframe specified under paragraph (b)(1)(ii) of this section. BAYS tunas, swordfish, and sharks commercially-harvested by a vessel can only be first received by dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or shark dealer permit under § 635.4. All federal Atlantic HMS dealers must provide a detailed report of all fish first received to NMFS within the period specified under paragraph (b)(1)(ii) of this section. All reports must be species-specific and must include the required information about all, swordfish, and sharks received by the dealer, including the required vessel information, regardless of where the fish were harvested or whether the harvesting vessel is permitted under § 635.4. For sharks, each report must specify the total weight of the carcass(es) without the fins for each species, and the total fin weight by grade for all sharks combined. Dealers are also required to submit ''negative'' reports, indicating no receipt of any species, within the timeframe specified under paragraph (b)(1)(ii) of this section if they did not first receive any fish during the reporting period . As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in existing dealer permit(s) being revoked, suspended, or modified, and in the denial of any permit applications.

(ii) Reports of any Atlantic BAYS tunas, sharks, and/or swordfish first received by dealers from a vessel must be submitted electronically on a weekly basis through a NMFS-approved electronic reporting system by the dealer and received by NMFS no later

than midnight, local time, of the first Tuesday following the end of the reporting week unless the dealer is otherwise notified by NMFS. Reports of BAYS tunas, sharks, and/or swordfish may be modified for not more than 30 days from when the dealer report is submitted to NMFS. NMFS will require BAYS tunas, swordfish, and shark dealers to submit dealer reports to NMFS on a weekly basis. Atlantic BAYS tunas, sharks, and swordfish dealers must submit electronic negative reports stating that no BAYS tunas, sharks, and/or swordfish were first received when they received no fish of these species, and no parts thereof, during the reporting period. Reporting requirements for bluefin tuna are specified in paragraph (b)(2) of this section. The negative reporting requirement does not apply for bluefin tuna.

(iii) Atlantic HMS dealers are not authorized to first receive Atlantic swordfish, sharks, and/or BAYS tunas if the required reports have not been submitted and received by NMFS according to reporting requirements under this section. Delinquent reports automatically result in an Atlantic HMS dealer becoming ineligible to first receive Atlantic swordfish, sharks, and/or BAYS tunas. Atlantic HMS dealers who become ineligible to first receive Atlantic swordfish, sharks, and/or BAYS tunas due to delinquent reports are authorized to first receive Atlantic swordfish, sharks, and/or BAYS tunas only once all required and delinquent reports have been completed, submitted by the dealer, and received by NMFS.

* * * * *

§ 635.6 Vessel and gear identification.

(a) *Vessel number*. For the purposes of this section, a vessel's number is the vessel's official number issued by either by the U.S. Coast Guard or by the appropriate state agency.

(b) *Vessel identification*. (1) An owner or operator of a vessel for which a permit has been issued under § 635.4, other than an HMS Angling permit, must display the vessel number—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) in length; at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) in length or less.

(2) The owner or operator of a vessel for which a permit has been issued under § 635.4 must keep the vessel's number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or any other material on board obstructs the view of the vessel's number from an enforcement vessel or aircraft.

(c) *Gear identification*. (1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses handline, buoy gear, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline, buoy gear, or harpoon, and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

(2) An unmarked handline, buoy gear, harpoon, longline, or gillnet, is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

[64 FR 29135, May 28, 1999, as amended at 66 FR 42804, Aug. 15, 2001; 67 FR 77437, Dec. 18, 2002; 71 FR 58166, Oct. 2, 2006]

§ 635.7 At-sea observer coverage.

(a) *Applicability*. NMFS may select for at-sea observer coverage any vessel that has an Atlantic HMS, tunas, shark or swordfish permit issued under § 635.4 or § 635.32. Vessels permitted in the HMS Charter/Headboat and Angling categories will be requested to take observers on a voluntary basis. When selected, vessels issued any other permit under § 635.4 or § 635.32 are required to take observers on a mandatory basis.

(b) *Selection of vessels*. NMFS will notify a vessel owner, in writing, when his or her vessel is selected for observer coverage. Vessels will be selected to provide information on catch, bycatch and other fishery data according to the need for representative samples.

(c) *Notification of trips*. The owner or operator of a vessel that is selected

under paragraph (b) of this section must notify NMFS, at an address designated by NMFS, before commencing any fishing trip that may result in the incidental catch or harvest of Atlantic HMS. Notification procedures and information requirements such as expected gear deployment, trip duration and fishing area will be specified in a selection letter sent by NMFS.

(d) *Assignment of observers.* Once notified of a trip, NMFS will assign an observer for that trip based on current information needs relative to the expected catch and bycatch likely to be associated with the indicated gear deployment, trip duration and fishing area. If an observer is not assigned for a fishing trip, NMFS will issue a waiver for that trip to the owner or operator of the selected vessel, so long as the waiver is consistent with other applicable laws. If an observer is assigned for a trip, the operator of the selected vessel must arrange to embark the observer and shall not fish for or retain any Atlantic HMS unless the NMFS-assigned observer is aboard.

(e) *Requirements.* The owner or operator of a vessel on which a NMFS-approved observer is embarked, regardless of whether required to carry the observer, must comply with §§ 600.725 and 600.746 of this chapter and—

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

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

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

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

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

(f) *Vessel responsibilities.* An owner or operator of a vessel required to carry one or more observer(s) must provide reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(1) Measuring decks, codends, and holding bins.

(2) Providing the observer(s) with a safe work area.

(3) Collecting bycatch when requested by the observer(s).

(4) Collecting and carrying baskets of fish when requested by the observer(s).

(5) Allowing the observer(s) to collect biological data and samples.

(6) Providing adequate space for storage of biological samples.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 17372, Mar. 30, 2001; 68 FR 63741, Nov. 10, 2003; 74 FR 66586, Dec. 16, 2009]

§ 635.8 Workshops.

(a) *Protected species release, disentanglement, and identification workshops.* (1) Both the owner and operator of a vessel that fishes with longline or gillnet gear must be certified by NMFS, or its designee, as having completed a workshop on the safe handling, release, and identification of protected species before a shark or swordfish limited access vessel permit, pursuant to § 635.4(e) and (f), is renewed in 2007. For the purposes of this section, it is a rebuttable presumption that a vessel fishes with longline or gillnet gear if: longline or gillnet gear is onboard the vessel; logbook reports indicate that longline or gillnet gear was used on at least one trip in the preceding year; or, in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline or gillnet gear was used on at least one trip since the permit transfer.

(2) NMFS, or its designee, will issue a protected species safe handling, release, and identification workshop certificate to any person who completes a protected species safe handling, release, and identification workshop. If an owner owns multiple vessels, NMFS will issue a certificate for each vessel that the owner owns upon successful completion of one workshop. An owner who is also an operator will be issued multiple certificates, one as the owner of the vessel and one as the operator.

(3) The owner of a vessel that fishes with longline or gillnet gear, as specified in paragraph (a)(1) of this section, is required to possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that vessel owner. A copy of a valid protected species safe handling, release, and identification workshop certificate issued to the vessel owner for a vessel that fishes with longline or gillnet gear must be included in the application package to renew or obtain a shark or swordfish limited access permit.

(4) An operator that fishes with longline or gillnet gear as specified in paragraph (a)(1) of this section must possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that operator, in addition to a certificate issued to the vessel owner.

(5) All owners and operators that attended and successfully completed industry certification workshops, held on April 8, 2005, in Orlando, FL, and on June 27, 2005, in New Orleans, LA, as documented by workshop facilitators, will automatically receive valid protected species safe handling, release, and identification workshop certificates issued by NMFS no later than December 31, 2006.

(b) *Atlantic shark identification workshops.* (1) As of December 31, 2007, all Federal Atlantic shark dealers permitted or required to be permitted pursuant to § 635.4(g)(2), or a proxy for each place of business as specified in paragraph (b)(4) of this section, must be certified by NMFS, or its designee, as having completed an Atlantic shark identification workshop.

(2) NMFS, or its designee, will issue an Atlantic shark identification workshop certificate to any person who completes an Atlantic shark identification workshop.

(3) Dealers who own multiple businesses and who attend and successfully complete the workshop will be issued a certificate for each place of business that is permitted to receive sharks pursuant to § 635.4(g)(2).

(4) Only dealers issued a valid shark dealer permit may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate at least one proxy from each place of business listed on the dealer permit, issued pursuant to § 635.4(g)(2), which first receives Atlantic shark by way of purchase, barter, or trade. The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy at each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer's application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to receive Atlantic sharks under the Atlantic shark dealer's permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic

shark dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must be included in the Atlantic shark dealer permit renewal application package.

(6) Persons holding an expired Atlantic shark dealer permit and persons who intend to apply for a new Atlantic shark dealer permit will be issued a participant certificate in their name upon successful completion of the Atlantic shark identification workshop. A participant certificate issued to such persons may be used only to apply for an Atlantic shark dealer permit. Pursuant to § 635.8(c)(4), an Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. After an Atlantic shark dealer permit is issued to a person using an Atlantic shark identification workshop participant certificate, such person may obtain an Atlantic shark identification workshop dealer certificate for each location which first receives Atlantic sharks by way of purchase, barter, or trade by contacting NMFS at an address designated by NMFS.

(c) *Terms and conditions.* (1) Certificates, as described in paragraphs (a) and (b) of this section, are valid for three calendar years. All certificates must be renewed prior to the expiration date on the certificate.

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a) of this section, the vessel owner may not renew a shark or swordfish limited access permit, issued pursuant to § 635.4(e) or (f), without submitting a valid protected species workshop certificate with the permit renewal application.

(3) A vessel that fishes with longline or gillnet gear as described in paragraph (a) of this section and that has been, or should be, issued a valid limited access permit pursuant to § 635.4(e) or (f), may not fish unless a valid protected species safe handling, release, and identification workshop certificate has been issued to both the owner and operator of that vessel.

(4) An Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. A valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy has been submitted with the permit renewal application. If the dealer is not certified and opts to send a proxy or proxies to a workshop, the dealer must submit a copy of a valid proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade.

(5) A vessel owner, operator, shark dealer, proxy for a shark dealer, or participant who is issued either a protected species workshop certificate or an Atlantic shark identification workshop certificate may not transfer that certificate to another person.

(6) Vessel owners issued a valid protected species safe handling, release, and identification workshop certificate may request, in the application for permit transfer per § 635.4(l)(2), additional protected species safe handling, release, and identification workshop certificates for additional vessels that they own. Shark dealers may request from NMFS additional Atlantic shark identification workshop certificates for additional places of business authorized to receive sharks that they own as long as they, and not a proxy, were issued the certificate. All certificates must be renewed prior to the date of expiration on the certificate.

(7) To receive either the protected species safe handling, release, and identification workshop certificate or Atlantic shark identification workshop certificate, persons required to attend the workshop must show a copy of their HMS permit, as well as proof of identification to NMFS or NMFS' designee at the workshop. If a permit holder is a corporation, partnership, association, or any other entity, the

individual attending on behalf of the permit holder must show proof that he or she is the permit holder's agent and a copy of the HMS permit to NMFS or NMFS' designee at the workshop. For proxies attending on behalf of a shark dealer, the proxy must have documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer and must show a copy of the Atlantic shark dealer permit to NMFS or NMFS' designee at the workshop.

[71 FR 58166, Oct. 2, 2006, as amended at 73 FR 38153, July 3, 2008; 74 FR 66586, Dec. 16, 2009]

EFFECTIVE DATE NOTE: At 77 FR 47316, Aug. 8, 2012, § 635.8 was amended by revising paragraphs (b)(4) through (6) and (c)(4), effective Jan. 1, 2013. For the convenience of the user, the revised text is set forth as follows:

§ 635.8 Workshops.

* * * * *

(b) * * *

(4) Only dealers issued a valid shark dealer permit may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate at least one proxy from each place of business listed on the dealer permit, issued pursuant to § 635.4(g)(2), which first receives Atlantic shark. The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are received; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks must possess a valid Atlantic shark identification workshop certificate.

(5) An Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy at each place of business listed on the dealer permit which first receives Atlantic sharks. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer's application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to first receive Atlantic sharks under the Atlantic shark dealer's permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic shark dealer permit which first receives Atlantic sharks must be included in the Atlantic shark dealer permit renewal application package.

(6) Persons holding an expired Atlantic shark dealer permit and persons who intend to apply for a new Atlantic shark dealer permit will be issued a participant certificate in their name upon successful completion of the Atlantic shark identification workshop. A participant certificate issued to such persons may be used only to apply for an Atlantic shark dealer permit. Pursuant to § 635.8(c)(4), an Atlantic shark dealer may not first receive Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. After an Atlantic shark dealer permit is issued to a person using an Atlantic shark identification workshop participant certificate, such person may obtain an Atlantic shark identification workshop dealer certificate for each location which first receives Atlantic sharks by contacting NMFS at an address designated by NMFS.

* * * * *

(c) * * *

(4) An Atlantic shark dealer may not first receive Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. A valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy has been submitted with the permit renewal application. If the dealer is not certified and opts to send a proxy or proxies to a workshop, the dealer must submit a copy of a valid proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks.

* * * * *

Subpart B—Limited Access

§ 635.16 [Reserved]

Subpart C—Management Measures

§ 635.20 Size limits.

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas for a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4.

(b) *BFT size classes.* The size class of a BFT found with the head removed shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35. The CFL, as determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. The conversion factor may be adjusted after consideration of additional scientific information and fish measurement data, and will be made effective by filing with the Office of the Federal Register for publication notification of the adjustment.

(c) *BFT, bigeye tuna, and yellowfin tuna.* (1) No person shall take, retain, or possess a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches (69 cm) CFL;

(2) Applying the conversion factor from PFCFL to CFL for a beheaded BFT in § 635.20(b) means that no person shall retain or possess a BFT, with the head removed, that is less than 20 inches (51 cm) PFCFL.

(3) No person shall remove the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches (69 cm) from the fork of the tail to the forward edge of the cut.

(d) *Billfish.* (1) No person shall take, retain or possess a blue marlin taken from its management unit that is less than 99 inches (251 cm), LJFL.

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL.

(3) No person shall take, retain or possess shoreward of the outer boundary of the EEZ a sailfish taken from its management unit that is less than 63 inches (160 cm), LJFL.

(4) No person shall take, retain or possess a roundscale spearfish taken from its management unit that is less than 66 inches (168 cm), LJFL.

(5) The Atlantic blue marlin, white marlin, and roundscale spearfish minimum size limits, specified in paragraphs (d)(1) and (d)(2) of this section, may be adjusted to sizes between 117 and 138 inches (297.2 and 350.5 cm) for blue marlin and 70 and 79 inches (177.8 and 200.7 cm) for white marlin and roundscale spearfish, to achieve, but not exceed, the annual Atlantic marlin landing limit specified in § 635.27(d). Minimum size limit increases will be based upon a review of landings, the period of time remaining in the current fishing year, current and historical landing trends, and any other relevant factors. NMFS will adjust the minimum size limits specified in this section by filing an adjustment with the Office of the Federal Register for publication. In no case shall the adjustments be effective less than 14 calendar days after the date of publication. The adjusted minimum size limits will remain in effect through the end of the applicable fishing year or until otherwise adjusted.

(e) *Sharks.* The following size limits change depending on the species being caught and the retention limit under which they are being caught as specified under § 635.22(c).

(1) All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins naturally attached.

(2) All sharks landed under the recreational retention limits specified at § 635.22(c)(2) must be at least 54 inches (137 cm) FL.

(3) There is no size limit for Atlantic sharpnose or bonnethead sharks taken under the recreational retention limits specified at § 635.22(c)(3).

(4) [Reserved]

(f) *Swordfish.* (1) For a swordfish that has its head naturally attached, the LJFL is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a whole (head on) North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 47 inches (119 cm) LJFL.

A swordfish with the head naturally attached that is damaged by shark bites may be retained only if the length of the remainder of the fish is equal to or greater than 47 inches (119 cm) LJFL.

(2) If the head of a swordfish is no longer naturally attached, the CK measurement is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a dressed North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 25 inches (63 cm) CK length. A swordfish that is damaged by shark bites may be retained only if the length of the remainder of the carcass is equal to or greater than 25 inches (63 cm) CK length.

(3) No person shall import into the United States an Atlantic swordfish weighing less than 33 lb (15 kg) dressed weight, or a part derived from a swordfish that weighs less than 33 lb (15 kg) dressed weight.

(4) Except for a swordfish landed in a Pacific state and remaining in that Pacific state of landing, a swordfish, or part thereof, not meeting the minimum size measurements specified in § 635.20(f)(1) or (2) will be deemed to be an Atlantic swordfish harvested by a vessel of the United States and to be in violation of the minimum size requirement of this section unless such swordfish, or part thereof, is accompanied by a swordfish statistical document attesting that the swordfish was lawfully imported. Refer to § 300.186 of this title for the requirements related to the swordfish statistical document.

(5) A swordfish, or part thereof, will be monitored for compliance with the minimum size requirement of this section from the time it is landed in, or imported into, the United States up to, and including, the point of first transaction in the United States.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 42804, Aug. 15, 2001; 68 FR 714, Jan. 7, 2003; 68 FR 74785, Dec. 24, 2003; 69 FR 67284, Nov. 17, 2004; 71 FR 58167, Oct. 2. 2006; 74 FR 66587, Dec. 19, 2009; 75 FR 30525, June 1, 2010; 75 FR 57701, Sept. 22, 2010; 76 FR 70066, Nov. 10, 2011; 77 FR 45280, July 31, 2012]

§ 635.21 Gear operation and deployment restrictions.

The green-stick gear authorization requirements under paragraphs (c)(2)(v)(A), (c)(2)(v)(B), (c)(5)(iii)(C)(*3*), (e)(1)(ii), (e)(1)(iii), (e)(1)(v), and (g) of this section are effective on October 23, 2008. The sea turtle bycatch mitigation gear requirements under paragraphs (c)(2)(v)(D), (c)(2)(v)(G), (c)(5)(i) introductory text, (c)(5)(i)(M), (c)(5)(ii)(A), and (c)(5)(ii)(C)(*1*) of this section are effective on January 1, 2009.

(a) *All Atlantic HMS fishing gears.* (1) An Atlantic HMS harvested from its management unit that is not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

(2) If a billfish is caught by a hook and not retained, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

(3) All vessels that have pelagic or bottom longline gear onboard and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess inside the wheelhouse the document provided by NMFS entitled ''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' and must also post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

(4) *Area closures for all Atlantic HMS fishing gears.* (i) No person may fish for, catch, possess, or retain any Atlantic highly migratory species or anchor a fishing vessel that has been issued a permit or is required to be permitted under this part, in the areas designated at § 622.34(d) of this chapter.

(ii) From November through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson closed area or the Steamboat Lumps closed area, as defined in § 635.2.

(iii) From May through October of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing

gear in the Madison-Swanson or the Steamboat Lumps closed areas except for surface trolling, as specified below under paragraph (a)(4)(iv) of this section.

(iv) For the purposes of paragraph (a)(4)(iii) of this section, surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(v) From January through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Edges 40 Fathom Contour closed area, as defined in § 635.2.

(vi) [Reserved]

(vii) *Caribbean, Gulf, and South Atlantic EEZ area closures related to Deepwater Horizon oil spill.* Effective May 11, 2010, no vessel issued, or required to be issued, a permit under this part, may fish or deploy any type of fishing gear in the areas designated at §§ 622.33(c), 622.34(n), or 622.35(m) of this chapter.

(b) *General.* No person may fish for, catch, possess, or retain any Atlantic HMS with gears other than the primary gears specifically authorized in this part. Consistent with paragraphs (a)(1) and (a)(2) of this section, secondary gears may be used at boat side to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS. Except as specified in this paragraph (b), a vessel using or having onboard in the Atlantic Ocean any unauthorized gear may not possess an Atlantic HMS on board.

(c) *Pelagic longlines.* For purposes of this part, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear. If a vessel issued a permit under this part is in a closed area designated under paragraph (c)(2) of this section with pelagic longline gear on board, it is a rebuttable presumption that fish on board such vessel were taken with pelagic longline gear in the closed area.

(1) If a vessel issued or required to be issued a permit under this part:

(i) Is in a closed area designated under paragraph (c)(2) of this section and has bottom longline gear onboard, the vessel may not, at any time, possess or land any pelagic species listed in table 2 of appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in tables 2 and 3 of appendix A to this part.

(ii) Has pelagic longline gear on board, persons aboard that vessel may not possess, retain, transship, land, sell, or store oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks.

(2) If pelagic longline gear is on board a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in:

(i) The Northeastern United States closed area from June 1 through June 30 each calendar year;

(ii) In the Charleston Bump closed area from February 1 through April 30 each calendar year;

(iii) In the East Florida Coast closed area at any time;

(iv) In the Desoto Canyon closed area at any time;

(v) In the Northeast Distant gear restricted area at any time, unless persons onboard the vessel comply with the following:

(A) The vessel is limited to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. The outer diameter of the circle hook at its widest point must be no smaller than 2.16 inches (55 mm) when measured with the eye on the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis), and the distance between the circle hook point and the shank (i.e., the gap) must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the

barbed end of the hook and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. If green-stick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook; and,

(B) The vessel is limited, at all times, to possessing onboard and/or using only whole Atlantic mackerel and/or squid bait, except that artificial bait may be possessed and used only with green-stick gear, as defined at § 635.2, if green-stick gear is onboard; and,

(C) Vessels must possess, inside the wheelhouse, a document provided by NMFS entitled, ''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' and must post, inside the wheelhouse, sea turtle handling and release guidelines provided by NMFS; and,

(D) Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section, on the initial list of ''NMFS-Approved Models For Equipment Needed For The Careful Release of Sea Turtles Caught In Hook And Line Fisheries,'' must be carried onboard, and must be used in accordance with the handling requirements specified in paragraphs (c)(2)(v)(E) through(G) of this section; and,

(E) Sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(v)(D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought on board, and to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought on board, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (c)(2)(v)(C) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1).

(F) *Boated turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet approved on the initial list specified in paragraph (c)(2)(v)(D) of this section. All turtles less than 3 ft (.91 m) carapace length should be boated, if sea conditions permit. A boated turtle should be placed on a standard automobile tire, or cushioned surface, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if the hook has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using approved monofilament line cutters from the initial list specified in paragraph (c)(2)(v)(D) of this section, and the hook should be cut as close as possible to the insertion point before releasing the turtle using bolt cutters from that list. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, an approved mouth-opener from the initial list specified in paragraph (c)(2)(v)(D) of this section may facilitate opening the turtle's mouth, and an approved gag from that list may facilitate keeping the mouth open. Short-handled dehookers for ingested hooks, long-nose pliers, or needle-nose pliers from the initial list specified in paragraph (c)(2)(v)(D) of this section should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(v)(C) of this section,

and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(G) *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(v)(D) of this section, must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (c)(2)(v)(C) of this section. Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured, if possible, with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using an approved line cutter from the list specified in paragraph (c)(2)(v)(D) of this section. If the hook can be removed, it must be removed using a long-handled dehooker from the initial list specified in paragraph (c)(2)(v)(D) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(v)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(3) When a marine mammal or sea turtle is hooked or entangled by pelagic longline gear, the operator of the vessel must immediately release the animal, retrieve the pelagic longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(4) In the Gulf of Mexico: pelagic longline gear may not be fished or deployed from a vessel issued a permit under this part with live bait affixed to the hooks; and, a person aboard a vessel issued a permit under this part that has pelagic longline gear on board shall not maintain live baitfish in any tank or well on board the vessel and shall not possess live baitfish, and shall not set up or attach an aeration or water circulation device in or to any such tank or well. For the purposes of this section, the Gulf of Mexico includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(5) The operator of a vessel required to be permitted under this part and that has pelagic longline gear on board must undertake the following sea turtle bycatch mitigation measures:

(i) *Possession and use of required mitigation gear.* Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section as meeting the minimum design standards specified in paragraphs (c)(5)(i)(A) through (c)(5)(i)(M) of this section, must be carried onboard, and must be used to disengage any hooked or entangled sea turtles in accordance with the handling requirements specified in paragraph (c)(5)(ii) of this section.

(A) *Long-handled line clipper or cutter.* Line cutters are intended to cut high test monofilament line as close as possible to the hook, and assist in removing line from entangled sea turtles to minimize any remaining gear upon release. NMFS has established minimum design standards for the line cutters. The LaForce line cutter and the Arceneaux line clipper are models that meet these minimum design standards, and may be purchased or fabricated from readily available and low-cost materials. One long-handled line clipper or cutter and a set of replacement blades are required to be onboard. The minimum design standards for line cutters are as follows:

(*1*) *A protected and secured cutting blade*. The cutting blade(s) must be capable of cutting 2.0-2.1 mm (0.078 in.–0.083 in.) monofilament line (400-lb test) or polypropylene multistrand material, known as braided or tarred mainline, and must be maintained in working order. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and be easily replaceable. One extra set of replacement blades meeting these standards must also be carried on board to replace all cutting surfaces on the line cutter or clipper.

(*2*) *An extended reach handle*. The line cutter blade must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

(B) *Long-handled dehooker for ingested hooks*. A long-handled dehooking device is intended to remove ingested hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the barb of the hook and prevent it from re-engaging during the removal process. One long-handled device to remove ingested hooks is required onboard. The minimum design standards are as follows:

(*1*) *Hook removal device*. The hook removal device must be constructed of 5/16-inch (7.94 mm) 316 L stainless steel and have a dehooking end no larger than 1 7/8-inches (4.76 cm) outside diameter. The device must securely engage and control the leader while shielding the barb to prevent the hook from re-engaging during removal. It may not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Extended reach handle*. The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

(C) *Long-handled dehooker for external hooks*. A long-handled dehooker is required for use on externally-hooked sea turtles that cannot be boated. The long-handled dehooker for ingested hooks described in paragraph (c)(5)(i)(B) of this section would meet this requirement. The minimum design standards are as follows:

(*1*) *Construction*. A long-handled dehooker must be constructed of 5/16-inch (7.94 mm) 316 L stainless steel rod. A 5-inch (12.7-cm) tube T-handle of 1-inch (2.54 cm) outside diameter is recommended, but not required. The design should be such that a fish hook can be rotated out, without pulling it out at an angle. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Extended reach handle*. The handle must be a minimum length equal to the freeboard of the vessel or 6 ft (1.83 m), whichever is greater.

(D) *Long-handled device to pull an ''inverted V''*. This tool is used to pull a ''V'' in the fishing line when implementing the ''inverted V'' dehooking technique, as described in the document entitled ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' required under paragraph (a)(3) of this section, for disentangling and dehooking entangled sea turtles. One long-handled device to pull an ''inverted V'' is required onboard. If a 6-ft (1.83 m) J-style dehooker is used to comply with paragraph (c)(5)(i)(C) of

this section, it will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook end*. This device, such as a standard boat hook or gaff, must be constructed of stainless steel or aluminum. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and should never contact the sea turtle.

(*2*) *Extended reach handle*. The handle must have a minimum length equal to the freeboard of the vessel, or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

(E) *Dipnet*. One dipnet is required onboard. Dipnets are to be used to facilitate safe handling of sea turtles by allowing them to be brought onboard for fishing gear removal, without causing further injury to the animal. Turtles must not be brought onboard without the use of a dipnet. The minimum design standards for dipnets are as follows:

(*1*) *Size of dipnet*. The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft (0.914 m)carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) 3 inches (7.62 cm). There must be no sharp edges or burrs on the hoop, or where it is attached to the handle.

(*2*) *Extended reach handle*. The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or at least 6 ft (1.83 m), whichever is greater. The handle must made of a rigid material strong enough to facilitate the sturdy attachment of the net hoop and able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

(F) *Tire*. A minimum of one tire is required for supporting a turtle in an upright orientation while it is onboard, although an assortment of sizes is recommended to accommodate a range of turtle sizes. The required tire must be a standard passenger vehicle tire, and must be free of exposed steel belts.

(G) *Short-handled dehooker for ingested hooks*. One short-handled device for removing ingested hooks is required onboard. This dehooker is designed to remove ingested hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(*1*) *Hook removal device*. The hook removal device must be constructed of 1/4-inch (6.35 mm) 316 L stainless steel, and must allow the hook to be secured and the barb shielded without re-engaging during the removal process. It must be no larger than 1$^{5}/_{16}$ inch (3.33 cm) outside diameter. It may not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a ¾-inch (1.91 cm) inside diameter high impact plastic cylinder (e.g., Schedule 80 PVC) that is 10 inches (25.4 cm) long to allow for 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Handle length*. The handle should be approximately 16–24 inches (40.64 cm–60.69 cm) in length, with approximately a 5-inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(H) *Short-handled dehooker for external hooks*. One short-handled dehooker for external hooks is required onboard. The short-handled dehooker for ingested hooks required to comply with paragraph (c)(5)(i)(G) of this section will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook removal device*. The dehooker must be constructed of 5/16-inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles

used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) *Handle length*. The handle should be approximately 16–24 inches (40.64 cm–60.69 cm) long with approximately a 5-inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(I) *Long-nose or needle-nose pliers*. One pair of long-nose or needle-nose pliers is required on board. Required long-nose or needle-nose pliers can be used to remove deeply embedded hooks from the turtle's flesh that must be twisted during removal. They can also hold PVC splice couplings, when used as mouth openers, in place. Minimum design standards are as follows:

(*1*) *General*. They must be approximately 12 inches (30.48 cm) in length, and should be constructed of stainless steel material.

(*2*) [Reserved]

(J) *Bolt cutters*. One pair of bolt cutters is required on board. Required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or barb of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed. Minimum design standards are as follows:

(*1*) *General*. They must be approximately 17 inches (43.18 cm) in total length, with 4-inch (10.16 cm) long blades that are 2¼ inches (5.72 cm) wide, when closed, and with 13-inch (33.02 cm) long handles. Required bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to 1/4-inch (6.35 mm) diameter.

(*2*) [Reserved]

(K) *Monofilament line cutters*. One pair of monofilament line cutters is required on board. Required monofilament line cutters must be used to remove fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed. Minimum design standards are as follows:

(*1*) *General*. Monofilament line cutters must be approximately 7½ inches (19.05 cm) in length. The blades must be 1 in (4.45 cm) in length and ⅝ in (1.59 cm) wide, when closed, and are recommended to be coated with Teflon (a trademark owned by E.I. DuPont de Nemours and Company Corp.).

(*2*) [Reserved]

(L) *Mouth openers/mouth gags*. Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing ingested hooks from boated turtles. They must allow access to the hook or line without causing further injury to the turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth openers/gags described below are required:

(*1*) *A block of hard wood*. Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (e.g. maple) with rounded edges should be sanded smooth, if necessary, and soaked in water to soften the wood. The dimensions should be approximately 11 inches (27.94 cm) 1 inch (2.54 cm) 1 inch (2.54 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements.

(*2*) *A set of three canine mouth gags*. Canine mouth gags are highly recommended to hold a turtle's mouth open, because the gag locks into an open position to allow for hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 inches)(12.7 cm), medium (6 inches) (15.24 cm), and large (7 inches)(17.78 cm). They must be constructed of stainless steel. A 1 -inch (4.45 cm) piece of vinyl tubing (3/4-inch (1.91 cm) outside diameter and 5/8-inch (1.59 cm) inside diameter) must be placed over the ends to protect the turtle's beak.

(*3*) *A set of two sturdy dog chew bones*. Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5½–

8 inches(13.97 cm–20.32 cm) in length), and one small (3½–4½ inches (8.89 cm–11.43 cm) in length) canine chew bones.

(*4*) *A set of two rope loops covered with hose.* A set of two rope loops covered with a piece of hose can be used as a mouth opener, and to keep a turtle's mouth open during hook and/or line removal. A required set consists of two 3-foot (0.91 m) lengths of poly braid rope (3/8-inch (9.52 mm) diameter suggested), each covered with an 8-inch (20.32 cm) section of ½ inch (1.27 cm) or ¾ inch (1.91 cm) light-duty garden hose, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(*5*) *A hank of rope.* Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6-foot (1.83 m) lanyard of approximately 3/16-inch (4.76 mm) braided nylon rope may be folded to create a hank, or looped bundle, of rope. Any size soft-braided nylon rope is allowed, however it must create a hank of approximately 2–4 inches (5.08 cm–10.16 cm) in thickness.

(*6*) *A set of four PVC splice couplings.* PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1¼ inch (3.18 cm), 1½ inch (3.81 cm), and 2 inches (5.08 cm).

(*7*) *A large avian oral speculum.* A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9-inches (22.86 cm) long, and constructed of 3/16-inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (5/16-inch (7.9 mm) outside diameter, 3/16-inch (4.76 mm) inside diameter).

(M) *Turtle control devices.* Effective January 1, 2009, one turtle control device, as described in paragraph (c)(5)(i)(M)(*1*) or (*2*) of this section, is required onboard and must be used to secure a front flipper of the sea turtle so that the animal can be controlled at the side of the vessel. It is strongly recommended that a pair of turtle control devices be used to secure both front flippers when crew size and conditions allow. Minimum design standards consist of:

(*1*) *Turtle tether and extended reach handle.* Approximately 15-20 feet of 1/2-inch hard lay negative buoyance line is used to make an approximately 30-inch loop to slip over the flipper. The line is fed through a 3/4-inch fair lead, eyelet, or eyebolt at the working end of a pole and through a 3/4-inch eyelet or eyebolt in the midsection. A 1/2-inch quick release cleat holds the line in place near the end of the pole. A final 3/4-inch eyelet or eyebolt should be positioned approximately 7-inches behind the cleat to secure the line, while allowing a safe working distance to avoid injury when releasing the line from the cleat. The line must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater. There is no restriction on the type of material used to construct this handle, as long as it is sturdy. The handle must include a tag line to attach the tether to the vessel to prevent the turtle from breaking away with the tether still attached.

(*2*) *T&G ninja sticks and extended reach handles.* Approximately 30-35 feet of 1/2-inch to 5/8-inch soft lay polypropylene or nylon line or similar is fed through 2 PVC conduit, fiberglass, of similar sturdy poles and knotted using an overhand (recommended) knot at the end of both poles or otherwise secured. There should be approximately 18-24 inches of exposed rope between the poles to be used as a working surface to capture and secure the flipper. Knot the line at the ends of both poles to prevent line slippage if they are not otherwise secured. The remaining line is used to tether the apparatus to the boat unless an additional tag line is used. Two lengths of sunlight resistant 3/4-inch schedule 40 PVC electrical conduit, fiberglass, aluminum, or similar material should be used to construct

the apparatus with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater.

(ii) *Handling and release requirements.* (A) Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(A) through (D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought onboard. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(E) through (M) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought onboard, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (a)(3) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1)of this title.

(B) *Boated turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet as required by paragraph (c)(5)(i)(E) of this section. All turtles less than 3 ft (.91 m) carapace length should be boated, if sea conditions permit.

(*1*) A boated turtle should be placed on a standard automobile tire, or cushioned surface, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using monofilament cutters as required by paragraph (c)(5)(i) of this section, and the hook should be cut as close as possible to the insertion point before releasing the turtle, using boltcutters as required by paragraph (c)(5)(i) of this section. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, a mouth-opener, as required by paragraph (c)(5)(i) of this section, may facilitate opening the turtle's mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for ingested hooks, long-nose pliers, or needle-nose pliers, as required by paragraph (c)(5)(i) of this section, should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(*2*) [Reserved]

(C) *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear required by paragraphs (c)(5)(i)(A)–(D) of this section must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (a)(3) of this section.

(*1*) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed

prior to release, using a line cutter as required by paragraph (c)(5)(i) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(5)(i) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) for additional information.

(*2*) [Reserved]

(iii) *Gear modifications.* The following measures are required of vessel operators to reduce the incidental capture and mortality of sea turtles:

(A) *Gangion length.* The length of any gangion on vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must be at least 10 percent longer than any floatline length if the total length of any gangion plus the total length of any floatline is less than 100 meters.

(B) *Corrodible hooks.* Vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must only have corrodible hooks on board.

(C) *Hook size, type, and bait.* Vessels fishing outside of the NED closed area, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait, and the following types and sizes of fishing hooks:

(*1*) 18/0 or larger circle hooks with an offset not to exceed 10°; and/or,

(*2*) 16/0 or larger non-offset circle hooks.

(*i*) For purposes of paragraphs (c)(5)(iii)(C)(*1*) and (c)(5)(iii)(C)(*2*) of this section, the outer diameter of an 18/0 circle hook at its widest point must be no smaller than 2.16 inches (55 mm), and the outer diameter of a 16/0 circle hook at its widest point must be no smaller than 1.74 inches (44.3 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The distance between the hook point and the shank (*i.e.*, the gap) on an 18/0 circle hook must be no larger than 1.13 inches (28.8 mm), and the gap on a 16/0 circle hook must be no larger than 1.01 inches (25.8 mm). The allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. In the Gulf of Mexico, as described at § 600.105(c), circle hooks also must be constructed of corrodible round wire stock that is no larger than 3.65 mm in diameter.

(*ii*) [Reserved]

(*3*) If green-stick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook. If green-stick gear is onboard, artificial bait may be possessed, but used only with green-stick gear.

(iv) *Approval of sea turtle bycatch mitigation gear.* NMFS will file with the Office of the Federal Register for publication an initial list of required sea turtle bycatch mitigation gear that NMFS has approved as meeting the minimum design standards specified under paragraph (c)(5)(i) of this section. Other devices proposed for use as line clippers or cutters or dehookers, as specified under paragraphs (c)(5)(i)(A), (B), (C), (G), (H), and (K) of this section, must be approved as meeting the minimum design standards before being used. NMFS will examine new devices, as they become available, to determine if

they meet the minimum design standards, and will file with the Office of the Federal Register for publication notification of any new devices that are approved as meeting the standards.

(d) *Bottom longlines*. For the purposes of this part, a vessel is considered to have bottom longline gear on board when a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of bottom longline gear. Bottom longline vessels may have a limited number of floats and/or high flyers onboard for the purposes of marking the location of the gear but removal of these floats does not constitute removal of bottom longline gear. If a vessel issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section with bottom longline gear on board, it is a rebuttable presumption that any fish on board such a vessel were taken with bottom longline in the closed area.

(1) If bottom longline gear is onboard a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the following areas:

(i) The mid-Atlantic shark closed area from January 1 through July 31 each calendar year;

(ii) The areas designated at § 622.33(a)(1) through (3) of this chapter, year-round; and

(iii) The areas described in paragraphs (d)(1)(iii)(A) through (H) of this section, year-round.

(A) *Snowy Grouper Wreck*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	33°25′	77°04.75′
B	33°34.75′	76°51.3′
C	33°25.5′	76°46.5′
D	33°15.75′	77°00.0′
A	33°25′	77°04.75′

(B) *Northern South Carolina*. Bounded on the north by 32°53.5′ N. lat.; on the south by 32°48.5′ N. lat.; on the east by 78°04.75′ W. long.; and on the west by 78°16.75′ W. long.

(C) *Edisto*. Bounded on the north by 32°24′ N. lat.; on the south by 32°18.5′ N. lat.; on the east by 78°54.0′ W. long.; and on the west by 79°06.0′ W. long.

(D) *Charleston Deep Artificial Reef*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	32°04′	79°12′
B	32°08.5′	79°07.5′
C	32°06′	79°05′
D	32°01.5′	79°09.3′
A	32°04′	79°12′

(E) *Georgia*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	31°43′	79°31′
B	31°43′	79°21′
C	31°34′	79°29′
D	31°34′	79°39′
A	31°43′	79°31′

(F) *North Florida*. Bounded on the north by 30°29′ N. lat.; on the south by 30°19′ N. lat.; on the east by 80°02′ W. long.; and on the west by 80°14′ W. long.

(G) *St. Lucie Hump*. Bounded on the north by 27°08′ N. lat.; on the south by 27°04′ N. lat.; on the east by 79°58′ W. long.; and on the west by 80°00′ W. long.

(H) *East Hump*. Bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°36.5′	80°45.5′
B	24°32′	80°36′
C	24°27.5′	80°38.5′
D	24°32.5′	80°48′
A	24°36.5′	80°45.5′

(2) When a marine mammal, sea turtle, or smalltooth sawfish is hooked or entangled by bottom longline gear, the operator of the vessel must immediately release the animal, retrieve the bottom longline gear, and move at

least 1 nmi (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(3) The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the following bycatch mitigation measures to release sea turtles, prohibited sharks, or smalltooth sawfish, as appropriate.

(i) *Possession and use of required mitigation gear.* The equipment listed in paragraph (c)(5)(i) of this section must be carried on board and must be used to handle, release, and disentangle hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish in accordance with requirements specified in paragraph (d)(3)(ii) of this section.

(ii) *Handling and release requirements.* Sea turtle bycatch mitigation gear, as required by paragraph (d)(3)(i) of this section, must be used to disengage any hooked or entangled sea turtle as stated in paragraph (c)(5)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed under heading D of Table 1 of appendix A of this part, any hooked or entangled species of sharks that exceed the retention limits as specified in § 635.24(a), and any hooked or entangled smalltooth sawfish. In addition, if a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and the fish should be examined for research tags. All smalltooth sawfish must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water or any research tags from the fish.

(iii) *Corrodible hooks.* Vessels that have bottom longline gear on board and that have been issued, or required to have, a limited access shark permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, must only have corrodible hooks on board.

(4) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section and has pelagic longline gear onboard, the vessel may not, at any time, possess or land any demersal species listed in Table 3 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

(e) *Authorized gear*—(1) *Atlantic tunas.* A person that fishes for, retains, or possesses an Atlantic bluefin tuna may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. Primary gears are the gears specifically authorized in this section. When fishing for Atlantic tunas other than BFT, primary gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit, a LAP other than handgear for swordfish, and a LAP for sharks.

(i) *Angling.* Speargun (for BAYS tunas only), and rod and reel (including downriggers)and handline (for all tunas).

(ii) *Charter/Headboat.* Rod and reel (including downriggers), bandit gear, handline, and green-stick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

(iii) *General.* Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick.

(iv) *Harpoon.* Harpoon.

(v) *Longline.* Longline and green-stick.

(vi) *Purse Seine.* Purse seine.

(A) *Mesh size.* A purse seine used in directed fishing for BFT must have a mesh size equal to or smaller than 4.5 inches (11.4 cm) in the main body (stretched when wet) and must have at least 24-count thread throughout the net.

(B) *Inspection of purse seine vessels.* Persons that own or operate a purse seine vessel conducting a directed fishery for Atlantic tunas must have their

fishing gear inspected for mesh size by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of Atlantic tunas. Such persons must request such inspection at least 24 hours before commencement of the first fishing trip of the season. If NMFS does not inspect the vessel within 24 hours of such notification, the inspection requirement is waived. In addition, at least 24 hours before commencement of offloading any BFT after a fishing trip, such persons must request an inspection of the vessel and catch by notifying NMFS. If, after notification by the vessel, NMFS does not arrange to inspect the vessel and catch at offloading, the inspection requirement is waived.

(vii) *Trap.* Pound net and fish weir.

(2) *Billfish.* (i) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category permit and are participating in a tournament as provided in 635.4 (c) of this part, may possess a blue marlin, white marlin, or roundscale spearfish in, or take a blue marlin, white marlin, or roundscale spearfish from, its management unit. Blue marlin, white marlin, or roundscale spearfish may only be harvested by rod and reel.

(ii) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ. Sailfish may only be harvested by rod and reel.

(iii) After December 31, 2007, persons who have been issued or are required to be issued a permit under this part and who are participating in a ''tournament'', as defined in § 635.2, that bestows points, prizes, or awards for Atlantic billfish must deploy only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, and may not deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination.

(3) *Sharks.* (i) No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet. No person issued an HMS Angling permit or an HMS Charter/headboat permit under § 635.4 may possess a shark if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit and a Federal Atlantic commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

(ii) No person may fish for sharks with a gillnet with a total length of 2.5 km or more. No person may have on board a vessel a gillnet with a total length of 2.5 km or more.

(iii) Persons fishing with gillnet gear must comply with the provisions implementing the Atlantic Large Whale Take Reduction Plan, the Bottlenose Dolphin Take Reduction Plan, the Harbor Porpoise Take Reduction Plan, and any other relevant Take Reduction Plan set forth in §§ 229.32 through 229.35 of this title. If a listed whale is taken, the vessel operator must cease fishing operations immediately and contact NOAA Fisheries as required under § 229 of this title.

(iv) While fishing with a gillnet for or in possession of any of the large coastal, small coastal, and pelagic sharks listed in section A, B, and/or C of table 1 of appendix A of this part, the gillnet must remain attached to at least one vessel at one end, except during net checks.

(v) Vessel operators fishing with gillnet for or in possession of any of the large coastal, small coastal, and pelagic sharks listed in sections A, B, and/or C of table 1 of appendix A of this part are required to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles, marine mammals, or smalltooth sawfish.

Smalltooth sawfish should not be removed from the water while being removed from the net.

(4) *Swordfish.* (i) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained by a vessel issued a valid Incidental HMS squid trawl permit, subject to restrictions specified in § 635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

(ii) An Atlantic swordfish may not be retained or possessed on board a vessel with a gillnet. A swordfish will be deemed to have been harvested by gillnet when it is onboard, or offloaded from a vessel using or having on board a gillnet.

(iii) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel using or having on board longline gear. Only vessels that have been issued, or that are required to have been issued, a valid directed or handgear swordfish LAP under this part may utilize or possess buoy gear. Vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess on board an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant, and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

(iv) Except for persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit or Incidental HMS squid trawl permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

(f) *Speargun fishing gear.* Speargun fishing gear may only be utilized when recreational fishing for Atlantic BAYS tunas and only from vessels issued either a valid HMS Angling or valid HMS Charter/Headboat permit. Persons fishing for Atlantic BAYS tunas using speargun gear, as specified in paragraph (e)(1) of this section, must be physically in the water when the speargun is fired or discharged, and may freedive, use SCUBA, or other underwater breathing devices. Only free-swimming BAYS tunas, not those restricted by fishing lines or other means, may be taken by speargun fishing gear. ''Powerheads'', as defined at § 600.10 of this chapter, or any other explosive devices, may not be used to harvest or fish for BAYS tunas with speargun fishing gear.

(g) *Green-stick gear.* Green-stick gear may only be utilized when fishing from vessels issued a valid Atlantic Tunas General, HMS Charter/Headboat, or Atlantic Tunas Longline category permit. The gear must be attached to the vessel, actively trolled with the mainline at or above the water's surface, and may not be deployed with more than 10 hooks or gangions attached.

[64 FR 29135, May 28, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 635.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov.*

EFFECTIVE DATE NOTE: At 77 FR 59850, Oct. 1, 2012, § 635.21 was amended by revising paragraphs (b), (e)(1) introductory text, (e)(3)(i),

and (e)(4)(iii) and (iv), effective Jan. 2, 2013. For the convenience of the user, the revised text is set forth as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(b) *General*. No person may fish for, catch, possess, or retain any Atlantic HMS with gears other than the primary gears specifically authorized in this part. Consistent with paragraphs (a)(1) and (2) of this section, secondary gears may be used at boat side to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS. Except for vessels permitted under § 635.4(o) or as specified in this paragraph (b), a vessel using or having onboard in the Atlantic Ocean any unauthorized gear may not possess an Atlantic HMS on board.

* * * * *

(e) * * *

(1) *Atlantic tunas*. A person that fishes for, retains, or possesses an Atlantic bluefin tuna (BFT) may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. Primary gears are the gears specifically authorized in this section. When fishing for Atlantic tunas other than BFT, primary gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit, a LAP other than handgear for swordfish, and a LAP for sharks. A person issued an HMS Commercial Caribbean Small Boat permit who fishes for, retains, or possesses BAYS tunas in the U.S. Caribbean, as defined at § 622.2, may have on board and use handline, harpoon, rod and reel, bandit gear, green-stick gear, and buoy gear.

* * * * *

(3) * * *

(i) No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet. No person issued an HMS Commercial Caribbean Small Boat permit may possess a shark taken from the U.S. Caribbean, as defined at § 622.2, by any gear other than with rod and reel, handline or bandit gear. No person issued an HMS Angling permit or an HMS Charter/headboat permit under § 635.4 may possess a shark if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit and a Federal Atlantic commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

* * * * *

(4) * * *

(iii) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish or an HMS Commercial Caribbean Small Boat permit may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel using or having on board longline gear. Only vessels that have been issued, or that are required to have been issued, a valid directed or handgear swordfish LAP or an HMS Commercial Caribbean Small Boat permit under this part may utilize or possess buoy gear. Vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess on board an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant, and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

(iv) Except for persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit, Incidental HMS squid trawl permit, or an HMS Commercial

Caribbean Small Boat permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

* * * * *

§ 635.22 Recreational retention limits.

(a) *General*. (1) Atlantic HMS caught, possessed, retained, or landed under these recreational limits may not be sold or transferred to any person for a commercial purpose. Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic Ocean including the Gulf of Mexico and Caribbean Sea, to a North Atlantic swordfish taken from or possessed in the Atlantic Ocean, and to bluefin and yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and for the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

(2) Vessels issued an HMS General Category permit under § 635.4(d) that are participating in a HMS registered tournament, vessels issued a HMS Angling category permit under § 635.4(c), or vessels issued a HMS Charter/Headboat permit under § 635.4(b) may not retain, possess or land oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks if swordfish, tuna, or billfish are retained or possessed on board, or offloaded from, the vessel. Such vessels also may not retain, possess or land swordfish, tuna, or billfish if oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks are retained or possessed on board, or offloaded from, the vessel.

(b) *Billfish*. No longbill spearfish from the management unit may be taken, retained, or possessed shoreward of the outer boundary of the EEZ.

(c) *Sharks*. (1) The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued a Federal Atlantic commercial shark vessel permit under § 635.4. The retention limit can change depending on the species being caught and the size limit under which they are being caught as specified under § 635.20(e). If a commercial Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks and no sale provision in paragraph (a) of this section may be applied to persons aboard a vessel issued a Federal Atlantic commercial shark vessel permit under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire fishing trip.

(2) Only one shark from the following list may be retained per vessel per trip, subject to the size limits described in § 635.20(e)(2): any of the non-ridgeback sharks listed under heading A.2 of Table 1 in Appendix A of this part, tiger (*Galeocerdo cuvier*), blue (*Prionace glauca*), common thresher (*Alopias vulpinus*), oceanic whitetip (*Carcharhinus longimanus*), porbeagle (*Lamna nasus*), shortfin mako (*Isurus oxyricnchus*), Atlantic sharpnose (*Rhizoprionodon terraenovae*), finetooth (*C. isodon*), blacknose (*C. Acronotus*), and bonnethead (*Sphyrna tiburo*).

(3) In addition to the sharks listed under paragraph (c)(2) of this section, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip, subject to the size limits described in § 635.20(e)(3).

(4) No prohibited sharks, including parts or pieces of prohibited sharks, which are listed in section D of Table 1 of Appendix A to this part, may be retained regardless of where harvested.

(5) Sharks listed in Table 1 of Appendix A that are not listed in this section, must be released by persons aboard a vessel that has not been issued a Federal Atlantic commercial shark vessel permit under § 635.4.

(6) [Reserved]

(d) *Yellowfin tuna*. Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a

person aboard a vessel issued an Atlantic Tunas vessel permit under § 635.4. The recreational retention limit for yellowfin tuna applies to persons, including captain and crew, aboard a vessel that has been issued an Atlantic HMS Charter/Headboat permit only when the vessel is engaged in a for-hire trip.

(e) *Bluefin tuna*. Refer to § 635.23 for Atlantic bluefin tuna recreational retention limits.

(f) *North Atlantic swordfish*. The recreational retention limits for North Atlantic swordfish apply to persons who fish in any manner, except to persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4.

(1) Vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are charter boats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to six North Atlantic swordfish per vessel per trip.

(2) Vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are headboats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to 15 North Atlantic swordfish per vessel per trip.

(3) Vessels issued an HMS Angling category permit under § 635.4(c), may retain, possess, or land no more than one North Atlantic swordfish per person and up to four North Atlantic swordfish per vessel per trip.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 8904, Feb. 5, 2001; 67 FR 77437, Dec. 18, 2002; 68 FR 714, Jan. 7, 2003; 68 FR 74785, Dec. 24, 2003; 71 FR 58169, Oct. 2, 2006; 72 FR 31709, June 7, 2007; 73 FR 40708, July 15, 2008; 75 FR 30525, June 1, 2010; 76 FR 53658, Aug. 29, 2011; 76 FR 70066, Nov. 10, 2011]

§ 635.23 Retention limits for BFT.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *General category*. (1) No person aboard a vessel that has a General category Atlantic Tunas permit may possess, retain, land, or sell a BFT in the school, large school, or small medium size class.

(2) On an RFD, no person aboard a vessel that has been issued a General category Atlantic Tunas permit may fish for, possess, retain, land, or sell a BFT of any size class, and catch-and-release or tag-and-release fishing for BFT under § 635.26 is not authorized from such vessel. On days other than RFDs, and when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the FEDERAL REGISTER.

(3) Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has a General category Atlantic Tunas permit. On days other than RFDs, when the General category is open, no person aboard such vessel may continue to fish, and the vessel must immediately proceed to port once the applicable limit for large medium or giant BFT is retained.

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of five per vessel. Such increase or decrease will be based on the criteria provided under § 635.27(a)(8). NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing an adjustment with the Office of the Federal Register for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

(b) *Angling category*. BFT may be retained and landed under the daily limits and quotas applicable to the Angling category by persons aboard vessels issued an HMS Angling permit as follows:

(1) *Large medium and giant BFT*. (i) No large medium or giant BFT may be retained, possessed, landed, or sold in the

Gulf of Mexico, except one per vessel per year may be landed if caught incidentally to fishing for other species.

(ii) One per vessel per year may be retained, possessed, and landed outside the Gulf of Mexico.

(iii) When a large medium or giant BFT has been caught and retained under this paragraph (b)(1), no person aboard the vessel may continue to fish, the vessel must immediately proceed to port, and no such BFT may be sold or transferred to any person for a commercial purpose.

(2) *School, large school, or small medium BFT.* (i) No school, large school, or small medium BFT may be retained, possessed, landed, or sold in the Gulf of Mexico.

(ii) One school, large school, or small medium BFT per vessel per day may be retained, possessed, or landed outside the Gulf of Mexico. Regardless of the length of a trip, no more than a single day's allowable catch of school, large school, or small medium BFT may be possessed or retained.

(3) *Changes to retention limits.* To provide for maximum utilization of the quota for BFT over the longest period of time, NMFS may increase or decrease the retention limit for any size class of BFT, or change a vessel trip limit to an angler trip limit and vice versa. Such increase or decrease in retention limit will be based on the criteria provided under § 635.27 (a)(8). The retention limits may be adjusted separately for persons aboard a specific vessel type, such as private vessels, headboats, or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing an adjustment with the Office of the Federal Register for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register.

(c) *HMS Charter/Headboat.* Persons aboard a vessel issued an HMS Charter/Headboat permit may retain and land BFT under the daily limits and quotas applicable to the Angling category or the General category as follows:

(1) When fishing in the Gulf of Mexico, the restrictions applicable to the Angling category specified in paragraph (b)(1) of this section apply.

(2) When fishing other than in the Gulf of Mexico when the fishery for the General category is closed, the restrictions applicable to the Angling category specified in paragraphs (b)(1) through (b)(3) of this section apply.

(3) When fishing other than in the Gulf of Mexico and when the fishery under the General category has not been closed under § 635.28, a person aboard a vessel that has been issued an HMS Charter/Headboat permit may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (a)(3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (b)(3) of this section. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day.

(d) *Harpoon category.* Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an unlimited number of giant BFT per day. An incidental catch of only four large medium BFT per vessel per day may be retained, possessed, or landed.

(e) *Purse Seine category.* Persons aboard a vessel permitted in the Atlantic Tunas Purse Seine category,

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the total amount of giant BFT landed during that fishing year.

(2) May retain, possess or land BFT smaller than the large medium size class that are taken incidentally when fishing for skipjack tuna or yellowfin tuna in an amount not exceeding 1 percent, by weight, of the skipjack tuna and yellowfin tuna landed on that trip. Landings of BFT smaller than the large medium size class may not be sold and are counted against the Purse Seine category BFT quota allocated to that vessel.

(f) *Longline category.* Persons aboard a vessel permitted in the Atlantic Tunas Longline category may retain, possess, land, and sell large medium and giant BFT taken incidentally when fishing for other species. For vessels fishing North or South of 31°00′ N. lat., limits on retention, possession, landing and sale are as follows:

(1) One large medium or giant BFT per vessel per trip may be landed, provided that at least 2,000 lb (907 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Two large medium or giant BFT per vessel per trip may be landed, provided that at least 6,000 lb (2,727 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Three large medium or giant BFT per vessel per trip may be landed, provided that at least 30,000 lb (13,620 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

(2) NMFS may increase or decrease the Longline category retention limit of large medium and giant BFT over a range from zero to a maximum of three per trip, or, for a given BFT retention limit, increase or decrease the target catch requirement by 25 percent from the level specified in paragraph (f)(1) of this section. Such increase or decrease in the BFT retention limit or target catch requirement will be based on a review of dealer reports, observer reports, vessel logbooks, landing trends, availability of the species on the fishing grounds, and any other relevant factors, and will consider the likelihood of increasing dead discards of BFT and/or exceeding the incidental landings quota established for the pelagic longline fishery. Such adjustments may be made separately for vessels fishing North or South of 31°00′ N. lat. NMFS will adjust the retention limits and target catch requirements specified in paragraph (f)(1) of this section by filing the adjustment with the Office of the Federal Register for publication. In no case shall such adjustment be effective less than 21 calendar days after the adjustment is filed with the Office of the Federal Register for publication.

(g) *Trap category*. Persons aboard a vessel permitted in the Atlantic Tunas Trap category may retain, possess, land, and sell each fishing year only one large medium or giant BFT that is taken incidentally while fishing for other species with a pound net or fish weir. No other Atlantic tunas caught in a pound net or fish weir may be retained.

[64 FR 29135, May 28, 1999, as amended at 65 FR 42887, July 12, 2000; 67 FR 77438, Dec. 18, 2002; 68 FR 32417, May 30, 2003; 68 FR 56788, Oct. 2, 2003; 68 FR 74511, Dec. 24, 2003; 69 FR 40758, July 6, 2004; 70 FR 10900, Mar. 7, 2005; 71 FR 58169, Oct. 2, 2006; 76 FR 39031, July 5, 2011; 76 FR 74009, Nov. 30, 2011]

§ 635.24 Commercial retention limits for sharks and swordfish.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28, and the gear operation and deployment restrictions in § 635.21.

(a) *Sharks*. (1) A person who owns or operates a vessel that has been issued a valid shark research permit under § 635.32(f) and who has a NMFS-approved observer on board may retain, possess, or land LCS, including sandbar sharks, in excess of the retention limits in paragraphs (a)(2) through (6) of this section. The amount of LCS that can be landed by such a person will vary as specified on the shark research permit. Only a person who owns or operates a vessel issued a valid shark research permit with a NMFS-approved observer on board may retain, possess, or land sandbar sharks.

(2) From July 24, 2008 through December 31, 2012, a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 33 non-sandbar LCS per vessel per trip if the fishery is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks. As of January 1, 2013, a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved

observer on board, may retain, possess, or land no more than 36 non-sandbar LCS per vessel per trip if the fishery is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks.

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued an incidental LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 3 non-sandbar LCS per vessel per trip if the fishery is open per § 635.27 and § 635.28. Such persons may not retain, possess, or land sandbar sharks.

(4)(i) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land pelagic sharks if the pelagic shark fishery is open per §§ 635.27 and 635.28.

(ii) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land blacknose and non-blacknose SCS if the blacknose and non-blacknose SCS fisheries are open per §§ 635.27 and 635.28.

(iii) A person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, or land no more than 16 SCS and pelagic sharks, combined, per trip, if the respective fishery is open per §§ 635.27 and 635.28.

(5) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit may not retain, possess, land, sell, or purchase prohibited sharks, including any parts or pieces of prohibited sharks, which are listed in section D of Table 1 of Appendix A to this part under prohibited sharks.

(6) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit, and who decides to retain sharks, must retain, subject to the trip limits, all dead, legal-sized, non-prohibited sharks that are brought onboard the vessel and cannot replace those sharks with sharks of higher quality or size that are caught later in the trip. Any fish that are to be released cannot be brought onboard the vessel and must be released in the water in a manner that maximizes survival.

(7) Only persons who own or operate a vessel that has been issued a Federal commercial smoothhound permit may retain, possess, and land smoothhound sharks if the smoothhound fishery is open per §§ 635.27 and 635.28.

(8) *Inseason trip limit adjustment criteria*. NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to trip limits. Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

(i) The amount of remaining shark quota in the relevant area or region, to date, based on dealer reports;

(ii) The catch rates of the relevant shark species/complexes, to date, based on dealer reports;

(iii) Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates;

(iv) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;

(v) Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge; and/or

(vi) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota.

(9) Notwithstanding other provisions in this subsection, possession, retention, transshipment, landing, sale, or storage of oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks is prohibited on vessels issued a permit under this part that have PLL gear on board.

(b) *Swordfish*. (1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, land, or sell no more than 30 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an Incidental HMS squid trawl

permit may retain, possess, land, or sell no more than 15 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

[64 FR 29135, May 28, 1999, as amended at 71 FR 58169, Oct. 2, 2006; 72 FR 31709, June 7, 2007; 73 FR 40709, July 15, 2008; 75 FR 30526, June 1, 2010; 75 FR 76314, Dec. 8, 2010; 76 FR 49380, Aug. 10, 2011; 76 FR 53658, Aug. 29, 2011]

EFFECTIVE DATE NOTE: 1. At 75 FR 30526, June 1, 2010, § 635.24 was amended by adding paragraph (a)(7). This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 77 FR 59851, Oct. 1, 2012, § 635.24 was amended by revising the section heading and adding paragraphs (a)(4)(iv), (b)(3), and (c), effective Jan. 2, 2013. For the convenience of the user, the added and revised text forth as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

(a) * * *

(4) * * *

(iv) A person who owns or operates a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, or land any LCS, SCS or pelagic sharks only when the HMS Commercial Caribbean Small Boat permit trip limit is set above zero. The current shark trip limit for HMS Commercial Caribbean Small Boat permit holders is set at zero.

* * * * *

(b) * * *

(3) Persons aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat vessel permit may retain, possess, land, or sell no more than 2 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(c) BAYS tunas. Persons aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit under § 635.4 may retain, possess, land, or sell no more than 10 BAYS tunas per vessel per trip.

§ 635.25 Fishing areas.

(a) *General.* Persons on board fishing vessels subject to the jurisdiction of the United States are authorized to fish for, catch, retain, or land species governed by an international catch sharing agreement implemented under this part only in or from those management areas for which the United States has received an allocation.

(b) *Exemptions.* Persons and vessels subject to the jurisdiction of the United States intending to fish for regulated species in fishing areas not otherwise authorized under this part, whether for the purposes of scientific research or commercial fishing under a chartering arrangement, must have a permit from NMFS issued under § 635.32.

(c) *Atlantic bluefin tuna.* No person aboard a U.S. fishing vessel shall fish for bluefin tuna in, or possess on board that fishing vessel a bluefin tuna taken from, the Mediterranean Sea.

[67 FR 70026, Nov. 20, 2002]

§ 635.26 Catch and release.

(a) *BFT.* (1) Notwithstanding the other provisions of this part, a person aboard a vessel issued a permit under this part, other than a person aboard a vessel permitted in the General category on a designated RFD, may fish with rod and reel or handline gear for BFT under a catch-and-release or tag-and-release program. When fishing under a tag-and-release program, vessel owner/operators should use tags issued or approved by NMFS. If a BFT is tagged, the tag information, including information on any previously applied tag remaining on the fish, must be reported to NMFS. All BFT caught under the catch-and-release or tag-and-release programs must be returned to the sea immediately with a minimum of injury.

(2) Persons may obtain NMFS-issued conventional tags, reporting cards, and detailed instructions for their use from the NMFS Cooperative Tagging Center. Persons may use a conventional tag obtained from a source other than NMFS to tag BFT, provided the use of such tags is registered each year with the Cooperative Tagging Center and the NMFS program manager has approved the use of a conventional tag from that source. An angler using an alternative source of tags wishing to tag BFT may contact the NMFS Cooperative Tagging Center at the Southeast Fishery Science Center.

(3) An angler registering for the HMS tagging program is required to provide his or her name, address, phone number and, if applicable, the identity of the alternate source of tags.

(b) *Billfish*. NMFS is encouraging further catch and release of Atlantic billfish by establishing a recreational catch-and-release fishery management program, consistent with the guidance of § 600.350(c).

(c) *Sharks*. Notwithstanding the other provisions of this part, a person may fish for white sharks (*Carcharodon carcharias*) with rod and reel, provided the person releases such fish to the sea immediately with a minimum of injury, and that such fish may not be removed from the water.

[64 FR 29135, May 28, 1999, as amended at 65 FR 42887, July 12, 2000; 70 FR 10900, Mar. 7, 2005]

§ 635.27 Quotas.

(a) *BFT*. Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. BFT quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories. BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. The baseline annual U.S. BFT quota is 923.7 mt, not including an additional annual 25 mt allocation provided in paragraph (a)(3) of this section. The baseline annual U.S. BFT quota is divided among the categories as follows: General—47.1 percent (435.1 mt); Angling—19.7 percent (182.0 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (36.0 mt); Purse Seine—18.6 percent (171.8 mt); Longline—8.1 percent (74.8 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap—0.1 percent (0.9 mt). The remaining 2.5 percent (23.1 mt) of the baseline annual U.S. BFT quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10) of this section. BFT quotas are specified in whole weight.

(1) *General category quota*. In accordance with the framework procedures of the HMS FMP, NMFS will publish in the FEDERAL REGISTER, prior to the beginning of each fishing year or as early as feasible, the General category effort control schedule, including daily retention limits and restricted-fishing days.

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). The amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 47.1 percent (435.1 mt) of the baseline annual U.S. BFT quota, and is apportioned as follows:

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or until March 31, whichever comes first—5.3 percent (25.2 mt);

(B) June 1 through August 31—50 percent (217.6 mt);

(C) September 1 through September 30—26.5 percent (115.3 mt);

(D) October 1 through November 30—13 percent (56.6 mt); and

(E) December 1 through December 31—5.2 percent (22.6 mt).

(ii) NMFS will adjust each period's apportionment based on overharvest or underharvest in the prior period.

(iii) When the coastwide General category fishery has been closed in any quota period specified under paragraph (a)(1)(i) of this section, NMFS will publish a closure action as specified in § 635.28. The subsequent time-period subquota will automatically open in accordance with the dates specified

under paragraph (a)(1)(i) of this section.

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent (182 mt) of the baseline annual U.S. BFT quota. No more than 2.3 percent (4.2 mt) of the annual Angling category quota may be large medium or giant BFT. In addition, over each 2-consecutive-year period (starting in 2011, inclusive), no more than 10 percent of the annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (40.8 mt) of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining school BFT Angling category quota (36.5 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(ii) An amount equal to 52.8 percent (43.8 mt) of the large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large school/small medium BFT Angling category quota (39.1 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(iii) An amount equal to 66.7 percent (2.8 mt) of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large medium and giant BFT Angling category quota (1.4 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent (74.8 mt) of the baseline annual U.S. BFT quota. No more than 60.0 percent (44.9 mt) of the Longline category quota may be allocated for landing in the area south of 31°00′ N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area.

(4) *Purse Seine category quota.* (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Purse Seine category Atlantic Tunas permits is 18.6 percent (171.8 mt) of the baseline annual U.S. BFT quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the Federal Register prior to July 1. The Purse Seine category fishery closes on December 31 of each year.

(ii) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued must apply in writing to NMFS at an address designated by NMFS, for an allocation of BFT from the Purse Seine category quota. The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on June 1.

(iii) On or about May 1 of each year, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting, adjusted as necessary to account for underharvest or overharvest by each participating vessel or the vessel it replaces from the previous fishing year, consistent with paragraph (a)(10)(i) of this section. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. Any purse seine vessel permit

holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of such intent to NMFS, at an address designated by NMFS, 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (in metric tons) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under § 635.23(e) are not affected by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether bluefin tuna are retained.

(iv) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued may apply to NMFS to permanently consolidate Purse Seine category vessel permits issued under § 635.4. Upon written approval of consolidation by NMFS, the Purse Seine Category Atlantic Tunas Permit of a transferring vessel will be canceled, and the receiving owner may apply for allocations of BFT commensurate with the number of consolidated permits. An owner of a purse seine vessel whose permit is canceled through consolidation may not use his or her vessel in any purse seine fishery in which BFT might be caught.

(5) *Harpoon category quota*. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 3.9 percent (36.0 mt) of the baseline annual U.S. BFT quota. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

(6) *Trap category quota*. The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 0.1 percent (1.0 mt) of the baseline annual U.S. BFT quota.

(7) *Reserve*. (i) The total amount of BFT that is held in reserve for inseason or annual adjustments and fishery-independent research using quotas or subquotas is 2.5 percent (23.1 mt) of the baseline annual U.S. BFT quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (17.6 mt) of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

(8) *Determination criteria*. NMFS will file with the Office of the Federal Register for publication notification of any inseason or annual adjustments. Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

(i) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock.

(ii) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made.

(iii) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

(iv) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(v) Effects of the adjustment on BFT rebuilding and overfishing.

(vi) Effects of the adjustment on accomplishing the objectives of the fishery management plan.

(vii) Variations in seasonal distribution, abundance, or migration patterns of BFT.

(viii) Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota.

(ix) Review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

(9) *Inseason adjustments.* Within a fishing year, NMFS may transfer quotas among categories or, as appropriate, subcategories, based on the criteria in paragraph (a)(8) of this section. NMFS may transfer inseason any portion of the remaining quota of a fishing category to any other fishing category or to the reserve as specified in paragraph (a)(7) of this section.

(10) *Annual adjustments.* (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota for any category or, as appropriate, subcategory has been exceeded or has not been reached, with the exception of the Purse Seine category, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year. These adjustments would be made provided that the underharvest being carried forward does not exceed 100 percent of each category's baseline allocation specified in paragraph (a) of this section, and the total of the adjusted category quotas and the reserve are consistent with ICCAT recommendations. For the Purse Seine category, if NMFS determines, based on landings statistics and other available information, that a purse seine vessel's allocation, as adjusted, has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that vessel's allocation for the following fishing year. Purse seine vessel adjustments would take place provided that the underharvest being carried forward does not exceed 100 percent of the purse seine category baseline allocation. Any of the unharvested quota amounts being carried forward, as described in this paragraph, that exceed the 100 percent limit will be transferred to the reserve, or another domestic quota category provided the transfers are consistent with paragraph (a)(8) of this section.

(ii) NMFS may allocate any quota remaining in the reserve at the end of a fishing year to any fishing category, provided such allocation is consistent with the criteria specified in paragraph (a)(8) of this section.

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 2-consecutive-year period beginning in the 2009 fishing year does not exceed 10 percent by weight of the total annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, for that period.

(iv) NMFS may subtract the best available estimate of dead discards from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards.

(v) NMFS will file any annual adjustment with the Office of the Federal Register for publication and specify the basis for any quota reductions or increases made pursuant to this paragraph (a)(10).

(b) *Sharks*—(1) *Commercial quotas.* The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section apply to all sharks harvested from the management unit, regardless of where harvested. Sharks taken and landed from state waters, even by fishermen without Federal shark permits, must be counted against the fishery quota. Commercial quotas are specified for each of the management groups of sandbar sharks, non-sandbar LCS, SCS, blue sharks, porbeagle sharks, and pelagic sharks other than blue or porbeagle sharks. Any sharks landed as unclassified will be counted against the appropriate species' quota based on the species composition calculated from data collected by observers on non-research trips and/or dealer data. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of Appendix A to this part, may be retained except as authorized under § 635.32.

(i) *Annual adjustments.* NMFS will publish in the FEDERAL REGISTER any annual adjustments to the base annual commercial quotas or the 2008 through 2012 adjusted base quotas. The base annual quota and the adjusted base annual quota will not be available, and the fishery will not open, until such adjustments are published and effective in the FEDERAL REGISTER.

(A) *Overharvests.* Except as noted in this paragraph, if the available commercial quota for any shark species or complex, as described in this section, is exceeded in any fishing year, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing year or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years. If the annual quota for non-sandbar LCS is exceeded in either region (*see* section (b)(1)(iii)(B)) or in the research fishery in any fishing year, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing year or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years, in the specific region or research fishery where the overharvest occurred. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing year or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years.

(B) *Underharvests.* Except as noted in this paragraph, if an annual quota for any shark species or complex, as described in this section, is not exceeded, NMFS may adjust the annual quota depending on the status of the stock or quota group. If the annual quota for non-sandbar LCS is not exceeded in either region or in the research fishery, NMFS may adjust the annual quota in either region (*see* paragraph (b)(1)(iii)(B) of this section) or the research fishery depending on the status of the stock or quota group. If the stock (*e.g.*, sandbar shark, porbeagle shark, pelagic shark, or blue shark) or specific species within a quota group (*e.g.*, non-sandbar LCS or non-blacknose SCS) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may not adjust the following fishing year's quota for any underharvest, and the following fishing year's quota will be equal to the base annual quota (or the adjusted base quota for sandbar and non-sandbar LCS until December 31, 2012). If the stock is not declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may increase the following year's base annual quota (or the adjusted base quota for sandbar and non-sandbar LCS until December 31, 2012) by an equivalent amount of the underharvest up to 50 percent above the base annual quota. For the non-sandbar LCS fishery, underharvests are not transferable between regions and/or the research fishery.

(ii) *Opening fishing season criteria.* NMFS will file with the Office of the Federal Register for publication notification of the opening dates of the shark fishery for each species/complex. Before making any decisions, NMFS would consider the following criteria and other relevant factors in establishing the opening dates:

(A) The available annual quotas for the current fishing season for the different species/complexes based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons;

(B) Estimated season length based on available quota(s) and average weekly catch rates of different species/complexes in the Atlantic and Gulf of Mexico regions from the previous years;

(C) Length of the season for the different species/complexes in the previous years and whether fishermen were able to participate in the fishery in those years;

(D) Variations in seasonal distribution, abundance, or migratory patterns of the different species/complexes based on scientific and fishery information;

(E) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species/complexes quotas;

(F) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or,

(G) Effects of a delayed opening with regard to fishing opportunities in other fisheries.

(iii) *Sandbar sharks.* The base annual commercial quota for sandbar sharks is 116.6 mt dw. However, from July 24, 2008 through December 31, 2012, to account for overharvests that occurred in 2007, the adjusted base quota is 87.9 mt dw. Both the base quota and the adjusted base quota may be further adjusted per paragraph (b)(1)(i) of this section. This quota is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(iv) *Non-sandbar LCS.* (A) The total base quota for non-sandbar LCS is 677.8 mt dw. This base quota is split between the two regions and the shark research fishery as follows: Gulf of Mexico = 439.5 mt dw; Atlantic = 188.3 mt dw; and Shark Research Fishery = 50 mt dw. However, from July 24, 2008 through December 31, 2012, to account for overharvests that occurred in 2007, the total adjusted base quota is 615.8 mt dw. This adjusted base quota is split between the regions and the shark research fishery as follows: Gulf of Mexico = 390.5 mt dw; Atlantic = 187.8 mt dw; and Shark Research Fishery = 37.5 mt dw. Both the base quota and the adjusted base quota may be further adjusted per paragraph (b)(1)(i) of this section.

(B) The commercial quotas for non-sandbar LCS are split between two regions: the Gulf of Mexico and the Atlantic. For the purposes of this section, the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the east coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

(C) Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported by dealers located in the Florida Keys areas or in the Gulf of Mexico will be counted against the non-sandbar LCS Gulf of Mexico regional quota. Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported by dealers located in the Atlantic region will be counted against the non-sandbar LCS Atlantic regional quota. Non-sandbar LCS landed by a vessel issued a valid shark research permit with a NMFS-approved observer onboard will be counted against the non-sandbar LCS research fishery quota using scientific observer reports.

(v) *Small coastal sharks.* The base annual commercial quota for non-blacknose small coastal sharks is 221.6 mt dw, unless adjusted pursuant to paragraph (b)(1)(i) of this section. The base annual commercial quota for blacknose sharks is 19.9 mt dw, unless adjusted pursuant to paragraph (b)(1)(i) of this section.

(vi) *Pelagic sharks.* The base annual commercial quotas for pelagic sharks are 273 mt dw for blue sharks, 1.7 mt dw for porbeagle sharks, and 488 mt dw for pelagic sharks other than blue sharks or porbeagle sharks, unless adjusted pursuant to paragraph (b)(1)(i) of this section.

(vii) [Reserved]

(2) *Public display and non-specific research quotas.* All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against the following:

(i) The base annual quota for persons who collect non-sandbar LCS, SCS, pelagic sharks, blue sharks, porbeagle sharks, or prohibited species under a display permit or EFP is 57.2 mt ww (41.2 mt dw).

(ii) The base annual quota for persons who collect sandbar sharks under a display permit is 1.4 mt ww (1 mt dw) and under an EFP is 1.4 mt ww (1 mt dw).

(iii) No persons may collect dusky sharks under a display permit. Collection of dusky sharks for research under EFPs and/or SRPs may be considered on a case by case basis and any associated mortality would be deducted from the shark research and display quota.

(iv) [Reserved]

(c) *Swordfish*—(1) *Categories.* Consistent with ICCAT recommendations,

the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock. The quota for the North Atlantic swordfish stock is further divided into equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species or taking swordfish recreationally, and a reserve category.

(i) *North Atlantic swordfish.* (A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, or a handgear permit for swordfish, has been issued or is required to be issued is counted against the directed fishery quota. The total baseline annual fishery quota, before any adjustments, is 2,937.6 mt dw for each fishing year. Consistent with applicable ICCAT recommendations, a portion of the total baseline annual fishery quota may be used for transfers to another ICCAT contracting party. The annual directed category quota is calculated by adjusting for over- or underharvests, dead discards, any applicable transfers, the incidental category quota, the reserve quota and other adjustments as needed, and is subdivided into two equal semi-annual: one for January 1 through June 30, and the other for July 1 through December 31.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish or an HMS Angling or Charter/Headboat permit has been issued, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued, is counted against the incidental catch quota. The annual incidental category quota is 300 mt dw for each fishing year.

(C) All swordfish discarded dead from U.S. fishing vessels, regardless of whether such vessels are permitted under this part, shall be counted against the annual directed fishing quota.

(D) Fifty (50) mt of the annual fishery quota of North Atlantic swordfish may be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery research, or for other purposes consistent with management objectives.

(E) In the event of an overharvest of South Atlantic swordfish, up to 150.4 mt dw of swordfish landed between 5 degrees North and 5 degrees South latitude may be applied against the North Atlantic swordfish quota. Otherwise, swordfish landed from this area shall be applied against the South Atlantic swordfish quota. For example, if the South Atlantic swordfish quota were 100 mt dw, and 50 mt dw were landed between 5 degrees North and 5 degrees South latitude, and 75 mt dw were caught south of 5 degrees South latitude, then 25 mt dw of the swordfish caught between 5 degrees North and 5 degrees South latitude would be applied against the North Atlantic swordfish quota. If only 25 mt dw of swordfish were caught between 5 degrees North and 5 degrees South latitude, and 150 mt dw of swordfish were caught south of 5 degrees South latitude, 25 mt dw would be applied against the North Atlantic swordfish quota. The remaining 50 mt dw overharvest would be counted against the following year's South Atlantic swordfish quota.

(ii) *South Atlantic Swordfish.* The annual directed fishery quota for the South Atlantic swordfish stock is 75.2 mt dw. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 37.6 mt dw: one for January 1 through June 30, and the other for July 1 through December 31. The entire quota for the South Atlantic swordfish stock is reserved for vessels with pelagic longline gear onboard and that have been issued a directed fishery permit for swordfish. No person may retain swordfish caught incidental to other fishing activities or with other fishing gear in the Atlantic Ocean south of 5 degrees North latitude.

(2) *Inseason adjustments.* (i) NMFS may adjust the July 1 through December 31 semiannual directed fishery quota or, as applicable, the reserve category, to reflect actual directed fishery and incidental fishing category catches

during the January 1 through June 30 semiannual period.

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, excess quota may be allocated to the directed fishery quota or to the reserve, as necessary. If NMFS determines that the annual directed catch quota will not be taken before the end of the fishing year, some of the excess quota may be allocated to the incidental fishery quota or to the reserve, as necessary.

(iii) If NMFS determines that it is necessary to close the directed swordfish fishery prior to the scheduled end of a semi-annual fishing season, any estimated overharvest or underharvest of the directed fishery quota for that semi-annual season will be used to adjust the annual incidental catch quota or the reserve as necessary to maintain landings and discards within the required annual limits.

(iv) NMFS will file with the Office of the Federal Register for publication any inseason swordfish quota adjustment and its apportionment to fishing categories or to the reserve made under paragraph (c)(2) of this section.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Consolidated Highly Migratory Species Fishery Management Plan.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 25 percent of the baseline quota allocation for that year. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw) for that year. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph.

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section will be subtracted from the landings quota in the following fishing year or from the reserve category. NMFS will file with the Office of the Federal Register for publication any adjustment made under this paragraph (c)(3)(iii).

(d) *Atlantic blue and white marlin.* (1) Effective January 1, 2007, and consistent with ICCAT recommendations and domestic management objectives, NMFS will establish the annual landings limit of Atlantic blue and white marlin to be taken, retained, or possessed by persons and vessels subject to U.S. jurisdiction. For the year 2007 and thereafter, unless adjusted under paragraph (d)(2) of this section or by ICCAT recommendation, this annual landings limit is 250 Atlantic blue and white marlin, combined. Effective January 1, 2011, annual landings of roundscale spearfish are also included to the blue and white marlin annual landings limit. Should the U.S. recreational Atlantic marlin landing limit be adjusted by an ICCAT recommendation, NMFS will file a notice identifying the new landing limit with the Office of the Federal Register for publication prior to the start of the next fishing year or as early as possible.

(2) Consistent with ICCAT recommendations and domestic management objectives, and based on landings statistics and other information as appropriate, if NMFS determines that aggregate landings of Atlantic blue marlin, white marlin, and roundscale spearfish exceeded the annual landings limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS will subtract any overharvest from the landings limit for the following fishing year. Additionally, if NMFS determines that aggregate landings of Atlantic blue marlin, white marlin, and roundscale spearfish were below the annual landings limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS

may add any underharvest, or portion thereof, to the landings limit for the following fishing year. Such adjustments to the annual recreational marlin landings limit, as specified in paragraph (d)(1) of this section, if necessary, will be filed with the Office of the Federal Register for publication prior to the start of the next fishing year or as early as possible.

(3) When the annual marlin landings limit specified in paragraph (d)(1) or, if adjusted, as specified in paragraph (d)(2) of this section is reached or projected to be reached, based upon a review of landings, the period of time remaining in the current fishing year, current and historical landings trends, and any other relevant factors, NMFS will file for publication with the Office of the Federal Register and action restricting fishing for Atlantic blue marlin, white marlin, and roundscale spearfish to catch-and-release fishing only. In no case shall such adjustment be effective less than 14 calendar days after the date of publication. From the effective date and time of such action until additional landings become available, no blue marlin, white marlin, or roundscale spearfish from the management unit may be taken, retained, or possessed.

[64 FR 29135, May 28, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 635.27, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: 1. At 77 FR 47317, Aug. 8, 2012, § 635.27 was amended by revising paragraph (b)(1)(iv)(C), effective Jan. 1, 2013. For the convenience of the user, the revised text is set forth as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *
(1) * * *
(iv) * * *

(C) Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported as harvested in the Florida Keys areas or in the Gulf of Mexico will be counted against the non-sandbar LCS Gulf of Mexico regional quota. Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported as harvested in the Atlantic region will be counted against the non-sandbar LCS Atlantic regional quota. Non-sandbar LCS landed by a vessel issued a valid shark research permit with a NMFS-approved observer onboard will be counted against the non-sandbar LCS research fishery quota using scientific observer reports.

* * * * *

2. At 77 FR 59851, Oct. 1, 2012, § 635.27 was amended by revising paragraph (c)(1)(i)(A), effective Jan. 2, 2013. For the convenience of the user, the revised text is set forth as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *
(1) * * *
(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, or a handgear permit for swordfish, or an HMS Commercial Caribbean Small Boat permit has been issued or is required to be issued is counted against the directed fishery quota. The total baseline annual fishery quota, before any adjustments, is 2,937.6 mt dw for each fishing year. Consistent with applicable ICCAT recommendations, a portion of the total baseline annual fishery quota may be used for transfers to another ICCAT contracting party. The annual directed category quota is calculated by adjusting for over- or underharvests, dead discards, any applicable transfers, the incidental category quota, the reserve quota and other adjustments as needed, and is subdivided into two equal semi-annual: one for January 1 through June 30, and the other for July 1 through December 31.

* * * * *

§ 635.28 Closures.

(a) *BFT*. (1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file a closure notice with the Office of the Federal Register for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent

quota period or until such date as specified in the notice.

(2) From the commencement date of the directed BFT purse seine fishery, as provided under § 635.27(a)(4)(i), through December 31, the owner or operator of a vessel that has been allocated a portion of the Purse Seine category quota under § 635.27(a)(4) may fish for BFT. Such vessel may be used to fish for yellowfin, bigeye, albacore, or skipjack tuna at any time, however, landings of BFT taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which BFT might be caught will be deducted from the individual vessel's quota for the following BFT fishing season. Upon reaching its individual vessel allocation of BFT, the vessel may not participate in a directed purse seine fishery for Atlantic tunas or in any fishery in which BFT might be caught for the remainder of the fishing year.

(3) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes participants in another area from a reasonable opportunity to harvest any allocated domestic category quota, as stated in § 635.27(a), NMFS may close all or part of the fishery under that category. NMFS may reopen the fishery at a later date if NMFS determines that reasonable fishing opportunities are available, e.g., BFT have migrated into the area or weather is conducive for fishing. In determining the need for any such interim closure or area closure, NMFS will also take into consideration the criteria specified in § 635.27(a)(8).

(b) *Sharks*. (1) If quota is available as specified by a publication in the FEDERAL REGISTER, the commercial fishery for the shark species or complexes specified in § 635.27(b)(1) will remain open.

(2) When NMFS calculates that the landings for the shark species or complexes, as specified in § 635.27(b)(1), has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark complex, and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the FEDERAL REGISTER, that additional quota is available and the season is reopened, the fishery for the shark species or shark complex and, for non-sandbar LCS, region is closed, even across fishing years.

(3) When NMFS calculates that the landings for either blacknose sharks or non-blacknose SCS has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for the entire SCS fishery, both the blacknose and non-blacknose fisheries, that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the FEDERAL REGISTER, that additional quota is available and the season is reopened, the fishery for non-blacknose SCS and blacknose sharks is closed, even across fishing years.

(4) When the fishery for a shark species group and/or region is closed, a fishing vessel, issued a Federal Atlantic commercial shark permit pursuant to § 635.4, may not possess or sell a shark of that species group and/or region, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard. A shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive a shark of that species group and/or region from a vessel issued a Federal Atlantic commercial shark permit, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species group, a shark dealer, issued a permit pursuant to § 635.4 may, in accordance with State regulations, purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in State waters and

that has not been issued a Federal Atlantic commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species group and/or regional closure, a shark dealer, issued a permit pursuant to § 635.4, may purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip sharks were collected.

(c) *Swordfish*—(1) *Directed fishery closure*. When the annual or semiannual directed fishery quota specified in § 635.27(c)(1)(i) or (ii) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure at least 14 days before the effective date. From the effective date and time of the closure until additional directed fishery quota becomes available, the directed fishery for the appropriate stock is closed and the following catch limits apply:

(i) When the directed fishery for the North Atlantic swordfish stock is closed,

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a pelagic longline, or issued an Incidental HMS squid trawl permit. However, North Atlantic swordfish legally taken prior to the effective date of the closure may be possessed in the Atlantic Ocean north of 5 N. lat. or landed in an Atlantic coastal state on a vessel with a pelagic longline on board, provided the harvesting vessel does no fishing after the closure in the Atlantic Ocean north of 5 N. lat., and reports positions with a vessel monitoring system, as specified in § 635.69. Additionally, legally taken swordfish from the South Atlantic swordfish stock may be possessed or landed north of 5 N. lat. provided the harvesting vessel does no fishing on that trip north of 5 N. lat., and reports positions with a vessel monitoring system as specified in § 635.69. NMFS may adjust the incidental catch retention limit by filing with the Office of the Federal Register for publication notification of the change at least 14 days before the effective date. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate of catch by vessels fishing under the incidental catch quota.

(B) No more than 2 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel that has been issued a handgear permit under § 635.4(f)(1) provided that such swordfish were not taken with a harpoon.

(ii) When the directed fishery for the South Atlantic swordfish stock is closed, swordfish from that stock taken incidental to fishing for other species may not be retained.

(2) *Incidental catch closure*. When the annual incidental catch quota specified in § 635.27(c)(1)(i) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. From the effective date and time of such notification until additional incidental catch quota becomes available, no swordfish may be landed in an Atlantic coastal state, or be possessed or sold in or from the Atlantic Ocean north of 5° N. lat. unless the directed fishery is open and the appropriate permits have been issued to the vessel. In the event of a directed and incidental North Atlantic swordfish category closure, South Atlantic swordfish may be possessed in the Atlantic Ocean north of 5° N. lat. and/or landed in an Atlantic coastal state on a vessel with longline gear onboard, provided that the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat., the fish were taken legally from waters of the Atlantic Ocean south of 5° N. lat., and the harvesting vessel reports positions with a vessel monitoring system as specified in § 635.69.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999; 66 FR 67121, Dec. 28, 2001; 67 FR 77438, Dec. 18, 2002; 68 FR 63741, Nov. 10, 2003; 68 FR 74511, 74786, Dec. 24, 2003; 71 FR 58172, Oct. 2, 2006; 72 FR 56933, Oct. 5, 2007; 73 FR 40710, July 15, 2008; 75 FR 30527, June 1, 2010; 75 FR 30527, June 1, 2010; 76 FR 49380, Aug. 10, 2011]

EFFECTIVE DATE NOTE: At 77 FR 47317, Aug. 8, 2012, § 635.2 was amended by revising paragraph (b)(4), effective Jan. 1, 2013. For the convenience of the user, the revised text is set forth as follows:

§ 635.28 Closures.

* * * * *

(b) * * *

(4) When the fishery for a shark species group and/or region is closed, a fishing vessel, issued a Federal Atlantic commercial shark permit pursuant to § 635.4, may not possess or sell a shark of that species group and/or region, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is on board. During the closure period, an Atlantic shark dealer, issued a permit pursuant to § 635.4, may not first receive a shark of that species group and/or region from a vessel issued a Federal Atlantic commercial shark permit, except that a permitted Atlantic shark dealer or processor may possess sharks that were harvested, offloaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species group, an Atlantic shark dealer, issued a permit pursuant to § 635.4 may, in accordance with State regulations, purchase, trade for, barter for, or receive a shark of that species group if the sharks were harvested, offloaded, and sold, traded, or bartered from a vessel that fishes only in State waters and that has not been issued a federal Atlantic commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species group and/or regional closure, an Atlantic shark dealer, issued a permit pursuant to § 635.4, may first receive a shark of that species group if the sharks were harvested, offloaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip sharks were collected.

* * * * *

§ 635.29 Transfer at sea.

(a) Persons may not transfer an Atlantic tuna, blue marlin, white marlin, roundscale spearfish, or swordfish at sea in the Atlantic Ocean, regardless of where the fish was harvested. Notwithstanding the definition of ''harvest'' at § 600.10, for the purposes of this part, transfer includes, but is not limited to, moving or attempting to move an Atlantic tuna that is on fishing or other gear in the water from one vessel to another vessel. However, an owner or operator of a vessel for which a Purse Seine category Atlantic Tunas category permit has been issued under § 635.4 may transfer large medium and giant BFT at sea from the net of the catching vessel to another vessel for which a Purse Seine category Atlantic Tunas permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

(b) Persons may not transfer a shark or a sailfish at sea shoreward of the outer boundary of the EEZ, regardless of where the shark was harvested, and persons may not transfer at sea a shark or a sailfish taken shoreward of the outer boundary of the EEZ, regardless of where the transfer takes place.

[64 FR 29135, May 28, 1999, as amended at 75 FR 57701, Sept. 22, 2010; 76 FR 39032, July 5, 2011]

§ 635.30 Possession at sea and landing.

(a) *Atlantic tunas.* Persons that own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached. The upper and lower lobes of the tuna tail may be removed for storage purposes as long as the fork of the tail remains intact.

(b) *Billfish.* Any person that possesses a blue marlin, white marlin, or roundscale spearfish taken from its management unit or a sailfish taken shoreward of the outer boundary of the EEZ or lands a blue marlin, white marlin, or roundscale spearfish in an Atlantic coastal port must maintain such billfish with its head, fins, and bill intact through offloading. Persons may eviscerate such billfish, but it must otherwise be maintained whole.

(c) *Shark.* (1) In addition to the regulations issued at part 600, subpart N, of this chapter, a person who owns or operates a vessel issued a Federal Atlantic commercial shark permit under § 635.4 must maintain all the shark fins including the tail naturally attached

to the shark carcass until the shark has been offloaded from the vessel. While sharks are on board and when sharks are being offloaded, persons issued a Federal Atlantic commercial shark permit under § 635.4 are subject to the regulations at part 600, subpart N, of this chapter.

(2) A person who owns or operates a vessel that has a valid Federal Atlantic commercial shark permit may remove the head and viscera of the shark while on board the vessel. At any time when on the vessel, sharks must not have the backbone removed and must not be halved, quartered, filleted, or otherwise reduced. All fins, including the tail, must remain naturally attached to the shark through offloading. While on the vessel, fins may be sliced so that the fin can be folded along the carcass for storage purposes as long as the fin remains naturally attached to the carcass via at least a small portion of uncut skin. The fins and tail may only be removed from the carcass once the shark has been landed and offloaded.

(3) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit and who lands sharks in an Atlantic coastal port, including ports in the Gulf of Mexico and Caribbean Sea, must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with part 600, subpart N, of this chapter. Persons may not possess any shark fins not naturally attached to a shark carcass on board a fishing vessel at any time. Once landed and offloaded, sharks that have been halved, quartered, filleted, cut up, or reduced in any manner may not be brought back on board a vessel that has been or should have been issued a Federal Atlantic commercial shark permit.

(4) Persons aboard a vessel that does not have a Federal Atlantic commercial shark permit must maintain a shark in or from the EEZ intact through landing with the head, tail, and all fins naturally attached. The shark may be bled and the viscera may be removed.

(d) *Swordfish*. Persons that own or operate a fishing vessel that possesses a swordfish in the Atlantic Ocean or lands a swordfish in an Atlantic coastal port must maintain such swordfish in round or dressed form through offloading.

[64 FR 29135, May 28, 1999, as amended at 67 FR 6201, Feb. 11, 2002; 69 FR 53362, Sept. 1, 2004; 71 FR 58173, Oct. 2, 2006; 73 FR 40711, July 15, 2008; 75 FR 30528, June 1, 2010; 75 FR 57702, Sept. 22, 2010; 76 FR 39032, July 5, 2011]

§ 635.31 Restrictions on sale and purchase.

(a) *Atlantic tunas*. (1) A persons that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit, or a valid General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas issued under this part. However, no person may sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

(2) Dealers may purchase Atlantic tunas only from a vessel that has a valid commercial permit for Atlantic tunas issued under this part in the appropriate category.

(3) Dealers or seafood processors may not purchase or sell a BFT smaller than the large medium size class unless it is lawfully imported and is accompanied by a bluefin tuna statistical document, as specified in § 300.185(a) of this title.

(4) A BFT in the possession of a dealer or seafood processor is deemed to be from the Atlantic Ocean. However, a BFT will not be deemed to be from the Atlantic Ocean if—

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a bluefin tuna statistical document, as specified in § 300.185(a) of this title.

(b) *Billfish.* (1) Persons may not sell or purchase a billfish taken from its management unit.

(2) A billfish or a closely related species, namely, black marlin, *Makaira indica,* striped marlin, *Tetrapturus audax,* or shortbill spearfish, *Tetrapturus angustirostris,* or a part thereof, in the possession of a dealer or seafood processor is considered, for purposes of this part, to be a billfish from the Atlantic Ocean management unit. However, a billfish or a closely related species will not be considered to be from the Atlantic Ocean management unit if—

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a Billfish Certificate of Eligibility (COE) form, obtained from NMFS, or its equivalent that documents that the fish was harvested from other than the Atlantic Ocean management unit.

(A) The Billfish COE required under this section must indicate, in English, the name and homeport of the harvesting vessel, and the date and port of offloading. Only the purchaser of the billfish from the harvesting vessel must complete this information.

(B) The Billfish COE must be signed and dated by each dealer in possession of the product throughout the chain of custody up to but not including the consumer. This signature indicates a declaration that the billfish were not harvested from the management unit.

(C) A Billfish COE may refer to billfish taken from only one harvesting vessel. If a shipment contains billfish taken from more than one vessel, a separate billfish COE must accompany the shipment for each harvesting vessel.

(D) A model Billfish COE can be obtained by contacting the Division Chief. An equivalent form may be used provided it contains all of the information required under this section.

(3) For the purposes of this paragraph, a dealer or seafood processor means any individual, other than a consumer, who engages in any activity, other than fishing, of industry, trade, or commerce, including but not limited to the buying or selling of a regulated species or parts thereof and activities conducted for the purpose of facilitating such buying and selling.

(c) *Shark.* (1) Persons that own or operate a vessel that possesses a shark from the management unit may sell such shark only if the vessel has a valid commercial shark permit issued under this part. Persons may possess and sell a shark only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

(2) Persons that own or operate a vessel for which a valid commercial shark permit has been issued and on which a shark from the management unit is possessed, may sell such shark only to a dealer that has a valid permit for shark issued under this part.

(3) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N, of this chapter and in § 635.30(c).

(4) Only dealers that have a valid shark dealer permit may purchase shark from the owner or operator of a fishing vessel. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial shark permit issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel that does not have a commercial permit for shark if that vessel fishes exclusively in state waters. Dealers may purchase a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer onboard the vessel for the trip in which the sandbar shark was collected. Dealers may purchase a shark from an owner or operator of fishing vessel that has a permit issued under this part only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

(5) A dealer issued a permit under this part may not purchase from an owner or operator of a fishing vessel shark fins that were not harvested in accordance with the regulations found at part 600, subpart N, of this chapter and in § 635.30(c).

(6) A dealer issued a permit under this part may not purchase oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an

owner or operator of a fishing vessel with pelagic longline gear on board, or from the owner of a fishing vessel issued both a HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

(d) *Swordfish.* (1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may sell such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

(2) Dealers may purchase a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part.

[64 FR 29135, May 28, 1999, as amended at 67 FR 6201, Feb. 11, 2002; 67 FR 77438, Dec. 18, 2002; 68 FR 715, Jan. 7, 2003; 69 FR 53362, Sept. 1, 2004; 69 FR 67284, Nov. 17, 2004; 71 FR 58173; Oct. 2, 2006; 73 FR 40711, July 15, 2008; 76 FR 53658, Aug. 29, 2011]

EFFECTIVE DATE NOTE: 1. At 77 FR 47317, Aug. 8, 2012, § 635.31 was amended by adding paragraphs (a)(2)(i) and (ii), and by revising paragraphs (c)(2), (c)(4), (5), (6), (d)(1), and (2), effective Jan. 1, 2013. For the convenience of the user, the added and revised text is set forth as follows:

§ 635.31 Restrictions on sale and purchase.

(a) * * *

(2) * * *

(i) Dealers may purchase Atlantic bluefin tuna only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category.

(ii) Dealers may first receive BAYS tunas only if they have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii) and only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category.

* * * * *

(c) * * *

(2) Persons that own or operate a vessel for which a valid Federal Atlantic commercial shark permit has been issued and on which a shark from the management unit is possessed, may sell, barter or trade such shark only to a dealer that has a valid permit for shark issued under this part.

* * * * *

(4) Only dealers that have a valid a Federal Atlantic shark dealer permit and who have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii) may first receive a shark from an owner or operator of a vessel that has, or is required to have, a valid federal Atlantic commercial shark permit issued under this part, except that Atlantic shark dealers may purchase, trade for, barter for, or receive a shark from an owner or operator of a vessel that does not have a federal Atlantic commercial shark permit if that vessel fishes exclusively in state waters. Atlantic shark dealers may first receive a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer on board the vessel for the trip in which the sandbar shark was collected. Atlantic shark dealers may first receive a shark from an owner or operator of a fishing vessel that has a permit issued under this part only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

(5) An Atlantic shark dealer issued a permit under this part may first receive shark fins from an owner or operator of a fishing vessel only if the shark fins were harvested in accordance with the regulations found at part 600, subpart N, of this chapter and in § 635.30(c).

(6) A dealer issued a permit under this part may not first receive oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board, or from the owner of a fishing vessel issued both a HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

(d) * * *

(1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell or trade such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may offload such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

(2) Atlantic swordfish dealers may first receive a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part and only if the dealer has submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii).

2. At 77 FR 59851, Oct. 1, 2012, § 635.31 was amended by revising paragraphs (a)(1),

(a)(2)(ii), and (d)(1), effective January 2, 2013. For the convenience of the user the revised text is set forth as follows:

§ 635.31 Restrictions on sale and purchase.

(a) * * *

(1) A person that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit; a valid General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas; or a valid HMS Commercial Caribbean Small Boat permit issued under this part. However, no person may sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A person may sell Atlantic bluefin tuna only to a dealer that has a valid permit for purchasing Atlantic bluefin tuna issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

* * * * *

(2) * * *

(ii) Dealers may first receive BAYS tunas only if they have submitted reports to NMFS according to reporting requirements of paragraphs § 635.5(b)(1)(ii) and only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category. Individuals issued a valid HMS Commercial Caribbean Small Boat permit, and operating in the U.S. Caribbean as defined at § 622.2, may sell their trip limits of BAYS tunas, codified at § 635.24(c), to dealers and non-dealers.

* * * * *

(d) * * *

(1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may offload such swordfish only to a dealer who has a valid permit for swordfish issued under this part; except that individuals issued a valid HMS Commercial Caribbean Small Boat permit, and operating in the U.S. Caribbean as defined at § 622.2, may sell swordfish, as codified at § 635.24(b)(3), to non-dealers.

* * * * *

§ 635.32 Specifically authorized activities.

(a) *General.* (1) Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize activities otherwise prohibited by the regulations contained in this part for the conduct of scientific research, the acquisition of information and data, the enhancement of safety at sea, the purpose of collecting animals for public education or display, the investigation of bycatch, economic discard and regulatory discard, or for chartering arrangements.

(2) Activities subject to the provisions of this section include, but are not limited to: scientific research resulting in, or likely to result in, the take, harvest, or incidental mortality of Atlantic HMS; exempted fishing and educational activities; programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks; or chartering arrangements. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, EFP, scientific research permit, display permit, chartering permit, or shark research permit issued in response to requests for authorization under this section.

(3) For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization.

(4) Inspection requirements specified in § 635.5(e) apply to the owner or operator of a fishing vessel that has been issued an exempted fishing permit, scientific research permit, display permit, or chartering permit.

(b) *Scientific research activities.* For the purposes of all species covered

under this part regulated under the authority of ATCA, the provisions for research plans under § 600.745(a) and reports under § 600.745(c)(1) of this chapter are mandatory. In such cases of authorized scientific research activities, NMFS shall issue scientific research permits. For scientific research activities involving the capture of Atlantic sharks, research plans and reports are requested; letters of acknowledgment shall be issued by NMFS as indicated under § 600.745(a) of this chapter.

(c) *Exempted fishing permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits.

(2) [Reserved]

(d) *Display permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue display permits.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid display permit is required to fish for, take, retain, or possess an HMS in or from the Atlantic EEZ for the purposes of public display. A valid display permit must be on board the harvesting vessel, must be available when the fish is landed, must be available when the fish is transported to the display facility, and must be presented for inspection upon request of an authorized officer. A display permit is valid for the specific time, area, gear, and species specified on it. Species landed under a display permit shall be counted against the appropriate quota specified in § 635.27 or as otherwise provided in the display permit.

(3) To be eligible for a display permit, a person must provide all information concerning his or her identification, numbers by species of HMS to be collected, when and where they will be collected, vessel(s) and gear to be used, description of the facility where they will be displayed, and any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(4) Collectors of HMS for public display must notify the local NMFS Office for Law Enforcement at least 24 hours, excluding weekends and holidays, prior to departing on a collection trip, regardless of whether the fishing activity will occur in or outside the EEZ, as to collection plans and location and the number of animals to be collected. In the event that a NMFS agent is not available, a message may be left.

(5) All live HMS collected for public display are required to have either a conventional dart tag or a microchip Passive Integrated Transponder (PIT) tag applied by the collector at the time of the collection. Both types of tags will be supplied by NMFS. Conventional dart tags will be issued unless PIT tags are specifically requested in the permit application and their use approved by NMFS. Terms and conditions of the permit will address requirements associated with the use of the tags supplied on a case-by-case basis.

(e) *Chartering permits.* (1) For activities consistent with the purposes of this section, § 635.5(a), and § 600.745(b)(1) of this chapter, NMFS may issue chartering permits for record keeping and reporting purposes. An application for a chartering permit must include all information required under § 600.745(b)(2) of this chapter and, in addition, written notification of: the species of fish covered by the chartering arrangement and quota allocated to the Contracting Party of which the chartering foreign entity is a member; duration of the arrangement; measures adopted by the chartering Contracting Party of which the foreign entity is a member to implement ICCAT chartering provisions; copies of fishing licenses, permits, and/or other authorizations issued by the chartering Contracting Party of which the foreign entity is a member for the vessel to fish under the arrangement; a copy of the High Seas Fishing Compliance Act Permit pursuant to 50 CFR 300.10; documentation regarding interactions with protected resources; and documentation regarding the legal establishment of the chartering company. To be considered complete, an application for a chartering permit for a vessel must include all information specified in § 600.745(b)(2) of this chapter and in § 635.32(e) and (f).

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid chartering permit is required to fish for, take, retain, or possess ICCAT- regulated species under chartering arrangements as specified in § 635.5(a)(6). A valid chartering permit must be on board the harvesting vessel, must be available when ICCAT-regulated species are landed, and must be presented for inspection upon request of an authorized officer. A chartering permit is valid for the duration of the chartering arrangement or until the expiration date specified on the permit, whichever comes first. Vessels issued a chartering permit shall not be authorized to fish under applicable Atlantic Highly Migratory Species quotas or entitlements of the United States until the chartering permit expires or is terminated.

(3) Charter permit holders must submit logbooks and comply with reporting requirements as specified in § 635.5. NMFS will provide specific conditions and requirements in the chartering permit, so as to ensure consistency, to the extent possible, with laws of foreign countries, the 2006 Consolidated HMS FMP and its amendments, as well as ICCAT recommendations.

(4) Observers may be placed on board vessels issued chartering permits as specified under § 635.7.

(5) NMFS will issue a chartering permit only if it determines that the chartering arrangement is in conformance with ICCAT's conservation and management programs.

(6) A vessel shall be authorized to fish under only one chartering arrangement at a time.

(7) All chartering permits are subject to sanctions and denials as indicated under § 635.4(a)(6).

(f) *Shark research permits*. (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue shark research permits.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark research permit is required to fish for, take, retain, or possess Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a). A valid shark research permit must be on board the harvesting vessel, must be available for inspection when the shark is landed, and must be presented for inspection upon request of an authorized officer. A shark research permit is only valid for the vessel and owner(s) combination specified and cannot be transferred to another vessel or owner(s). A shark research permit is only valid for the retention limits, time, area, gear specified, and other terms and conditions as listed on the permit and only when a NMFS-approved observer is onboard. Species landed under a shark research permit shall be counted against the appropriate quota specified in § 635.27 or as otherwise provided in the shark research permit.

(3) Regardless of the number of applicants, NMFS will issue only a limited number of shark research permits depending on available quotas as described in § 635.27, research needs for stock assessments and other scientific purposes, and the number of sharks expected to be harvested by vessels issued LAPs for sharks.

(4) In addition to the workshops required under § 635.8, persons issued a shark research permit, and/or operators of vessels specified on the shark research permit, may be required to attend other workshops (e.g., shark identification workshops, captain's meeting, etc.) as deemed necessary by NMFS to ensure the collection of high quality data.

(5) Issuance of a shark research permit does not guarantee the permit holder that a NMFS-approved observer will be deployed on any particular trip. Rather, permit issuance indicates that a vessel is eligible for a NMFS-approved observer to be deployed on the vessel for a particular trip and that, on such observed trips, the vessel may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a).

(6) The shark research permit may be revoked, limited, or modified at any time, does not confer any right to engage in activities beyond those authorized by the permit, and does not confer any right of compensation to the holder.

(g) *Applications and renewals.* (1) Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register, on an annual or more frequent basis as necessary, notification of previously authorized exempted fishing, scientific research, public display, chartering, and shark research activities and to solicit public comment on anticipated EFP, scientific research permit, letter of acknowledgment, public display, chartering, or shark research permit activities. Applications for EFPs, scientific research permits, public display permits, chartering permits, or shark research permits are required to include all reports specified in the applicant's previous permit including, if applicable, the year-end report, all delinquent reports for permits issued in prior years, and all other specified information. In situations of delinquent reports, applications will be deemed incomplete and a permit will not be issued under this section.

(2) For the shark research permit, NMFS will publish annually, in a FEDERAL REGISTER notice(s), a description for the following fishing year of the expected research objectives. This description may include information such as the number of vessels needed, regions and seasons for which vessels are needed, the specific criteria for selection, and the application deadline. Complete applications, including all information requested in the applicable FEDERAL REGISTER notice(s) and on the application form and any previous reports required pursuant to this section and § 635.5, must be received by NMFS by the application deadline in order for the vessel to be considered. Requested information could include, but is not limited to, applicant name and address, permit information, vessel information, availability of the vessel, past involvement in the shark fishery, and compliance with HMS regulations including observer regulations. NMFS will only review complete applications received by the published deadline to determine eligibility for participation in the shark research fishery. Qualified vessels will be chosen based on the information provided on the applications and their ability to meet the selection criteria as published in the FEDERAL REGISTER notice. A commercial shark permit holder whose vessel was selected to carry an observer in the previous two years for any HMS fishery but failed to comply with the observer regulations specified in § 635.7 will not be considered. A commercial shark permit holder that has been charged criminally or civilly (i.e., issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS related violation will not be considered for participation in the shark research fishery. Qualified vessels will be randomly selected to participate in the shark research fishery based on their availability and the temporal and spatial needs of the research objectives. If a vessel issued a shark research permit cannot conduct the shark research tasks, for whatever reason, that permit will be revoked and, depending on the status of the research and the fishing year, NMFS will randomly select another qualified vessel to be issued a shark research permit.

(h) *Terms and conditions.* (1) For EFPs, scientific research permits, and public display permits: Written reports on fishing activities, and disposition of all fish captured under a permit issued under this section must be submitted to NMFS within 5 days of return to port. NMFS will provide specific conditions and requirements as needed, consistent with the Consolidated HMS Fishery Management Plan, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a ''no-catch'' report must be submitted to NMFS within 5 days of the last day of that month.

(2) For chartering permits, written reports of fishing activities must be submitted to NMFS by a date specified, and to an address designated, in the terms and conditions of each chartering permit.

(3) An annual written summary report of all fishing activities, and disposition of all fish captured, under the permit must be submitted to NMFS for all EFPs, scientific research permits,

display permits, and chartering permits issued under this section within 30 days after the expiration date of the permit.

(4) For shark research permits, all owners and/or operators must comply with the recordkeeping and reporting requirements specified in § 635.5 per the requirement of holding a LAP for sharks.

(5) As stated in § 635.4(a)(6), failure to comply with the recordkeeping and reporting requirements of this section could result in the EFP, scientific research permit, display permit, chartering permit, or shark research permit being revoked, suspended, or modified, and in the denial of any future applications.

[64 FR 29135, May 28, 1999, as amended at 68 FR 63742, Nov. 10, 2003; 68 FR 74786, Dec. 24, 2003; 69 FR 70399, Dec. 6, 2004; 73 FR 40711, July 15, 2008; 75 FR 30528, June 1, 2010]

§ 635.33 Archival tags.

(a) *Implantation report.* Any person affixing or implanting an archival tag into a regulated species must obtain written authorization from NMFS pursuant to § 635.32. Persons so authorized to conduct archival tag implantation must provide a written report to NMFS at an address designated by NMFS, indicating the type and number of tags, the species and approximate size of the fish as well as any additional information requested in the authorization.

(b) *Landing.* Notwithstanding other provisions of this part, persons may catch, possess, retain, and land an Atlantic HMS in which an archival tag has been implanted or affixed, provided such persons comply with the requirements of paragraph (c) of this section.

(c) *Landing report.* Persons that retain an Atlantic HMS that has an archival tag must contact NMFS, prior to or at the time of landing; furnish all requested information regarding the location and method of capture; and, as instructed, remove the archival tag and return it to NMFS or make the fish available for inspection and recovery of the tag by a NMFS scientist, enforcement agent, or other person designated in writing by NMFS.

(d) *Quota monitoring.* If an Atlantic HMS landed under the authority of paragraph (b) of this section is subject to a quota, the fish will be counted against the applicable quota for the species consistent with the fishing gear and activity which resulted in the catch. In the event such fishing gear or activity is otherwise prohibited under applicable provisions of this part, the fish shall be counted against the reserve quota established for that species.

§ 635.34 Adjustment of management measures.

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23; the quotas for BFT, shark and swordfish, as specified in § 635.27; the marlin landing limit, as specified in § 635.27(d); and the minimum sizes for Atlantic blue marlin, white marlin, and roundscale spearfish as specified in § 635.20.

(b) In accordance with the framework procedures in the Highly Migratory Species Fishery Management Plan, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions or regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; workshop requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restriction; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

(c) NMFS may add species to the prohibited shark species group specified in Table 1 of appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, the species is determined to meet at least two of the criteria. Alternatively, NMFS may remove species from the prohibited shark species group and place them in

the appropriate shark species group in Table 1 of appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, NMFS determines the species only meets one criterion.

(1) Biological information indicates that the stock warrants protection.

(2) Information indicates that the species is rarely encountered or observed caught in HMS fisheries.

(3) Information indicates that the species is not commonly encountered or observed caught as bycatch in fishing operations for species other than HMS.

(4) The species is difficult to distinguish from other prohibited species.

(d) When considering a framework adjustment to add, change, or modify time/area closures, NMFS will consider, consistent with the FMP, the Magnuson-Stevens Act, and other applicable law, but is not limited to, the following criteria: any Endangered Species Act related issues, concerns, or requirements, including applicable BiOps; bycatch rates of protected species, prohibited HMS, or non-target species both within the specified or potential closure area(s) and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; new or updated landings, bycatch, and fishing effort data; evidence or research indicating that changes to fishing gear and/or fishing practices can significantly reduce bycatch; social and economic impacts; and the practicability of implementing new or modified closures compared to other bycatch reduction options. If the species is an ICCAT managed species, NMFS will also consider the overall effect of the U.S.'s catch on that species before implementing time/area closures.

[64 FR 29135, May 28, 1999, as amended at 68 FR 74788, Dec. 24, 2003; 71 FR 58173, Oct. 2, 2006; 75 FR 57702, Sept. 22, 2010]

Subpart D—Restrictions on Imports

§ 635.40 Restrictions to enhance conservation.

(a) *Determinations*. Upon a determination by NMFS that species of fish subject to regulation or under investigation by ICCAT are ineligible for entry into the United States under 16 U.S.C. 971d (c)(4) or (c)(5), NMFS, with the concurrence of the Secretary of State, will file with the Office of the Federal Register for publication a finding to that effect. Effective upon the date of filing of such finding, all shipments of fish in any form of the species found to be ineligible will be denied entry unless, with respect to a particular shipment, it is established by satisfactory proof pursuant to paragraph (b) of this section that the particular shipment of fish is eligible for entry. Entry will not be denied and no such proof will be required for any such shipment that, on the date of filing was in transit to the United States on board a vessel operating as a common carrier.

(b) *Proof of admissibility*. (1) For the purposes of paragraph (a) of this section and section 6(c) of ATCA, a shipment of fish in any form of the species under regulation or under investigation by ICCAT offered for entry, directly or indirectly, from a country named in a finding filed with the Office of the Federal Register for publication under paragraph (a) of this section is eligible for entry if the shipment is accompanied by a completed ATCA COE attached to the invoice certifying that the fish in the shipment:

(i) Are not of the species specified in the finding;

(ii) Are of the species named in the finding, but were not taken in the regulatory area; or

(iii) Are of the species named in the finding, but are products of an American fishery and were lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the finding solely for transshipment.

(2) If the fish are offered for entry under paragraph (b)(1)(i) or (b)(1)(ii) of this section, the ATCA COE must be executed by a duly authorized official of the country named in the finding and the ATCA COE must be validated by a consular officer or consular agent of the United States. Such validation must be attached to the ATCA COE.

(3) If the fish are offered for entry under paragraph (b)(1)(iii) of this section, the ATCA COE must be executed by a consular officer or consular agent

of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The ''Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries'' required by 19 CFR 10.79 must contain a further statement as follows: ''We further declare that the said fish were caught by us in full compliance with part 635, title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress.''

(c) *Removal of import restrictions.* Upon a determination by NMFS that the conditions no longer exist that warranted the finding under paragraph (a) of this section, NMFS will remove the import restriction by filing with the Office of the Federal Register for publication notification of removal effective on the date of filing. However, for 1 year from the date of filing every shipment of fish in any form that was subject to the finding under paragraph (a) of this section will continue to be denied entry, unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States certifying that no portion of the shipment is composed of fish taken prior to or during the import restriction.

§ 635.41 Products denied entry.

(a) [Reserved]

(b) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel that is required to be listed, but not listed on the ICCAT record of authorized vessels will be denied entry into the United States.

(c) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel listed on the ICCAT record as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

(d) All shipments of tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

(e) For the purposes of this section, it is a rebuttable presumption that any shipment containing swordfish, bluefin tuna, bigeye tuna, or their products offered for entry into the United States has been harvested by a vessel or vessels of the exporting nation.

[69 FR 70400, Dec. 6, 2004, as amended at 70 FR 28218, May 17, 2005; 77 FR 52261, Aug. 29, 2012]

Subpart E—International Port Inspection

§ 635.50 Basis and purpose.

The regulations in this subpart implement the ICCAT port inspection scheme. The text of the ICCAT port inspection scheme may be obtained from NMFS.

§ 635.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party to serve as an authorized inspector for ICCAT, and who possesses identification issued by the authorized officer's national government.

§ 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels or vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT, and their catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures by an authorized officer when landing or transshipping tuna or when making a port call at a port of any ICCAT contracting party.

(b) A vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, that is registered by any of the ICCAT contracting parties, and the vessel's catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures when landing or transshipping regulated species or when making a port call in the United States.

(c) The master of a vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, must cooperate with an authorized officer during the conduct of an inspection in national and foreign ports. Inspections will be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

§ 635.53 Reports.

(a) Apparent violations shall be reported by the authorized officer on a standardized ICCAT form or form produced by the national government which collects the same quality of information. The authorized officer must sign the form in the presence of the master of the vessel, who is entitled to add or have added to the report any observations, and to add his own signature. The authorized officer should note in the vessel's log that the inspection has been made.

(b) Copies of the report form must be sent to the flag state of the vessel and to the ICCAT Secretariat within 10 days. Flag states will consider and act on reports of apparent violations by foreign inspectors on a similar basis as the reports of their national inspectors in accordance with their national legislation. The vessel's flag state will notify ICCAT of actions taken to address the violation.

Subpart F—Enforcement

§ 635.69 Vessel monitoring systems.

(a) *Applicability*. To facilitate enforcement of time/area and fishery closures, an owner or operator of a commercial vessel permitted, or required to be permitted, to fish for Atlantic HMS under § 635.4 and that fishes with pelagic or bottom longline or gillnet gear, is required to install a NMFS-approved enhanced mobile transmitting unit (E–MTU) vessel monitoring system (VMS) on board the vessel and operate the VMS unit under the circumstances listed in paragraphs (a)(1) thorugh (a)(4) of this section. For purposes of this section, a NMFS-approved E–MTU VMS is one that has been approved by NMFS as satisfying its type approval listing for E–MTU VMS units. Those requirements are published in the FEDERAL REGISTER and may be updated periodically.

(1) Whenever the vessel is away from port with pelagic longline gear on board;

(2) Whenever a vessel issued a directed shark LAP, is away from port with bottom longline gear on board, is located between 33°00′ N. lat. and 36°30′ N. lat., and the mid-Atlantic shark closed area is closed as specified in § 635.21(d)(1); or

(3) Whenever a vessel, issued a directed shark LAP, is away from port with a gillnet on board from November 15–April 15.

(4) A vessel is considered to have pelagic longline gear on board, for the purposes of this section, when gear as specified at § 635.21(c) is on board. A vessel is considered to have bottom longline gear on board, for the purposes of this section, when gear as specified at § 635.21(d) is on board. A vessel is considered to have gillnet gear on board, for the purposes of this section, when gillnet, as defined in § 600.10, is on board a vessel that has been issued a shark LAP.

(b) *Hardware specifications*. The VMS hardware must be approved by NMFS and must be able to perform all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS units. As necessary, NMFS will make additions and/or amendments to the VMS hardware type approval list to account for changes in specifications or new products offered by manufacturers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(c) *Communications specifications*. The communications service provider must be approved by NMFS and must be able to provide all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS communications service providers. As necessary, NMFS will make additions and/or amendments to the VMS communications service providers type approval list to account for changes in specifications

or new services offered by communications providers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(d) *Installation and activation*. As of March 1, 2012, only an E–MTU VMS that has been approved by NMFS for Atlantic HMS Fisheries may be used. As of January 1, 2012, any VMS unit must be installed by a qualified marine electrician. When any NMFS-approved E–MTU VMS is installed and activated or reinstalled and reactivated, the vessel owner or operator must—

(1) Follow procedures indicated on a NMFS-approved installation and activation checklist for the applicable fishery, which is available from NMFS;

(2) Submit to NMFS a statement certifying compliance with the checklist, as prescribed on the checklist; and,

(3) Submit to NMFS the checklist, completed by a qualified marine electrician. Vessels fishing prior to NMFS' receipt of the completed checklist and compliance certification statement will be in violation of the VMS requirement.

(e) *Operation*.—(1) Owners or operators of vessels subject to requirements specified in paragraph (a) of this section, must activate the VMS unit to submit automatic position reports at least 2 hours prior to leaving port and continuing until the vessel returns to port. While at sea, the unit must always be on, operating and reporting without interruption, and NMFS enforcement must receive position reports without interruption. No person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

(2) At least 2 hours prior to departure for each trip, a vessel owner or operator must initially report to NMFS any HMS the vessel will target on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel. If the vessel owner or operator participates in multiple HMS fisheries, or possesses multiple fishing gears on board the vessel, the vessel owner or operator must submit multiple electronic reports to NMFS. If, during the trip, the vessel switches to a gear type or species group not reported on the initial declaration, another declaration must be submitted before this fishing begins. This information must be reported to NMFS using an attached VMS terminal.

(3) A vessel owner or operator must report advance notice of landing to NMFS. For the purposes of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The vessel owner or operator is responsible for ensuring that NMFS is contacted at least 3 hours in advance of landing regardless of trip duration. This information must be reported to NMFS using an attached VMS terminal.

(f) *Interruption*. When the vessel operator is aware that transmission of automatic position reports has been interrupted, or when notified by NMFS that automatic position reports are not being received, the vessel operator must contact NMFS and follow the instructions given. Such instructions may include but are not limited to manually communicating to a location designated by NMFS the vessel's position or returning to port until the VMS is operable.

(g) *Repair and replacement*. After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must have a qualified marine electrician replace or repair the VMS unit prior to the vessel's next trip. Repair or reinstallation of a VMS unit or installation of a replacement, including change of communications service provider, shall be in accordance with the installation and activation requirements specified at § 635.69(d) of this part.

(h) *Access*. As a condition to obtaining a LAP for Atlantic swordfish, sharks, or tunas, all vessel owners or operators using pelagic or bottom longline or gillnet gear, subject to the VMS provisions of this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS at the time of or after

its transmission to the vendor or receiver, as the case may be.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999; 65 FR 47238, Aug. 1, 2000; 68 FR 45169, Aug. 1, 2003; 68 FR 74788, Dec. 24, 2003; 69 FR 51012, Aug. 17, 2004; 72 FR 57194, Oct. 5, 2007; 73 FR 40712, July 15, 2008; 75 FR 30528, June 1, 2010; 76 FR 75502, Dec. 2, 2011]

§ 635.70 Penalties.

(a) *General.* See § 600.735 of this chapter.

(b) *Civil procedures for Atlantic tuna.* Because of the perishable nature of Atlantic tuna when it is not chilled or frozen, an authorized officer may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen Atlantic tuna that may be seized and forfeited under ATCA and this part.

§ 635.71 Prohibitions.

In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, ATCA, the Magnuson-Stevens Act, or any other rules promulgated under ATCA or the Magnuson-Stevens Act.

(a) *General.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Falsify information required on an application for a permit submitted under § 635.4 or § 635.32.

(2) Fish for, catch, possess, retain, or land Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, scientific research permit, display permit, chartering permit, or shark research permit on board the vessel, as specified in §§ 635.4 and 635.32.

(3) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS without the appropriate valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) Sell or transfer or attempt to sell or transfer, for commercial purposes, an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested by a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(5) Fail to possess and make available for inspection a vessel permit on board the permitted vessel or upon transfer of HMS to a dealer or a dealer permit at the dealer's place of business, or to alter any such permit as specified in § 635.4(a).

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in §§ 635.5 and 635.32 or in the terms and conditions of a permit issued under § 635.4 or an EFP, scientific research permit, display permit, chartering permit, or shark research permit issued under § 635.32.

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(e) and (f) or § 635.32.

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(e) and (f).

(9) Fail to report the catching of any Atlantic HMS to which a conventional tag has been affixed under a tag and release program.

(10) Falsify or fail to display and maintain vessel and gear identification, as specified in § 635.6.

(11) Fail to comply with the requirements for at-sea observer coverage, as specified in § 635.7 and § 600.746.

(12) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in connection with enforcement of this part.

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

(14) Fail to install, activate, repair, or replace a vessel monitoring system prior to leaving port with pelagic longline gear, bottom longline gear, or gillnet gear on board the vessel as specified in § 635.69.

(15) Tamper with, or fail to operate and maintain a vessel monitoring system as specified in § 635.69.

(16) Fail to contact NMFS or follow NMFS instructions when automatic position reporting has been interrupted as specified in § 635.69.

(17) Fish for Atlantic tunas or swordfish with a gillnet or possess Atlantic tunas or swordfish on board a vessel with a gillnet on board, as specified in § 635.21 (b), (e)(1), and (e)(4)(ii).

(18) Fail to retrieve fishing gear and move after an interaction with a protected species, as specified in § 635.21 (c)(3) or (d)(2).

(19) Utilize secondary gears as specified in § 635.21(b) to capture, or attempt to capture, any undersized or free swimming Atlantic HMS, or fail to release a captured Atlantic HMS in the manner specified in § 635.21(a).

(20) Fail to report the retention of an Atlantic HMS that has an archival tag, as specified in § 635.33.

(21) Fail to maintain an Atlantic HMS in the form specified in § 635.30.

(22) Fish for, catch, retain, or possess an Atlantic HMS that is less than its minimum size limit specified in § 635.20.

(23) Fail to comply with the restrictions on use of pelagic longline, bottom longline, gillnet, buoy gear, speargun gear, or green-stick gear as specified in § 635.21(c), (d), (e)(1), (e)(3), (e)(4), (f), or (g).

(24) Import, or attempt to import, any fish or fish products regulated under this part in a manner contrary to any import requirements or import restrictions specified at § 635.40 or 635.41.

(25) Dispose of fish or parts thereof or other matter in any manner after any communication or signal from an authorized officer, or after the approach of an authorized officer.

(26) Violate the terms and conditions or any provision of a permit issued under §§ 635.4 or 635.32.

(27) Operate a charterboat or headboat without a valid U.S. Coast Guard merchant marine or uninspected passenger vessel license on board the vessel when fishing for or possessing Atlantic HMS as specified at § 635.4(b).

(28) Violate any provision of this part, the Magnuson-Stevens Act, ATCA, or any regulations or permits issued under the Magnuson-Stevens Act or ATCA.

(29) Land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control:

(i) Any fish that the person knows, or should have known, was taken, retained, possessed, or landed contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel that harvested the fish.

(ii) Any fish of a species regulated pursuant to a recommendation of ICCAT that was harvested, retained, or possessed in a manner contrary to the regulations of another country.

(30) Deploy or fish with any fishing gear from a vessel or anchor a fishing vessel, permitted or required to be permitted under this part, in any closed area as specified at § 635.21.

(31) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board in any closed area during the time periods specified at § 635.21(c)(2).

(32) In the Gulf of Mexico, deploy or fish a pelagic longline with live bait affixed to the hooks or to possess live bait, or set up a well or tank to maintain live bait, aboard a vessel with pelagic longline gear on board as specified at § 635.21(c)(4).

(33) Deploy or fish with any fishing gear from a vessel with pelagic or bottom longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i) for pelagic longline gear and § 635.21(d)(3)(i) for bottom longline gear. This equipment must be utilized in accordance with § 635.21(c)(5)(ii) and (d)(3)(ii) for pelagic and bottom longline gear, respectively.

(34) Fail to disengage any hooked or entangled sea turtle with the least harm possible to the sea turtle as specified at § 635.21 (c)(5) or (d)(3).

(35) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, NMFS personnel or anyone

collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic HMS.

(36) Fish with bottom or pelagic longline and shark gillnet gear for HMS without adhering to the gear operation and deployment restrictions required in 50 CFR 635.21.

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear as required by § 635.5.

(38) Fish for, or possess on board a fishing vessel, species regulated under this part in unauthorized fishing areas as specified in § 635.25.

(39) Deploy or fish with any fishing gear, from a vessel with a bottom longline on board, in any closed area during the time periods specified at § 635.21(d)(1).

(40) Deploy or fish with any fishing gear, from a vessel with bottom longline gear on board, without carrying a dipnet, line clipper, and dehooking device as specified at § 635.21(d)(3).

(41) Fail to immediately notify NMFS upon the termination of a chartering arrangement as specified in § 635.5(a)(5).

(42) Count chartering arrangement catches against quotas other than those defined as the Contracting Party of which the chartering foreign entity is a member as specified in § 635.5(a)(5).

(43) Fail to submit catch information regarding fishing activities conducted under a chartering arrangement with a foreign entity, as specified in § 635.5(a)(5).

(44) Offload charter arrangement catch in ports other than ports of the chartering Contracting Party of which the foreign entity is a member or offload catch without the direct supervision of the chartering foreign entity as specified in § 635.5(a)(5).

(45) Import or attempt to import tuna or tuna-like species harvested from the ICCAT convention area by a fishing vessel that is not listed in the ICCAT record of authorized vessels as specified in § 635.41(b).

(46) Import or attempt to import tuna or tuna-like species harvested by a fishing vessel on the ICCAT illegal, unreported, and unregulated fishing list as specified in § 635.41(c).

(47) Import or attempt to import tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing as specified in § 635.41(d).

(48) Purchase any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(49) Sell any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(50) Fish without being certified for completion of a NMFS protected species safe handling, release, and identification workshop, as required in § 635.8.

(51) Fish without having a valid protected species workshop certificates issued to the vessel owner and operator on board the vessel as required in § 635.8.

(52) Falsify a NMFS protected species workshop certificate or a NMFS Atlantic shark identification workshop certificate as specified at § 635.8.

(53) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ''buoy gear'', as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f).

(54) Possess, use, or deploy, in the Gulf of Mexico, any circle hook, other than as described at § 635.21(c). Vessels in the Gulf of Mexico, with pelagic gear onboard, are prohibited from possessing, using, or deploying circle hooks that are constructed of round wire stock which is larger than 3.65 mm in diameter (See: § 635.21(c)(5)(iii)(C)(*2*)(*i*)).

(b) *Atlantic tunas.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Engage in fishing with a vessel that has been issued an Atlantic Tunas or Atlantic HMS permit under § 635.4, unless the vessel travels to and from the area where it will be fishing under

its own power and the person operating that vessel brings any BFT under control (secured to the catching vessel and/or brought on board) with no assistance from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.

(2) [Reserved]

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a person aboard a vessel other than one that has on board a valid HMS Angling or Charter/Headboat permit, or an Atlantic tunas Purse Seine category permit as authorized under § 635.23 (b), (c), and (e)(2).

(4) Fail to inspect a vessel's permit, fail to affix a dealer tag to a large medium or giant BFT, or fail to use such tag as specified in § 635.5(b)(2).

(5) Fail to report a large medium or giant BFT that is not sold, as specified in § 635.5(a)(3).

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a BFT, as specified in § 635.5(c)(1) or (c)(3).

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have such gear on board when in possession of a BFT, as specified in § 635.21(e)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(e)(1)(vi)(B).

(9) Fish for or catch BFT in a directed fishery with purse seine nets without an allocation made under § 635.27(a)(4).

(10) Fish for or catch any Atlantic tunas in a directed fishery with purse seine nets if there is no remaining BFT allocation made under § 635.27 (a)(4).

(11) Exceed the recreational catch limit for yellowfin tuna, as specified in § 635.22(d).

(12) Exceed a catch limit for BFT specified for the appropriate permit category, as specified in § 635.23.

(13) As a vessel with a General category Atlantic tuna permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT on a commercial fishing day, as specified in § 635.23(a)(3).

(14) As a person aboard a vessel issued an HMS Angling or Charter/Headboat permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT or fail to report such catch, as specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(15) As a person aboard a vessel issued an HMS Angling or HMS Charter/Headboat permit, sell, offer for sale, or attempt to sell a large medium or giant BFT retained when fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(16) Retain a BFT caught under the catch and release program specified in § 635.26.

(17) As a vessel with a Purse Seine category Atlantic tunas permit, catch, possess, retain, or land BFT in excess of its allocation of the Purse Seine category quota, or fish for BFT under that allocation prior to the commencement date of the directed BFT purse seine fishery, as specified in § 635.27(a)(4).

(18) As a vessel with a Purse Seine category Atlantic tunas permit, land BFT smaller than the large medium size class except as specified under § 635.23(e)(2).

(19) Fish for, retain, possess, or land a BFT when the fishery is closed, as specified in § 635.28(a), except as may be authorized for catch and release under § 635.26.

(20) Approach to within 100 yd (91.5 m) of the cork line of a purse seine net used by a vessel fishing for Atlantic tuna, or for a purse seine vessel to approach to within 100 yd (91.5 m) of a vessel actively fishing for Atlantic tuna, except that two vessels that have Purse Seine category Atlantic tuna permits may approach closer to each other.

(21) Transfer at sea an Atlantic tuna, except as may be authorized for the transfer of BFT between purse seine vessels, as specified in § 635.29(a).

(22) As the owner or operator of a purse seine vessel, fail to comply with the requirement for possession at sea and landing of BFT under § 635.30(a).

(23) Fish for, catch, possess, or retain a BFT from the Gulf of Mexico except as specified under § 635.23(f)(1), or if taken incidental to recreational fishing for other species and retained in accordance with § 635.23(b) and (c).

(24) Fail to comply with the restrictions on sale and purchase of an Atlantic tuna, as specified in §§ 635.5(b), 635.23, and 635.31(a).

(25) [Reserved]

(26) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic tunas.

(27) Possess a large medium or giant BFT, after it has been landed, that does not have a dealer tag affixed to it as specified in § 635.5(b)(2)(ii), unless the BFT is not to be sold and has been reported per the requirements specified in §§ 635.5(a)(3) or 635.5(c).

(28) Participate in any HMS recreational fishing activity aboard a vessel issued an Atlantic Tunas General category permit unless, as specified at § 635.4(c)(2) and (3), the vessel has registered and paid an entry fee to, and is fishing under the rules of, a recreational HMS fishing tournament registered as required under § 635.5(d)

(29) Import a bigeye tuna or bigeye tuna product into the United States from Bolivia or Georgia as specified in § 635.41.

(30) Fish for any HMS, other than Atlantic BAYS tunas, with speargun fishing gear, as specified at § 635.21(f).

(31) Harvest or fish for BAYS tunas using speargun gear with powerheads, or any other explosive devices, as specified in § 635.21(f).

(32) Sell, purchase, barter for, or trade for an Atlantic BAYS tuna harvested with speargun fishing gear, as specified at § 635.31(a)(1).

(33) Fire or discharge speargun gear without being physically in the water, as specified at § 635.21(f).

(34) Use speargun gear to harvest a BAYS tuna restricted by fishing lines or other means, as specified at § 635.21(f).

(35) Use speargun gear to fish for BAYS tunas from a vessel that does not possess either a valid HMS Angling or HMS Charter/Headboat permit, as specified at § 635.21(f).

(36) Possess J-hooks onboard a vessel that has pelagic longline gear onboard, and that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, except when green-stick gear is onboard, as specified at § 635.21(c)(2)(v)(A) and (c)(5)(iii)(C)(*3*).

(37) Use or deploy J-hooks with pelagic longline gear from a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico.

(38) Possess more than 20 J-hooks onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, when possessing onboard both pelagic longline gear, as described at § 635.21(c), and green-stick gear as defined at § 635.2.

(39) Use or deploy more than 10 hooks at one time on any individual green-stick gear.

(40) Possess, use, or deploy J-hooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any other part of the hook, when fishing with or possessing green-stick gear onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico.

(c) *Billfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) As specified in § 635.21(e)(2), retain a billfish harvested by gear other than rod and reel, or retain a billfish on board a vessel unless that vessel has been issued an Atlantic HMS Angling or Charter/Headboat permit or has been issued an Atlantic Tunas General category permit and is participating in a tournament in compliance with § 635.4(c).

(2) Transfer a billfish at sea, as specified in § 635.29(a).

(3) Fail to maintain a billfish in the form specified in § 635.30(b).

(4) Sell or purchase a billfish, as specified in § 635.31(b).

(5) Retain onboard a vessel a longbill spearfish, or a blue marlin, white marlin, roundscale spearfish, or sailfish that is less than the minimum size specified in § 635.20(d).

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a billfish, as specified in § 635.5(c)(2) or (c)(3).

(7) Deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination when participating in a tournament for, or including, Atlantic billfish, as specified in § 635.21(e)(2).

(8) Take, retain, or possess an Atlantic blue marlin, white marlin, and roundscale spearfish when the fishery for these species has been restricted to catch and release fishing only, as specified in § 635.27(d).

(d) *Shark*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Exceed a recreational retention limit for shark, as specified in § 635.22(c).

(2) Exceed a commercial retention limit for shark, as specified in § 635.24(a).

(3) Retain, possess, or land a shark of a species group when the fishery for that species group and/or region is closed, as specified in § 635.28(b).

(4) Sell or purchase a shark of a species group when the fishery for that species group and/or region is closed, as specified in § 635.28(b).

(5) Transfer a shark at sea, as specified in § 635.29(b).

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c). Fail to maintain naturally attached shark fins through offloading as specified in § 635.30(c).

(7) Sell or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c) and § 600.1204(e) and (l) of this chapter.

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c).

(9) Fail to comply with the restrictions on sale and purchase of a shark, as specified in § 635.31(c).

(10) Retain, possess, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, as specified under §§ 635.22(c), 635.24(a), and 635.27(b), or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d).

(11) Receive, purchase, trade, or barter for Atlantic sharks without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.21(e)(3).

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21(e)(3).

(14) Receive, purchase, trade, or barter for Atlantic sharks without making available for inspection, at each of the dealer's places of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, a valid dealer or proxy Atlantic shark identification workshop certificate issued by NMFS to the dealer or proxy in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

(15) Sell or transfer or attempt to sell or transfer a shark or sharks or part of a shark or sharks in excess of the retention limits specified in § 635.24(a).

(16) Purchase, receive, or transfer or attempt to purchase, receive, or transfer a shark or sharks or part of a shark or sharks landed in excess of the retention limits specified in § 635.24(a).

(17) Replace sharks that are onboard the vessel for retention with sharks of higher quality or size that are caught later in a particular trip as specified in § 635.24(a).

(18) [Reserved]

(19) Retain, possess, transship, land, store, sell or purchase oceanic whitetip sharks or scalloped, smooth, or great

hammerhead sharks as specified in § 635.21(c)(1)(ii), § 635.22(a)(2), § 635.24, and § 635.31(c)(6).

(e) *Swordfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Purchase, barter for, or trade for a swordfish from the north or south Atlantic swordfish stock without a dealer permit as specified in § 635.4(g).

(2) Fail to comply with the restrictions on use of a pelagic longline specified in § 635.21(b) and (c).

(3) When the directed fishery for swordfish is closed, exceed the limits specified in § 635.28(c)(1)(i) and (c)(1)(ii).

(4) When the incidental catch fishery for swordfish is closed, possess, land, sell, or purchase a swordfish, as specified in § 635.28(c)(2).

(5) Transfer at sea a swordfish, as specified in § 635.29(a).

(6) Fail to maintain a swordfish in the form specified in § 635.30(d).

(7) Fail to comply with the restrictions on sale and purchase of a swordfish, as specified in § 635.31(d).

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline or handgear, except as specified at § 635.21(e)(4)(i).

(9) Fish for swordfish from the South Atlantic swordfish stock using any gear other than pelagic longline.

(10) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ''buoy gear'' as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f).

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed or swordfish handgear limited access permit category and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(e)(4)(iii).

(12) Fail to mark each buoy gear as required at § 635.6(c)(1).

(13) Exceed the incidental catch retention limits specified at § 635.24(b).

(14) Exceed the recreational catch limit for North Atlantic swordfish, as specified in § 635.22(f).

(15) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (c)(3).

(16) Possess any HMS, other than Atlantic swordfish, harvested with buoy gear § 635.21(e).

(17) Fail to construct, deploy, or retrieve buoy gear as specified at § 635.21(e)(4)(iii).

[64 FR 29135, May 28, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 635.71, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: 1. At 77 FR 47317, Aug. 8, 2012, § 635.71 was amended by revising paragraphs (a)(3), (d)(11), (d)(14), and (d)(16), and amending paragraph (a)(55), effective Jan. 1, 2013. For the convenience of the user, the revised and added text is set forth as follows:

§ 635.71 Prohibitions.

(a) * * *

(3) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, Atlantic bluefin tuna landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer Atlantic bluefin tuna without the appropriate valid Federal Atlantic tunas dealer permit issued under § 635.4. Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks without the appropriate valid dealer permit issued under § 635.4 or submission of reports by dealers to NMFS according to reporting requirements specified in § 635.5. This prohibition does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

* * * * *

(55) Fail to electronically submit an Atlantic HMS dealer report through the HMS electronic dealer reporting system to report BAYS tunas, swordfish, and sharks to NMFS in accordance with § 635.5, if issued, or required to be issued, a Federal Atlantic HMS dealer permit pursuant to § 635.4.

* * * * *

(d) * * *

(11) First receive or attempt to first receive Atlantic sharks without a valid Federal Atlantic shark dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

* * * * *

(14) First receive or attempt to first receive Atlantic sharks without making available for inspection, at each of the dealer's places of business listed on the dealer permit which first receives Atlantic sharks, an original, valid dealer or proxy Atlantic shark identification workshop certificate issued by NMFS to the dealer or proxy in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

* * * * *

(16) First receive or attempt to first receive a shark or sharks or part of a shark or sharks landed in excess of the retention limits specified in § 635.24(a).

* * * * *

2. At 77 FR 59852, Oct. 1, 2012, § 635.71 was amended by revising paragraphs Revise paragraphs (a)(3), (4), (53), (e)(1), (10), (11), and (16) and by adding paragraph (a)(56), effective January 2, 2013. For the convenience of the user, the added and revised text is set forth as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(3) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, Atlantic bluefin tuna landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer Atlantic bluefin tuna without the appropriate valid Federal Atlantic tunas dealer permit issued under § 635.4. Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks without the appropriate valid dealer permit issued under § 635.4 or submission of reports by dealers to NMFS according to reporting requirements specified in § 635.5. This prohibition does not apply to HMS harvested by HMS Commercial Caribbean Small Boat vessel permit holders operating in the U.S. Caribbean as defined at § 622.2 or to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) Sell or transfer or attempt to sell or transfer, for commercial purposes, an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to HMS Commercial Caribbean Small Boat vessel permit holders operating in the U.S. Caribbean as defined at § 622.2, or to a shark harvested by a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

* * * * *

(53) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ''buoy gear'' as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f) or a valid HMS Commercial Caribbean Small Boat permit in accordance with § 635.4(o).

* * * * *

(56) Have been issued a valid HMS Commercial Caribbean Small Boat permit and to purchase, barter for, or trade for HMS harvested by other vessels with the intent to sell.

* * * * *

(e) * * *

(1) Purchase, barter for, or trade for a swordfish from the north or south Atlantic swordfish stock without a dealer permit as specified in § 635.4(g), unless the harvesting vessel possesses a valid HMS Commercial Caribbean Small Boat permit issued under § 635.4 of this part and harvested the swordfish in the U.S. Caribbean as defined at § 622.2.

* * * * *

(10) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ''buoy gear'' as defined at §635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with §635.4(f) or a valid HMS Commercial Caribbean Small Boat permit in accordance with §635.4(o).

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed, swordfish handgear limited access permit category, or issued a valid HMS Commercial Caribbean Small Boat permit and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at §635.21(e)(4)(iii).

* * * * *

(16) Possess any HMS, other than Atlantic swordfish, harvested with buoy gear as specified at §635.21(e) unless issued a valid HMS Commercial Caribbean Small Boat permit and operating within the U.S. Caribbean as defined at §622.2.

* * * * *

APPENDIX A TO PART 635—SPECIES TABLES

TABLE 1 OF APPENDIX A TO PART 635—OCEANIC SHARKS

A. Large Coastal Sharks
- 1. Ridgeback sharks:
  - Sandbar, *Carcharhinus plumbeus*
  - Silky, *Carcharhinus falciformis*
  - Tiger, *Galeocerdo cuvier*
- 2. Non-ridgeback sharks:
  - Blacktip, *Carcharhinus limbatus*
  - Bull, *Carcharhinus leucas*
  - Great hammerhead, *Sphyrna mokarran*
  - Lemon, *Negaprion brevirostris*
  - Nurse, *Ginglymostoma cirratum*
  - Scalloped hammerhead, *Sphyrna lewini*
  - Smooth hammerhead, *Sphyrna zygaena*
  - Spinner, *Carcharhinus brevipinna*

B. Small Coastal Sharks
- Atlantic sharpnose, *Rhizoprionodon terraenovae*
- Blacknose, *Carcharhinus acronotus*
- Bonnethead, *Sphyrna tiburo*
- Finetooth, *Carcharhinus isodon*

C. Pelagic Sharks
- Blue, *Prionace glauca*

TABLE 1 OF APPENDIX A TO PART 635—OCEANIC SHARKS—Continued

- Oceanic whitetip, *Carcharhinus longimanus*
- Porbeagle, *Lamna nasus*
- Shortfin mako, *Isurus oxyrinchus*
- Thresher, *Alopias vulpinus*

D. Prohibited Sharks
- Atlantic angel, *Squatina dumerili*
- Basking, *Cetorhinus maximus*
- Bigeye sand tiger, *Odontaspis noronhai*
- Bigeye sixgill, *Hexanchus nakamurai*
- Bigeye thresher, *Alopias superciliosus*
- Bignose, *Carcharhinus altimus*
- Caribbean reef, *Carcharhinus perezii*
- Caribbean sharpnose, *Rhizoprionodon porosus*
- Dusky, *Carcharhinus obscurus*
- Galapagos, *Carcharhinus galapagensis*
- Longfin mako, *Isurus paucus*
- Narrowtooth, *Carcharhinus brachyurus*
- Night, *Carcharhinus signatus*
- Sand tiger, *Carcharias taurus*
- Sevengill, *Heptranchias perlo*
- Sixgill, *Hexanchus griseus*
- Smalltail, *Carcharhinus porosus*
- Whale, *Rhincodon typus*
- White, *Carcharodon carcharias*

E. [Reserved]

TABLE 2 OF APPENDIX A TO PART 635–PELAGIC SPECIES

Albacore tuna, *Thunnus alalunga*
Bigeye tuna, *Thunnus obesus*
Blue shark, *Prionace glauca*
Bluefin tuna, *Thunnus thynnus*
Dolphin fish, *Coryphaena hippurus*
Oceanic whitetip shark, *Carcharhinus longimanus*
Porbeagle shark, *Lamna nasus*
Shortfin mako shark, *Isurus oxyrinchus*
Skipjack tuna, *Katsuwonus pelamis*
Swordfish, *Xiphias gladius*
Thresher shark, *Alopias vulpinus*
Wahoo, *Acanthocybium solandri*
Yellowfin tuna, *Thunnus albacares*

TABLE 3 OF APPENDIX A TO PART 635–DEMERSAL SPECIES

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
Black grouper, *Mycteroperca bonaci*
Blackfin snapper, *Lutjanus buccanella*
Blacknose shark, *Carcharhinus acronotus*
Blacktip shark, *Carcharhinus limbatus*
Blueline tilefish, *Caulolatilus microps*
Bonnethead shark, *Sphyrna tiburo*
Bull shark, *Carcharhinus leucas*
Cubera snapper, *Lutjanus cyanopterus*
Dog snapper, *Lutjanus jocu*
Finetooth shark, *Carcharhinus isodon*

Gag grouper, *Mycteroperca microlepis*
Lane snapper, *Lutjanus synagris*
Lemon shark, *Negaprion brevirostris*
Mangrove snapper, *Lutjanus griseus*
Marbled grouper, *Dermatolepis inermis*
Misty grouper, *Epinephelus mystacinus*
Mutton snapper, *Lutjanus analis*
Nurse shark, *Ginglymostoma cirratum*
Queen snapper, *Etelis oculatus*
Red grouper, *Epinephelus morio*
Red hind, *Epinephelus guttatus*
Red snapper, *Lutjanus campechanus*
Rock hind, *Epinephelus adscensionis*
Sand tilefish, *Malacanthus plumieri*
Sandbar shark, *Carcharhinus plumbeus*
Schoolmaster snapper, *Lutjanus apodus*
Silk snapper, *Lutjanus vivanus*
Snowy grouper, *Epinephelus niveatus*
Speckled hind, *Epinephelus drummondhayi*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*
Tilefish, *Lopholatilus chamaeleonticeps*
Vermilion snapper, *Rhomboplites aurorubens*
Warsaw grouper, *Epinephelus nigritus*
Yellowedge grouper, *Epinephelus flavolimbatus*
Yellowfin grouper, *Mycteroperca venenosa*
Yellowtail snapper, *Ocyurus chrysurus*

[64 FR 29135, May 28, 1999 as amended at 71 FR 58174, Oct. 2, 2006; 75 FR 30528, June 1, 2010; 76 FR 70066, Nov. 10, 2011]

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Subpart A—General Provisions

Sec.
640.1 Purpose and scope.
640.2 Definitions.
640.3 Relation to other laws.
640.4 Permits and fees.
640.5 Recordkeeping and reporting. [Reserved]
640.6 Vessel and gear identification.
640.7 Prohibitions.
640.8 Facilitation of enforcement.
640.9 Penalties.

Subpart B—Management Measures

640.20 Seasons.
640.21 Harvest limitations.
640.22 Gear and diving restrictions.
640.23 Bag/possession limits.
640.24 Authorized activities.
640.25 Adjustment of management measures.
640.26 Tortugas marine reserves.
640.27 Spiny lobster import prohibitions.
640.28 Annual catch limits (ACLs) and accountability measures (AMs).
640.29 Incorporation by reference.
FIGURE 1 TO PART 640

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

EDITORIAL NOTE: Nomenclature changes to part 640 appear at 74 FR 1152, Jan. 12, 2009.

Subpart A—General Provisions

§ 640.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson-Stevens Act.

(b) This part governs the conservation and management of Caribbean spiny lobster (spiny lobster) in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico. This part also governs importation of spiny lobster into any place subject to the jurisdiction of the United States.

(c) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobster, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from the requirements of this part 640, except for § 640.27 with which such an owner or operator must comply, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

[74 FR 1151, Jan. 12, 2009, as amended at 76 FR 75490, Dec. 2, 2011]

§ 640.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bully net means a circular frame attached at right angles to the end of a pole and supporting a conical bag of webbing. The webbing is usually held up by means of a cord which is released when the net is dropped over a lobster.

Carapace length means the measurement of the carapace (head, body, or front section) of a spiny lobster from the anteriormost edge (front) of the groove between the horns directly above the eyes, along the middorsal line (middle of the back), to the rear

edge of the top part of the carapace, excluding any translucent membrane.

Caribbean spiny lobster or *spiny lobster* means the species *Panulirus argus*, or a part thereof.

Commercial fishing means any fishing or fishing activities which result in the harvest of any marine or freshwater organisms, one or more of which (or parts thereof) is sold, traded, or bartered.

Hoop net means a frame, circular or otherwise, supporting a shallow bag of webbing and suspended by a line and bridles. The net is baited and lowered to the ocean bottom, to be raised rapidly at a later time to prevent the escape of lobster.

Import means—

(1) 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; but

(2) Does not include any activity described in paragraph (1) of this definition with respect to fish caught in the U.S. exclusive economic zone by a vessel of the United States.

Live well means a shaded container used for holding live lobsters aboard a vessel in which aerated seawater is continuously circulated from the sea. Circulation of seawater at a rate that replaces the water at least every 8 minutes meets the requirement for aeration.

Off Florida means the area from the Florida coast to the outer limit of the EEZ between the Georgia/Florida boundary (30°42′45.6″N. latitude) and the Alabama/Florida boundary (87°31′06″W. longitude).

Off the Gulf states, other than Florida means the area from the coast to the outer limit of the EEZ between the Texas/Mexico border to the Alabama/Florida boundary (87°31′06″ W. long.).

Off Monroe County, Florida means the area from the Florida coast to the outer limit of the EEZ between a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4′N. latitude) and a line extending directly west from the Monroe/Collier County, Florida boundary (25°48.0′N. latitude).

Off the southern Atlantic states, other than Florida means the area from the coast to the outer limit of the EEZ between the Virginia/North Carolina boundary (36°34′55″ N. lat.) to the Georgia/Florida boundary (30°42′45.6″ N. lat.).

Recreational fishing means fishing or fishing activities which result in the harvest of fish, none of which (or parts thereof) is sold, traded, or bartered.

Regional Administrator (RA), for the purposes of this part, means the Administrator, Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or a designee.

Tail length means the lengthwise measurement of the entire tail (segmented portion), not including any protruding muscle tissue, of a spiny lobster along the top middorsal line (middle of the back) to the rearmost extremity. The measurement is made with the tail in a flat, straight position with the tip of the tail closed.

Trip means a fishing trip, regardless of number of days' duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 17196, May 16, 1988; 53 FR 24655, June 29, 1988; 53 FR 38294, Sept. 30, 1988; 55 FR 26448, June 28, 1990; 57 FR 56518, Nov. 30, 1992; 58 FR 38979, July 21, 1993; 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995; 74 FR 1152, Jan. 12, 2009; 76 FR 75490, Dec. 2, 2011]

§ 640.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) and (c) of this section.

(b) The regulations in this part apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico and South Atlantic EEZ.

(c) Regulations pertaining to additional prohibitions on importation of spiny lobster into Puerto Rico or the

U.S. Virgin Islands are set forth in part 622 of this chapter.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 24655, June 29, 1988; 74 FR 1152, Jan. 12, 2009]

§ 640.4 Permits and fees.

(a) *Applicability*—(1) *Licenses, certificates, and permits*—(i) *EEZ off Florida and spiny lobster landed in Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested or possessed in the EEZ off Florida, or harvested in the EEZ other than off Florida and landed from a fishing vessel in Florida, or for a person to be exempt from the daily bag and possession limit specified in ''640.23(b)(1) for such spiny lobster, such person must have the licenses and certificates specified to be a ''commercial harvester,'' as defined in Rule 68B–24.002, Florida Administrative Code, in effect as of July 1, 2008 (incorporated by reference, see § 640.29).

(ii) *EEZ other than off Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested in the EEZ other than off Florida or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, a Federal vessel permit must be issued to the harvesting vessel and must be on board. However, see paragraph (a)(1)(i) of this section for the licenses and certificates required for a person to possess or land spiny lobster harvested in the EEZ other than off Florida and subsequently possessed in the EEZ off Florida or landed from a fishing vessel in Florida.

(2) *Tail-separation permits.* For a person to possess aboard a fishing vessel a separated spiny lobster tail in or from the EEZ as defined in § 640.1(b), a valid Federal tail-separation permit must be issued to the vessel and must be on board. Permitting prerequisites for the tail-separation permit are either a valid Federal vessel permit for spiny lobster or a valid Florida Saltwater Products License with a valid Florida Restricted Species Endorsement and a valid Crawfish Endorsement.

(3) *Corporation/partnership-owned vessels.* For a vessel owned by a corporation or partnership to be eligible for a Federal vessel permit specified in paragraph (a)(1)(ii) of this section, the earned income qualification specified in paragraph (b)(2)(vi) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(4) *Operator-qualified permits.* A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Applications for permits.* (1) An application for a Federal vessel and/or tail-separation permit must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Administrator at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address including zip code, telephone number, social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, provide the employer identification number, if one has been assigned by the Internal Revenue Service, and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) If the owner does not meet the earned income qualification specified in paragraph (b)(2)(vi) of this section and the operator does meet that qualification, the name, mailing address including zip code, telephone number, social security number, and date of birth of the operator.

(v) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the Regional Administrator and included on the application form.

(vi) A sworn statement by the applicant for a vessel permit certifying that at least 10 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, during the calendar year preceding the application.

(vii) Documentation supporting the statement of income, if required under paragraph (b)(3) of this section.

(viii) If a tail-separation permit is desired, a sworn statement by the applicant certifying that his or her fishing activity—

(A) Is routinely conducted in the EEZ on trips of 48 hours or more; and

(B) Necessitates the separation of carapace and tail to maintain a quality product.

(ix) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Administrator and included on the application form.

(3) The Regional Administrator may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (h) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

(c) *Change in application information.* The owner or operator of a vessel with a permit must notify the Regional Administrator within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Issuance.* (1) The Regional Administrator will issue a permit at any time to an applicant if the application is complete and the applicant meets the earned income requirement specified in paragraph (b)(2)(vi) of this section. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the Regional Administrator will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Administrator's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued pursuant to this section is not transferable or assignable. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale.

(h) *Display.* A permit issued pursuant to this section must be carried on board the vessel, and such vessel must be identified as required by § 640.6. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the

amount of which is stated with the application form, must accompany each request for a replacement permit.

[57 FR 56518, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995; 69 FR 18803, Apr. 9, 2004; 76 FR 75490, Dec. 2, 2011]

§ 640.5 Recordkeeping and reporting. [Reserved]

§ 640.6 Vessel and gear identification.

(a) *EEZ off Florida.* (1) An owner or operator of a vessel that is used to harvest spiny lobster by traps in the EEZ off Florida must comply with the vessel and gear identification requirements specified in sections 379.367(2)(a)1 and 379.367(3), Florida Statutes, in effect as of July 1, 2009 and in Rule 68B–24.006(3), (4), and (5), Florida Administrative Code, in effect as of July 1, 2008 (incorporated by reference, see § 640.29).

(2) An owner or operator of a vessel that is used to harvest spiny lobsters by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters in Rule 68B–24.006(6), Florida Administrative Code, in effect as of July 1, 2008 (incorporated by reference, see § 640.29).

(b) *EEZ other than off Florida.* (1) The owner or operator of a vessel that is used to harvest spiny lobsters in the EEZ other than off Florida, must meet the following vessel and gear identification requirements:

(i) The vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number must be permanently and conspicuously displayed horizontally on the uppermost structural portion of the vessel in numbers at least 10 inches (25.4 cm) high so as to be readily identifiable from the air and water;

(ii) If the vessel uses spiny lobster traps in the EEZ, other than off Florida—

(A) The vessel's color code, as assigned by Florida or, if a color code has not been assigned by Florida, as assigned by the Regional Administrator, must be permanently and conspicuously displayed above the number specified in paragraph (b)(1)(i) of this section so as to be readily identifiable from the air and water, such color code being in the form of a circle at least 20 inches (50.8 cm) in diameter on a background of colors contrasting to those contained in the assigned color code;

(B) A buoy or timed-release buoy of such strength and buoyancy to float must be attached to each spiny lobster trap or at each end of a string of traps;

(C) A buoy used to mark spiny lobster traps must bear the vessel's assigned color code and be of such color, hue, and brilliancy as to be easily distinguished, seen, and located;

(D) A buoy used to mark spiny lobster traps must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number in numbers at least 2 inches (5.08 cm) high; and

(E) A spiny lobster trap must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number permanently and legibly affixed.

(2) A spiny lobster trap in the EEZ, other than off Florida, will be presumed to be the property of the most recently documented owner. Upon the sale or transfer of a spiny lobster trap used in the EEZ, other than off Florida, within 5 days of acquiring ownership, the person acquiring ownership must notify the Florida Division of Law Enforcement of the Department of Environmental Protection, for a trap that bears a Florida crawfish license or trap number, or the Regional Administrator, for a trap that bears a Federal vessel permit number, as to the number of traps purchased, the vendor, and the crawfish license or trap number, or Federal vessel permit number, currently displayed on the traps, and must request issuance of a crawfish license or trap number, or Federal vessel permit, if the acquiring owner does not possess such license or trap number or permit.

(c) *Unmarked traps and buoys.* An unmarked spiny lobster trap or buoy in the EEZ is illegal gear.

(1) *EEZ off Florida.* Such trap or buoy, and any connecting lines, during times

other than the authorized fishing season, will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code, in effect as of October 15, 2007 (incorporated by reference, see § 640.29). An owner of such trap or buoy remains subject to appropriate civil penalties.

(2) *EEZ other than off Florida.* Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties.

[57 FR 56519, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995; 69 FR 18803, Apr. 9, 2004; 76 FR 75491, Dec. 2, 2011]

§ 640.7 Prohibitions.

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

(a) Sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster in or from the EEZ without a required license, certificate, or permit, as specified in § 640.4(a)(1).

(b) Falsify information specified in § 640.4(b)(2) on an application for a permit.

(c) Fail to display a permit, as specified in § 640.4(h).

(d) Falsify or fail to display and maintain vessel and gear identification, as required by § 640.6 (a) and (b).

(e) Possess a spiny lobster trap in the EEZ at a time not authorized, as specified in § 640.20(b)(3)(i) and (b)(3)(ii).

(f) Possess a spiny lobster in or from the EEZ at a time not authorized, as specified in § 640.20(b)(4).

(g) Fail to return immediately to the water a berried spiny lobster; strip eggs from or otherwise molest a berried spiny lobster; or possess a spiny lobster, or part thereof, from which eggs, swimmerettes, or pleopods have been removed or stripped; as specified in § 640.21(a).

(h) Possess or fail to return immediately to the water unharmed a spiny lobster smaller than the minimum size limits specified in § 640.21 (b)(1) and (b)(3), except as provided in § 640.21(c).

(i) Harvest or attempt to harvest a spiny lobster by diving without having and using in the water a measuring device, or fail to release an undersized spiny lobster in the water, as specified in § 640.21(b)(2).

(j) Possess an undersized spiny lobster for use as an attractant in a trap in quantities or under conditions not authorized in § 640.21(c).

(k) Possess a separated spiny lobster tail, except as specified in § 640.21(d).

(l) Possess a spiny lobster harvested by prohibited gear or methods; or possess on board a fishing vessel any dynamite or similar explosive substance; as specified in § 640.20(b) and § 640.22 (a)(1) and (a)(3).

(m) Use or possess in the EEZ a spiny lobster trap that does not meet the requirements specified in § 640.22(b)(1).

(n) Pull or tend a spiny lobster trap other than during daylight hours, as specified in § 640.22(b)(2).

(o) Pull or tend another person's spiny lobster trap, except as authorized in § 640.22(b)(3).

(p) Possess spiny lobsters in or from the EEZ in an amount exceeding the daily bag and possession limit specified in § 640.23 (a), (b)(1), or (b)(2) except as authorized in § 640.23(b)(3) and (b)(4).

(q) Possess spiny lobsters aboard a vessel that uses or has on board a net or trawl in an amount exceeding the limits, as specified in § 640.23(b)(4).

(r) Operate a vessel that fishes for or possesses spiny lobster in or from the EEZ with spiny lobster aboard in an amount exceeding the cumulative bag and possession limit, as specified in § 640.23(d).

(s) Transfer or receive at sea spiny lobster in or from the EEZ caught under the bag and possession limits, as specified in § 640.23(e).

(t) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson-Stevens Act.

(u) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a spiny lobster.

(v) Fish for any species or anchor a fishing vessel in a marine reserve as specified in § 640.26.

(w) Fail to comply with the spiny lobster import prohibitions, as specified in § 640.27.

(x) Harvest a spiny lobster, effective May 11, 2010, in the portion of the Gulf or South Atlantic EEZ designated in § 622.34(n) or § 622.35(m) of this chapter, respectively, due to the Deepwater Horizon oil spill.

(y) Fish for a spiny lobster using trap gear in the areas specified in § 640.22(b)(4).

[57 FR 56520, Nov 30, 1992, as amended at 58 FR 38979, July 21, 1993; 58 FR 61845, Nov. 23, 1993; 59 FR 53119, Oct. 21, 1994; 60 FR 41831, Aug. 14, 1995; 67 FR 47469, July 19, 2002; 74 FR 1152, Jan. 12, 2009; 75 FR 27219, May 14, 2010; 76 FR 75491, Dec. 2, 2011; 77 FR 44169, July 27, 2012]

§ 640.8 Facilitation of enforcement.

See § 600.730 of this chapter.

[74 FR 1152, Jan. 12, 2009]

§ 640.9 Penalties.

See § 600.735 of this chapter.

[74 FR 1152, Jan. 12, 2009]

Subpart B—Management Measures

SOURCE: 57 FR 56520, Nov. 30, 1992, unless otherwise noted.

§ 640.20 Seasons.

(a) *EEZ off the southern Atlantic states, other than Florida.* In the EEZ off the southern Atlantic states, other than Florida, there are no seasonal restrictions on the harvest of spiny lobster or on the possession of traps.

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* The commercial and recreational fishing season for spiny lobster in the EEZ off Florida and the EEZ off the Gulf states, other than Florida, begins on August 6 and ends on March 31.

(2) *Special recreational fishing seasons*—(i) *EEZ off Florida.* There is a 2-day special recreational fishing season in the EEZ off Florida on the last Wednesday and successive Thursday of July each year during which fishing for spiny lobster is limited to diving or use of a bully net or hoop net. (See § 640.22(a) for general prohibitions on gear and methods.) In the EEZ off Monroe County, Florida, no person may harvest spiny lobster by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, during this 2-day special recreational fishing season.

(ii) *EEZ off the Gulf states, other than Florida.* There is a 2-day special recreational fishing season in the EEZ off the Gulf states, other than Florida, during the last Saturday and successive Sunday of July each year during which fishing for spiny lobster may be conducted by authorized gear and methods other than traps. (See § 640.22(a) for general prohibitions on gear and methods.)

(3) *Possession of traps.* (i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 68B–24.005(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994 (incorporated by reference, see § 640.29), apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. A spiny lobster trap, buoy, or rope in the EEZ off Florida, during periods not authorized in this paragraph will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code, in effect as of October 15, 2007 (incorporated by reference, see § 640.29). An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(ii) In the EEZ off the Gulf states, other than Florida, a spiny lobster trap may be placed in the water prior to the commercial and recreational fishing season, which is specified in paragraph (b)(1) of this section, beginning on August 1 and must be removed from the water after such season not later than April 5. A spiny lobster trap, buoy, or rope in the EEZ off the Gulf states, other than Florida, during periods not authorized in this paragraph will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap,

buoy, or rope remains subject to appropriate civil penalties.

(4) *Possession of spiny lobsters.* In the EEZ off Florida and the Gulf states, a whole or a part of a spiny lobster subject to these regulations may only be possessed during the commercial and recreational fishing season and the special recreational fishing season specified in § 640.20, unless accompanied by proof of lawful harvest in the waters of a foreign nation. Consistent with the provisions of paragraphs (b)(3)(i) and (ii) of this section, a spiny lobster in a trap in this area will not be deemed to be possessed provided such spiny lobster is returned immediately to the water unharmed when a trap is removed from the water between March 31 and April 15.

(c) *Primacy of seasonal restrictions in the EEZ off Florida.* The seasonal restrictions applicable in the EEZ off Florida apply to all spiny lobsters and traps in the EEZ off Florida, without regard to harvest or use elsewhere, unless accompanied by proof of lawful harvest elsewhere.

[60 FR 41831, Aug. 14, 1995, as amended at 69 FR 18803, Apr. 9, 2004; 76 FR 75491, Dec. 2, 2011]

§ 640.21 Harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) spiny lobster in or from the EEZ must be returned immediately to the water unharmed. If found in a trap in the EEZ, a berried spiny lobster may not be retained in the trap. A berried spiny lobster in or from the EEZ may not be stripped of its eggs or otherwise molested. The possession of a spiny lobster, or part thereof, in or from the EEZ from which eggs, swimmerettes, or pleopods have been removed or stripped is prohibited.

(b) *Minimum size limits.* (1) Except as provided in paragraph (c) of this section—

(i) No person may possess a spiny lobster in or from the EEZ with a carapace length of 3.0 inches (7.62 cm) or less; and

(ii) A spiny lobster, harvested in the EEZ by means other than diving, with a carapace length of 3.0 inches (7.62 cm) or less must be returned immediately to the water unharmed.

(2) No person may harvest or attempt to harvest a spiny lobster by diving in the EEZ unless he or she possesses, while in the water, a measuring device capable of measuring the carapace length. A spiny lobster captured by a diver must be measured in the water using such measuring device and, if the spiny lobster has a carapace length of 3.0 inches (7.62 cm) or less, it must be released unharmed immediately without removal from the water.

(3) Aboard a vessel authorized under paragraph (d) of this section to possess a separated spiny lobster tail, no person may possess in or from the EEZ a separated spiny lobster tail with a tail length less than 5.5 inches (13.97 cm).

(c) *Undersized attractants.* A live spiny lobster under the minimum size limit specified in paragraph (b)(1) of this section that is harvested in the EEZ by a trap may be retained aboard the harvesting vessel for future use as an attractant in a trap provided it is held in a live well aboard the vessel. No more than fifty undersized spiny lobsters, and one per trap aboard the vessel, whichever is greater, may be retained aboard for use as attractants. The live well must provide a minimum of ¾ gallons (1.7 liters) of seawater per spiny lobster. An undersized spiny lobster so retained must be released to the water alive and unharmed immediately upon leaving the trap lines and prior to one hour after official sunset each day. No more than fifty undersized spiny lobsters and one per trap aboard the vessel, may be retained aboard for use as attractants.

(d) *Tail separation.* (1) The possession aboard a fishing vessel of a separated spiny lobster tail in or from the EEZ as defined in § 640.1(b), is authorized only when the possession is incidental to fishing exclusively in the EEZ on a trip of 48 hours or more and a valid Federal tail-separation permit, and either a valid Federal vessel permit for spiny lobster or a valid Florida Saltwater Products License with a valid Florida Restricted Species Endorsement and a valid Crawfish Endorsement, as specified in § 640.4(a)(2), has been issued to and are on board the vessel.

(2) Spiny lobster must be landed either all whole or all tailed on a single fishing trip.

[57 FR 56520, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994; 76 FR 75491, Dec. 2, 2011]

§ 640.22 Gear and diving restrictions.

(a) *Prohibited gear and methods.* (1) A spiny lobster may not be taken in the EEZ with a spear, hook, or similar device, or gear containing such devices. In the EEZ, the possession of a speared, pierced, or punctured spiny lobster is *prima facie* evidence that prohibited gear was used to take such lobster. Hook, as used in this paragraph (a)(1), does not include a hook in a hook-and-line fishery for species other than spiny lobster; and possession of a spiny lobster that has been speared, pierced, or punctured by such hook is not considered evidence that prohibited gear was used to take the spiny lobster, provided no prohibited gear is on board the vessel.

(2) A spiny lobster may not be taken in a directed fishery by the use of a net or trawl. See § 640.23(d) for the bycatch limits applicable to a vessel that uses or has on board a net or trawl.

(3) Poisons and explosives may not be used to take a spiny lobster in the EEZ as defined in § 640.1(b). For the purposes of this paragraph (a)(3), chlorine, bleach, and similar substances, which are used to flush a spiny lobster out of rocks or coral, are poisons. A vessel in the spiny lobster fishery may not possess on board in the EEZ any dynamite or similar explosive substance.

(b) *Traps.* (1) In the EEZ, a spiny lobster trap may be no larger in dimension than 3 feet by 2 feet by 2 feet (91.4 cm by 61.0 cm by 61.0 cm), or the volume equivalent. A trap constructed of material other than wood must have a panel constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap. Such panel must be located in the upper half of the sides or on top of the trap, so that, when removed, there will be an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.

(2) A spiny lobster trap in the EEZ may be pulled or tended during daylight hours only, that is, from 1 hour before official sunrise to 1 hour after official sunset.

(3) A spiny lobster trap in the EEZ may be pulled or tended only by the owner's vessel, or by a vessel for which permission to pull or work traps belonging to another person has been granted—

(i) For traps in the EEZ off Florida, by the Division of Law Enforcement, Florida Fish and Wildlife Conservation Commission, in accordance with the procedures in Rule 68B–24.006(7), Florida Administrative Code, in effect as of July 1, 2008 (incorporated by reference, see § 640.29).

(ii) For traps in the EEZ, other than off Florida, by the Regional Administrator, as may be arranged upon written request.

(4) Fishing with spiny lobster trap gear is prohibited year-round in the following areas bounded by rhumb lines connecting, in order, the points listed.

(i) Lobster Trap Gear Closed Area 1.

Point	North Lat.	West Long.
A	24°31′15.002″	81°31′00.000″
B	24°31′15.002″	81°31′19.994″
C	24°31′29.999″	81°31′19.994″
D	24°31′29.999″	81°31′00.000″
A	24°31′15.002″	81°31′00.000″

(ii) Lobster Trap Gear Closed Area 2.

Point	North Lat.	West Long.
A	24°31′20.205″	81°30′17.213″
B	24°31′17.858″	81°30′27.700″
C	24°31′27.483″	81°30′30.204″
D	24°31′29.831″	81°30′19.483″
A	24°31′20.205″	81°30′17.213″

(iii) Lobster Trap Gear Closed Area 3.

Point	North Lat.	West Long.
A	24°31′42.665″	81°30′02.892″
B	24°31′45.013″	81°29′52.093″
C	24°31′34.996″	81°29′49.745″
D	24°31′32.335″	81°30′00.466″
A	24°31′42.665″	81°30′02.892″

(iv) Lobster Trap Gear Closed Area 4.

Point	North Lat.	West Long.
A	24°31′50.996″	81°28′39.999″
B	24°31′50.996″	81°29′03.002″
C	24°31′56.998″	81°29′03.002″
D	24°31′56.998″	81°28′39.999″
A	24°31′50.996″	81°28′39.999″

(v) Lobster Trap Gear Closed Area 5.

Point	North Lat.	West Long.
A	24°32′20.014″	81°26′20.390″
B	24°32′13.999″	81°26′41.999″
C	24°32′27.004″	81°26′45.611″
D	24°32′33.005″	81°26′23.995″
A	24°32′20.014″	81°26′20.390″

(vi) Lobster Trap Gear Closed Area 6.

Point	North Lat.	West Long.
A	24°32′30.011″	81°24′47.000″
B	24°32′23.790″	81°24′56.558″
C	24°32′45.997″	81°25′10.998″
D	24°32′52.218″	81°25′01.433″
A	24°32′30.011″	81°24′47.000″

(vii) Lobster Trap Gear Closed Area 7.

Point	North Lat.	West Long.
A	24°32′46.834″	81°27′17.615″
B	24°32′41.835″	81°27′35.619″
C	24°32′54.003″	81°27′38.997″
D	24°32′59.002″	81°27′21.000″
A	24°32′46.834″	81°27′17.615″

(viii) Lobster Trap Gear Closed Area 8.

Point	North Lat.	West Long.
A	24°33′10.002″	81°25′50.995″
B	24°33′04.000″	81°26′18.996″
C	24°33′17.253″	81°26′21.839″
D	24°33′23.254″	81°25′53.838″
A	24°33′10.002″	81°25′50.995″

(ix) Lobster Trap Gear Closed Area 9.

Point	North Lat.	West Long.
A	24°33′22.004″	81°30′31.998″
B	24°33′22.004″	81°30′41.000″
C	24°33′29.008″	81°30′41.000″
D	24°33′29.008″	81°30′31.998″
A	24°33′22.004″	81°30′31.998″

(x) Lobster Trap Gear Closed Area 10.

Point	North Lat.	West Long.
A	24°33′33.004″	81°30′00.000″
B	24°33′33.004″	81°30′09.998″
C	24°33′41.999″	81°30′09.998″
D	24°33′41.999″	81°30′00.000″
A	24°33′33.004″	81°30′00.000″

(xi) Lobster Trap Gear Closed Area 11.

Point	North Lat.	West Long.
A	24°33′50.376″	81°23′35.039″
B	24°33′27.003″	81°24′51.003″
C	24°33′40.008″	81°24′54.999″
D	24°34′03.382″	81°23′39.035″
A	24°33′50.376″	81°23′35.039″

(xii) Lobster Trap Gear Closed Area 12.

Point	North Lat.	West Long.
A	24°34′00.003″	81°19′29.996″
B	24°34′00.003″	81°20′04.994″
C	24°34′24.997″	81°20′04.994″
D	24°34′24.997″	81°19′29.996″
A	24°34′00.003″	81°19′29.996″

(xiii) Lobster Trap Gear Closed Area 13.

Point	North Lat.	West Long.
A	24°35′19.997″	81°14′25.002″
B	24°35′19.997″	81°14′34.999″
C	24°35′29.006″	81°14′34.999″
D	24°35′29.006″	81°14′25.002″
A	24°35′19.997″	81°14′25.002″

(xiv) Lobster Trap Gear Closed Area 14.

Point	North Lat.	West Long.
A	24°44′37.004″	80°46′47.000″
B	24°44′37.004″	80°46′58.000″
C	24°44′47.002″	80°46′58.000″
D	24°44′47.002″	80°46′47.000″
A	24°44′37.004″	80°46′47.000″

(xv) Lobster Trap Gear Closed Area 15.

Point	North Lat.	West Long.
A	24°49′53.946″	80°38′17.646″
B	24°48′32.331″	80°40′15.530″
C	24°48′44.389″	80°40′23.879″
D	24°50′06.004″	80°38′26.003″
A	24°49′53.946″	80°38′17.646″

(xvi) Lobster Trap Gear Closed Area 16.

Point	North Lat.	West Long.
A	24°53′32.085″	80°33′22.065″
B	24°53′38.992″	80°33′14.670″
C	24°53′31.673″	80°33′07.155″
D	24°53′24.562″	80°33′14.886″
A	24°53′32.085″	80°33′22.065″

(xvii) Lobster Trap Gear Closed Area 17.

Point	North Lat.	West Long.
A	24°53′33.410″	80°32′50.247″
B	24°53′40.149″	80°32′42.309″
C	24°53′32.418″	80°32′35.653″
D	24°53′25.348″	80°32′43.302″
A	24°53′33.410″	80°32′50.247″

(xviii) Lobster Trap Gear Closed Area 18.

Point	North Lat.	West Long.
A	24°54′06.317″	80°32′34.115″

Point	North Lat.	West Long.
B	24°53′59.368″	80°32′41.542″
C	24°54′06.667″	80°32′48.994″
D	24°54′13.917″	80°32′41.238″
A	24°54′06.317″	80°32′34.115″

(xix) Lobster Trap Gear Closed Area 19.

Point	North Lat.	West Long.
A	24°54′06.000″	80°31′33.995″
B	24°54′06.000″	80°31′45.002″
C	24°54′36.006″	80°31′45.002″
D	24°54′36.006″	80°31′33.995″
A	24°54′06.000″	80°31′33.995″

(xx) Lobster Trap Gear Closed Area 20.

Point	North Lat.	West Long.
A	24°56′21.104″	80°28′52.331″
B	24°56′17.012″	80°29′05.995″
C	24°56′26.996″	80°29′08.996″
D	24°56′31.102″	80°28′55.325″
A	24°56′21.104″	80°28′52.331″

(xxi) Lobster Trap Gear Closed Area 21.

Point	North Lat.	West Long.
A	24°56′53.006″	80°27′46.997″
B	24°56′21.887″	80°28′25.367″
C	24°56′35.002″	80°28′36.003″
D	24°57′06.107″	80°27′57.626″
A	24°56′53.006″	80°27′46.997″

(xxii) Lobster Trap Gear Closed Area 22.

Point	North Lat.	West Long.
A	24°57′35.001″	80°27′14.999″
B	24°57′28.011″	80°27′21.000″
C	24°57′33.999″	80°27′27.997″
D	24°57′40.200″	80°27′21.106″
A	24°57′35.001″	80°27′14.999″

(xxiii) Lobster Trap Gear Closed Area 23.

Point	North Lat.	West Long.
A	24°58′58.154″	80°26′03.911″
B	24°58′48.005″	80°26′10.001″
C	24°58′52.853″	80°26′18.090″
D	24°59′03.002″	80°26′11.999″
A	24°58′58.154″	80°26′03.911″

(xxiv) Lobster Trap Gear Closed Area 24.

Point	North Lat.	West Long.
A	24°59′17.009″	80°24′32.999″
B	24°58′41.001″	80°25′21.998″
C	24°58′57.591″	80°25′34.186″
D	24°59′33.598″	80°24′45.187″
A	24°59′17.009″	80°24′32.999″

(xxv) Lobster Trap Gear Closed Area 25.

Point	North Lat.	West Long.
A	24°59′44.008″	80°25′38.999″
B	24°59′27.007″	80°25′48.997″
C	24°59′32.665″	80°25′58.610″
D	24°59′49.666″	80°25′48.612″
A	24°59′44.008″	80°25′38.999″

(xxvi) Lobster Trap Gear Closed Area 26.

Point	North Lat.	West Long.
A	25°01′00.006″	80°21′55.002″
B	25°01′00.006″	80°22′11.996″
C	25°01′18.010″	80°22′11.996″
D	25°01′18.010″	80°21′55.002″
A	25°01′00.006″	80°21′55.002″

(xxvii) Lobster Trap Gear Closed Area 27.

Point	North Lat.	West Long.
A	25°01′34.997″	80°23′12.998″
B	25°01′18.010″	80°23′44.000″
C	25°01′22.493″	80°23′46.473″
D	25°01′36.713″	80°23′37.665″
E	25°01′46.657″	80°23′19.390″
A	25°01′34.997″	80°23′12.998″

(xxviii) Lobster Trap Gear Closed Area 28.

Point	North Lat.	West Long.
A	25°01′38.005″	80°21′25.998″
B	25°01′28.461″	80°21′46.158″
C	25°01′45.009″	80°21′53.999″
D	25°01′54.553″	80°21′33.839″
A	25°01′38.005″	80°21′25.998″

(xxix) Lobster Trap Gear Closed Area 29.

Point	North Lat.	West Long.
A	25°01′53.001″	80°23′08.995″
B	25°01′53.001″	80°23′17.997″
C	25°02′01.008″	80°23′17.997″
D	25°02′01.008″	80°23′08.995″
A	25°01′53.001″	80°23′08.995″

(xxx) Lobster Trap Gear Closed Area 30.

Point	North Lat.	West Long.
A	25°02′20.000″	80°22′11.001″
B	25°02′10.003″	80°22′50.002″
C	25°02′22.252″	80°22′53.140″
D	25°02′32.250″	80°22′14.138″
A	25°02′20.000″	80°22′11.001″

(xxxi) Lobster Trap Gear Closed Area 31.

Point	North Lat.	West Long.
A	25°02′29.503″	80°20′30.503″
B	25°02′16.498″	80°20′43.501″
C	25°02′24.999″	80°20′52.002″
D	25°02′38.004″	80°20′38.997″
A	25°02′29.503″	80°20′30.503″

(xxxii) Lobster Trap Gear Closed Area 32.

Point	North Lat.	West Long.
A	25°02′34.008″	80°21′57.000″
B	25°02′34.008″	80°22′14.997″
C	25°02′50.007″	80°22′14.997″
D	25°02′50.007″	80°21′57.000″
A	25°02′34.008″	80°21′57.000″

(xxxiii) Lobster Trap Gear Closed Area 33.

Point	North Lat.	West Long.
A	25°03′11.294″	80°21′36.864″
B	25°03′02.540″	80°21′43.143″
C	25°03′08.999″	80°21′51.994″
D	25°03′17.446″	80°21′45.554″
A	25°03′11.294″	80°21′36.864″

(xxxiv) Lobster Trap Gear Closed Area 34.

Point	North Lat.	West Long.
A	25°03′30.196″	80°21′34.263″
B	25°03′39.267″	80°21′29.506″
C	25°03′35.334″	80°21′19.801″
D	25°03′26.200″	80°21′24.304″
A	25°03′30.196″	80°21′34.263″

(xxxv) Lobster Trap Gear Closed Area 35.

Point	North Lat.	West Long.
A	25°03′26.001″	80°19′43.001″
B	25°03′26.001″	80°19′54.997″
C	25°03′41.011″	80°19′54.997″
D	25°03′41.011″	80°19′43.001″
A	25°03′26.001″	80°19′43.001″

(xxxvi) Lobster Trap Gear Closed Area 36.

Point	North Lat.	West Long.
A	25°07′03.008″	80°17′57.999″
B	25°07′03.008″	80°18′10.002″
C	25°07′14.997″	80°18′10.002″
D	25°07′14.997″	80°17′57.999″
A	25°07′03.008″	80°17′57.999″

(xxxvii) Lobster Trap Gear Closed Area 37.

Point	North Lat.	West Long.
A	25°07′51.156″	80°17′27.910″
B	25°07′35.857″	80°17′37.091″
C	25°07′43.712″	80°17′50.171″
D	25°07′59.011″	80°17′40.998″
A	25°07′51.156″	80°17′27.910″

(xxxviii) Lobster Trap Gear Closed Area 38.

Point	North Lat.	West Long.
A	25°08′12.002″	80°17′09.996″
B	25°07′55.001″	80°17′26.997″
C	25°08′04.998″	80°17′36.995″
D	25°08′22.000″	80°17′20.000″
A	25°08′12.002″	80°17′09.996″

(xxxix) Lobster Trap Gear Closed Area 39.

Point	North Lat.	West Long.
A	25°08′18.003″	80°17′34.001″
B	25°08′18.003″	80°17′45.997″
C	25°08′29.003″	80°17′45.997″
D	25°08′29.003″	80°17′34.001″
A	25°08′18.003″	80°17′34.001″

(xl) Lobster Trap Gear Closed Area 40.

Point	North Lat.	West Long.
A	25°08′45.002″	80°15′50.002″
B	25°08′37.999″	80°15′56.998″
C	25°08′42.009″	80°16′00.995″
D	25°08′48.999″	80°15′53.998″
A	25°08′45.002″	80°15′50.002″

(xli) Lobster Trap Gear Closed Area 41.

Point	North Lat.	West Long.
A	25°08′58.007″	80°17′24.999″
B	25°08′58.007″	80°17′35.999″
C	25°09′09.007″	80°17′35.999″
D	25°09′09.007″	80°17′24.999″
A	25°08′58.007″	80°17′24.999″

(xlii) Lobster Trap Gear Closed Area 42.

Point	North Lat.	West Long.
A	25°09′10.999″	80°16′00.000″
B	25°09′10.999″	80°16′09.997″
C	25°09′20.996″	80°16′09.997″
D	25°09′20.996″	80°16′00.000″
A	25°09′10.999″	80°16′00.000″

(xliii) Lobster Trap Gear Closed Area 43.

Point	North Lat.	West Long.
A	25°09′28.316″	80°17′03.713″
B	25°09′14.006″	80°17′17.000″
C	25°09′21.697″	80°17′25.280″
D	25°09′36.006″	80°17′12.001″
A	25°09′28.316″	80°17′03.713″

(xliv) Lobster Trap Gear Closed Area 44.

Point	North Lat.	West Long.
A	25°10′00.011″	80°16′06.000″
B	25°10′00.011″	80°16′17.000″
C	25°10′09.995″	80°16′17.000″
D	25°10′09.995″	80°16′06.000″
A	25°10′00.011″	80°16′06.000″

(xlv) Lobster Trap Gear Closed Area 45.

Point	North Lat.	West Long.
A	25°10′29.002″	80°15′52.995″
B	25°10′29.002″	80°16′04.002″
C	25°10′37.997″	80°16′04.002″
D	25°10′37.997″	80°15′52.995″
A	25°10′29.002″	80°15′52.995″

(xlvi) Lobster Trap Gear Closed Area 46.

Point	North Lat.	West Long.
A	25°11′05.998″	80°14′25.997″
B	25°11′05.998″	80°14′38.000″
C	25°11′20.006″	80°14′38.000″
D	25°11′20.006″	80°14′25.997″
A	25°11′05.998″	80°14′25.997″

(xlvii) Lobster Trap Gear Closed Area 47.

Point	North Lat.	West Long.
A	25°12′00.998″	80°13′24.996″
B	25°11′43.008″	80°13′35.000″
C	25°11′48.007″	80°13′44.002″
D	25°12′06.011″	80°13′33.998″
A	25°12′00.998″	80°13′24.996″

(xlviii) Lobster Trap Gear Closed Area 48.

Point	North Lat.	West Long.
A	25°12′18.343″	80°14′32.768″
B	25°12′02.001″	80°14′44.001″
C	25°12′07.659″	80°14′52.234″
D	25°12′24.001″	80°14′41.001″
A	25°12′18.343″	80°14′32.768″

(xlix) Lobster Trap Gear Closed Area 49.

Point	North Lat.	West Long.
A	25°15′23.998″	80°12′29.000″
B	25°15′04.676″	80°12′36.120″
C	25°15′09.812″	80°12′50.066″
D	25°15′29.148″	80°12′42.946″
A	25°15′23.998″	80°12′29.000″

(l) Lobster Trap Gear Closed Area 50.

Point	North Lat.	West Long.
A	25°16′01.997″	80°12′32.996″
B	25°15′33.419″	80°12′52.394″
C	25°15′44.007″	80°13′08.001″
D	25°16′12.585″	80°12′48.597″
A	25°16′01.997″	80°12′32.996″

(li) Lobster Trap Gear Closed Area 51.

Point	North Lat.	West Long.
A	25°16′33.006″	80°13′30.001″
B	25°16′33.006″	80°13′41.001″
C	25°16′34.425″	80°13′41.026″
D	25°16′41.850″	80°13′37.475″
E	25°16′42.001″	80°13′30.001″
A	25°16′33.006″	80°13′30.001″

(lii) Lobster Trap Gear Closed Area 52.

Point	North Lat.	West Long.
A	25°17′04.715″	80°12′11.305″
B	25°16′17.007″	80°12′27.997″
C	25°16′23.997″	80°12′47.999″
D	25°17′11.705″	80°12′31.300″
A	25°17′04.715″	80°12′11.305″

(liii) Lobster Trap Gear Closed Area 53.

Point	North Lat.	West Long.
A	25°17′23.008″	80°12′40.000″
B	25°17′23.008″	80°12′49.997″
C	25°17′33.005″	80°12′49.997″
D	25°17′33.005″	80°12′40.000″
A	25°17′23.008″	80°12′40.000″

(liv) Lobster Trap Gear Closed Area 54.

Point	North Lat.	West Long.
A	25°20′57.996″	80°09′50.000″
B	25°20′57.996″	80°10′00.000″
C	25°21′07.005″	80°10′00.000″
D	25°21′07.005″	80°09′50.000″
A	25°20′57.996″	80°09′50.000″

(lv) Lobster Trap Gear Closed Area 55.

Point	North Lat.	West Long.
A	25°21′45.004″	80°09′51.998″
B	25°21′38.124″	80°09′56.722″
C	25°21′49.124″	80°10′12.728″
D	25°21′56.004″	80°10′07.997″
A	25°21′45.004″	80°09′51.998″

(lvi) Lobster Trap Gear Closed Area 56.

Point	North Lat.	West Long.
A	25°21′49.000″	80°09′21.999″
B	25°21′49.000″	80°09′31.996″
C	25°21′58.998″	80°09′31.996″
D	25°21′58.998″	80°09′21.999″
A	25°21′49.000″	80°09′21.999″

(lvii) Lobster Trap Gear Closed Area 57.

Point	North Lat.	West Long.
A	25°24′31.008″	80°07′36.997″
B	25°24′31.008″	80°07′48.999″
C	25°24′41.005″	80°07′48.999″
D	25°24′41.005″	80°07′36.997″
A	25°24′31.008″	80°07′36.997″

(lviii) Lobster Trap Gear Closed Area 58.

Point	North Lat.	West Long.
A	25°25′14.005″	80°07′27.995″
B	25°25′14.005″	80°07′44.001″
C	25°25′26.008″	80°07′44.001″
D	25°25′26.008″	80°07′27.995″
A	25°25′14.005″	80°07′27.995″

(lix) Lobster Trap Gear Closed Area 59.

Point	North Lat.	West Long.
A	25°35′13.996″	80°05′39.999″
B	25°35′13.996″	80°05′50.999″
C	25°35′24.007″	80°05′50.999″
D	25°35′24.007″	80°05′39.999″
A	25°35′13.996″	80°05′39.999″

(lx) Lobster Trap Gear Closed Area 60.

Point	North Lat.	West Long.
A	25°40′57.003″	80°05′43.000″
B	25°40′57.003″	80°05′54.000″
C	25°41′06.550″	80°05′53.980″
D	25°41′18.136″	80°05′49.158″
E	25°41′18.001″	80°05′43.000″
A	25°40′57.003″	80°05′43.000″

[57 FR 56520, Nov. 30, 1992, as amended at 58 FR 38980, July 21, 1993; 60 FR 41831, Aug. 14, 1995; 69 FR 18803, Apr. 9, 2004; 76 FR 75492, Dec. 2, 2011; 77 FR 44169, July 27, 2012; 77 FR 50642, Aug. 22, 2012]

§ 640.23 Bag/possession limits.

(a) *EEZ off the southern Atlantic states, other than Florida.* The daily bag or possession limit for spiny lobster in or from the EEZ off the southern Atlantic states, other than Florida, is two per person for commercial and recreational fishing, year-round.

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* Except as specified in paragraphs (b)(3) and (b)(4) of this section, during the commercial and recreational fishing season specified in § 640.20(b)(1), the daily bag or possession limit of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, is six per person.

(2) *Special recreational fishing seasons.* During the special recreational fishing seasons specified in § 640.20(b)(2), the daily bag or possession limit of spiny lobster—

(i) In or from the EEZ off the Gulf states, other than Florida, is six per person;

(ii) In or from the EEZ off Florida other than off Monroe County, Florida, is twelve per person; and

(iii) In or from the EEZ off Monroe County, Florida, is six per person.

(3) *Exemption from the bag/possession limit.* During the commercial and recreational fishing season specified in § 640.20(b)(1), a person is exempt from the bag and possession limit specified in paragraph (a) of this section, provided—

(i) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(ii) The vessel from which the person is operating has on board the required licenses, certificates, or permits, as specified in § 640.4(a)(1).

(4) *Harvest by net or trawl.* During the commercial and recreational fishing season specified in § 640.20(b)(1), aboard a vessel with the required licenses, certificates, or permits specified in § 640.4(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.6 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (b)(4), the term ''net or trawl'' does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(5) *Diving at night.* The provisions of paragraph (b)(3) of this section notwithstanding, a person who harvests spiny lobster in the EEZ by diving at

night, that is, from 1 hour after official sunset to 1 hour before official sunrise, is limited to the bag limit specified in paragraph (b)(1) of this section, whether or not a Federal vessel permit specified in § 640.4(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(c) *Combination of bag/possession limits.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not combine the bag or possession limits of those paragraphs or combine such bag or possession limit with a bag or possession limit applicable to state waters.

(d) *Responsibility for bag/possession limits.* The operator of a vessel that fishes for or possesses spiny lobster in or from the EEZ is responsible for the cumulative bag or possession limit specified in paragraphs (a) and (b) of this section applicable to that vessel, based on the number of persons aboard.

(e) *Transfer at sea.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not transfer a spiny lobster at sea from a fishing vessel to any other vessel, and no person may receive at sea such spiny lobster.

[60 FR 41831, Aug. 14, 1995]

§ 640.24 Authorized activities.

The Assistant Administrator may authorize, for the acquisition of information and date, activities otherwise prohibited by the regulations in this part.

[57 FR 56520, Nov. 30, 1992, as amended at 60 FR 41832, Aug. 14, 1995]

§ 640.25 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the Regional Administrator may establish or modify the following items: Reporting and monitoring requirements, permitting requirements, bag and possession limits, size limits, vessel trip limits, closed seasons, closed areas, reopening of sectors that have been prematurely closed, annual catch limits (ACLs), annual catch targets (ACTs), quotas, accountability measures (AMs), maximum sustainable yield (or proxy), optimum yield, total allowable catch (TAC), management parameters such as overfished and overfishing definitions, gear restrictions, gear markings and identification, vessel identification requirements, allowable biological catch (ABC) and ABC control rule, rebuilding plans, and restrictions relative to conditions of harvested fish (such as tailing lobster, undersized attractants, and use as bait).

[76 FR 75492, Dec. 2, 2011]

§ 640.26 Tortugas marine reserves.

The following activities are prohibited within the Tortugas marine reserves: Fishing for any species and anchoring by fishing vessels.

(a) *EEZ portion of Tortugas North.* The area is bounded by rhumb lines connecting the following points: From point A at 24°40′00′ N. lat., 83°06′00′ W. long. to point B at 24°46′00′ N. lat., 83°06′00′ W. long. to point C at 24°46′00′ N. lat., 83°00′00′ W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11438, to point A at 24°40′00′ N. lat., 83°06′00′ W. long.

(b) *Tortugas South.* The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33′00′	83°09′00′
B	24°33′00′	83°05′00′
C	24°18′00′	83°05′00′
D	24°18′00′	83°09′00′
A	24°33′00′	83°09′00′

[67 FR 47469, July 19, 2002]

§ 640.27 Spiny lobster import prohibitions.

(a) *Minimum size limits for imported spiny lobster.* There are two minimum size limits that apply to importation of spiny lobster into the United States -one that applies any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and a more restrictive minimum size limit that applies to Puerto Rico and the U.S. Virgin Islands.

(1) No person may import a spiny lobster with less than a 5–ounce (142–gram) tail weight into any place subject to the jurisdiction of the United States excluding Puerto Rico and the U.S. Virgin Islands. For the purposes of paragraph (a) of this section, a 5–ounce (142–gram) tail weight is defined as a tail that weighs 4.2–5.4 ounces (119–153 grams). If the documentation accompanying an imported spiny lobster (including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices) indicates that the product does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster has the burden to prove that such spiny lobster actually does satisfy the minimum tail-weight requirement or that such spiny lobster has a tail length of 5.5 inches (13.97 cm) or greater or that such spiny lobster has or had a carapace length of greater than 3.0 inches (7.62 cm). If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster has the burden to prove that such spiny lobster has a tail length of 5.5 inches (13.97 cm) or greater or that such spiny lobster has or had a carapace length of greater than 3.0 inches (7.62 cm). If the burden is satisfied, such spiny lobster will be considered to be in compliance with the minimum 5–ounce (142–gram) tail-weight requirement.

(2) See § 622.50 of this chapter regarding a more restrictive minimum size limit that applies to spiny lobster imported into Puerto Rico or the U.S. Virgin Islands.

(b) *Additional spiny lobster import prohibitions*—(1) *Prohibition related to tail meat*. No person may import into any place subject to the jurisdiction of the United States spiny lobster tail meat that is not in whole tail form with the exoskeleton attached.

(2) *Prohibitions related to egg-bearing spiny lobster*. No person may import into any place subject to the jurisdiction of the United States spiny lobster with eggs attached or spiny lobster from which eggs or pleopods (swimmerets) have been removed or stripped. Pleopods (swimmerets) are the first five pairs of abdominal appendages.

[74 FR 1152, Jan. 12, 2009]

§ 640.28 Annual catch limits (ACLs) and accountability measures (AMs).

For recreational and commercial spiny lobster landings combined, the ACL is 7.32 million lb (3.32 million kg), whole weight. The ACT is 6.59 million lb, (2.99 million kg) whole weight.

[76 FR 75492, Dec. 2, 2011]

§ 640.29 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER. All material incorporated by reference is available for inspection at the NMFS, Office of Sustainable Fisheries, Office of the Regional Administrator, 1315 East-West Highway, Silver Spring, MD; and the National Archives and Records Administration (NARA), Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. For more information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_resister/code_of_federal_regulations/ibr_locations.html*.

(b) Florida Administrative Code (F.A.C.): Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: (850) 488–4676; *http://laws.flrules.org*.

(1) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.002: Definitions, in effect as of July 1, 2008, IBR approved for § 640.4.

(2) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule

68B–24.005: Seasons, in effect as of June 1, 2004, IBR approved for § 640.20.

(3) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.006: Gear: Traps, Buoys, Identification Requirements, Prohibited Devices, in effect as of July 1, 2008, IBR approved for § 640.6 and § 640.22.

(4) F.A.C., Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.002: Retrieval of Trap Debris, in effect as of October 15, 2007, IBR approved for § 640.6 and § 640.20.

(5) F.A.C., Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.004: Retrieval of Derelict and Traps Located in Areas Permanently Closed to Trapping, in effect as of October 15, 2007, IBR approved for § 640.6 and § 640.20.

(c) Florida Statute: Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: (850) 488–4676; *http://www.leg.state.fl.us/Statutes/index.cfm.*

(1) Florida Statutes, Chapter 379: Fish and Wildlife Conservation, Part VII: Nonrecreational Licenses, Section 379.367: Spiny lobster; regulation, 379.367, in effect as of June 1, 1994, IBR approved for § 640.6.

(2) [Reserved]

[76 FR 75492, Dec. 2, 2011]

FIGURE 1 TO PART 640

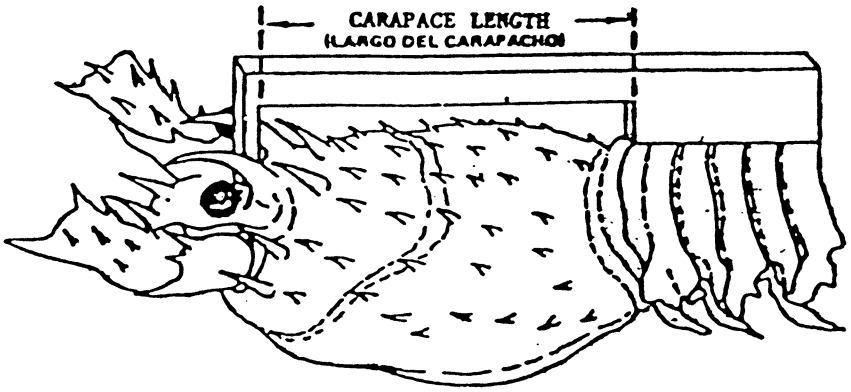


Figure 1

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

PART 644 [RESERVED]

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

Subpart A—General Provisions

Sec.
648.1 Purpose and scope.
648.2 Definitions.
648.3 Relation to other laws.
648.4 Vessel permits.
648.5 Operator permits.
648.6 Dealer/processor permits.
648.7 Recordkeeping and reporting requirements.
648.8 Vessel identification.
648.9 VMS vendor and unit requirements.
648.10 VMS and DAS requirements for vessel owners/operators.
648.11 At-sea sea sampler/observer coverage.
648.12 Experimental fishing.
648.13 Transfers at sea.
648.14 Prohibitions.
648.15 Facilitation of enforcement.
648.16 Penalties.
648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.

648.18 [Reserved]

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

648.20 Mid-Atlantic Fishery Management Council ABC control rules.
648.21 Mid-Atlantic Fishery Management Council risk policy.
648.22 Atlantic mackerel, squid, and butterfish specifications.
648.23 Mackerel, squid, and butterfish gear restrictions.
648.24 Fishery closures and accountability measures.
648.25 Atlantic Mackerel, squid, and butterfish framework adjustments to management measures.
648.26 Mackerel, squid, and butterfish possession restrictions.
648.27 Observer requirements for the longfin squid fishery.

Subpart C—Management Measures for Atlantic Salmon

648.40 Prohibition on possession.
648.41 Framework specifications.

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

648.50 Shell-height standard.
648.51 Gear and crew restrictions.
648.52 Possession and landing limits.
648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).
648.54 State waters exemption.
648.55 Framework adjustments to management measures.
648.56 Scallop research.
648.57 Sea Scallop area rotation program.
648.58 Rotational closed areas.
648.59 Sea Scallop access areas.
648.60 Sea scallop access area program requirements.
648.61 EFH closed areas.
648.62 Northern Gulf of Maine (NGOM) Management Program.
648.63 General category Sectors and harvesting cooperatives.
648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

648.70 Surfclam and ocean quahog Annual Catch Limit (ACL).
648.71 Surfclam and ocean quahog Annual Catch Targets (ACT).
648.72 Surfclam and ocean quahog specifications.
648.73 Surfclam and ocean quahog Accountability Measures.
648.74 Annual individual allocations.
648.75 Shucking at sea and minimum surfclam size.
648.76 Closed areas.
648.77 Cage identification.
648.78 Maine mahogany quahog zone.
648.79 Surfclam and ocean quahog framework adjustments to management measures.

Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries

648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.
648.81 NE multispecies closed areas and measures to protect EFH.
648.82 Effort-control program for NE multispecies limited access vessels.
648.83 Multispecies minimum fish sizes.
648.84 Gear-marking requirements and gear restrictions.
648.85 Special management programs.
648.86 NE Multispecies possession restrictions.
648.87 Sector allocation.
648.88 Multispecies open access permit restrictions.
648.89 Recreational and charter/party vessel restrictions.
648.90 NE Multispecies assessment, framework procedures and specifications, and flexible area action system.
648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.
648.92 Effort-control program for monkfish limited access vessels.
648.93 Monkfish minimum fish sizes.
648.94 Monkfish possession and landing restrictions.
648.95 Offshore Fishery Program in the SFMA.
648.96 FMP review, specification, and framework adjustment process.
648.97 Closed areas.

Subpart G—Management Measures for the Summer Flounder Fishery

648.100 Summer flounder Annual Catch Limit (ACL).
648.101 Summer flounder Annual Catch Target (ACT).
648.102 Summer flounder specifications.
648.103 Summer flounder accountability measures.
648.104 Summer flounder minimum fish sizes.
648.105 Summer flounder recreational fishing season.
648.106 Summer flounder possession restrictions.

648.107 Conservation equivalent measures for the summer flounder party/charter and recreational fishery.
648.108 Summer flounder gear restrictions.
648.109 Sea turtle conservation.
648.110 Summer flounder framework adjustments to management measures.

Subpart H—Management Measures for the Scup Fishery

648.120 Scup Annual Catch Limit (ACL).
648.121 Scup Annual Catch Target (ACT).
648.122 Scup specifications.
648.123 Scup accountability measures.
648.124 Scup commercial season and commercial fishery area restrictions.
648.125 Scup gear restrictions.
648.126 Scup minimum fish sizes.
648.127 Scup recreational fishing season.
648.128 Scup possession restrictions.
648.129 Protection of threatened and endangered sea turtles.
648.130 Scup framework adjustments to management measures.

Subpart I—Management Measures for the Black Sea Bass Fishery

648.140 Black sea bass Annual Catch Limit (ACL).
648.141 Black sea bass Annual Catch Target (ACT).
648.142 Black sea bass specifications.
648.143 Black sea bass Accountability Measures.
648.144 Black sea bass gear restrictions.
648.145 Black sea bass possession limit.
648.146 Black sea bass recreational fishing season.
648.147 Black sea bass minimum fish sizes.
648.148 Special management zones.
648.149 Black sea bass framework adjustments to management measures.

Subpart J—Management Measures for the Atlantic Bluefish Fishery

648.160 Bluefish Annual Catch Limit (ACL).
648.161 Bluefish Annual Catch Targets (ACTs).
648.162 Bluefish specifications.
648.163 Bluefish Accountability Measures (AMs).
648.164 Bluefish possession restrictions.
648.165 Bluefish minimum fish sizes.
648.166 Bluefish gear restrictions.
648.167 Bluefish framework adjustment to management measures.

Subpart K—Management Measures for the Atlantic Herring Fishery

648.200 Specifications.
648.201 AMs and harvest controls.
648.202 Season and area restrictions.
648.203 Gear restrictions.
648.204 Possession restrictions.
648.205 VMS requirements.
648.206 Framework provisions.
648.207 Herring Research Set-aside (RSA)

Subpart L—Management Measures for the Spiny Dogfish Fishery

648.230 Spiny dogfish Annual Catch Limits (ACLs).
648.231 Spiny dogfish Annual Catch Target (ACT) and Total Allowable Level of Landings (TAL).
648.232 Spiny dogfish specifications.
648.233 Spiny dogfish Accountability Measures (AMs).
648.234 Gear restrictions. [Reserved]
648.235 Spiny dogfish possession and landing restrictions.
648.236 Special Management Zones. [Reserved]
648.237–648.238 [Reserved]
648.239 Spiny dogfish framework adjustments to management measures.

Subpart M—Management Measures for the Atlantic Deep-Sea Red Crab Fishery

648.260 Specifications.
648.261 Framework adjustment process.
648.262 Accountability measures for red crab limited access vessels.
648.263 Red crab possession and landing restrictions.
648.264 Gear requirements/restrictions.

Subpart N—Management Measures for the Tilefish Fishery

648.290 Tilefish Annual Catch Limit (ACL).
648.291 Tilefish Annual Catch Target (ACT).
648.292 Tilefish specifications.
648.293 Tilefish accountability measures.
648.294 Individual fishing quota (IFQ) program.
648.295 Tilefish incidental trip limits.
648.296 Tilefish recreational possession limit.
648.297 Tilefish gear restricted areas.
648.298 [Reserved]
648.299 Tilefish framework specifications.

Subpart O—Management Measures for the NE Skate Complex Fisheries

648.320 Skate FMP review and monitoring.
648.321 Framework adjustment process.
648.322 Skate allocation, possession, and landing provisions.
648.323 Accountability measures.
FIGURE 1 TO PART 648

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

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

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

Subpart A—General Provisions

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surfclam and ocean quahog fisheries (Atlantic Surfclam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); the tilefish fishery (Tilefish FMP); and the NE skate complex fisheries (Skate FMP). These FMPs and the regulations in this part govern the conservation and management of the above named fisheries of the Northeastern United States.

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

[61 FR 34968, July 3, 1996, as amended at 61 FR 43424, Aug. 23, 1996; 62 FR 13299, Mar. 20, 1997; 65 FR 1568, Jan. 11, 2000; 65 FR 77464, Dec. 11, 2000; 66 FR 49192, Sept. 26, 2001; 67 FR 63229, Oct. 10, 2002; 68 FR 49699, Aug. 19, 2003; 76 FR 60649, Sept. 29, 2011]

§ 648.2 Definitions.

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

Alewife means *Alosa pseudoharengus*.

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

American shad means *Alosa sapidissima*.

Annual catch entitlement (ACE), with respect to the NE multispecies fishery, means the share of the annual catch limit (ACL) for each NE multispecies stock that is allocated to an individual sector or state-operated permit bank based upon the cumulative fishing history attached to each permit participating in that sector or held by a state-operated permit bank in a given year. This share may be adjusted due to penalties for exceeding the sector's ACE for a particular stock in earlier years, or due to other violations of the FMP, including the yearly sector operations plan. When a sector's or state-operated permit bank's share of a NE multispecies stock, as determined by the fishing histories of vessels participating in that sector or permits held by a state-operated permit bank, is multiplied by the available catch, the result is the amount of ACE (live weight in pounds) that can be harvested (landings and discards) by participants in that sector or transferred by a state-operated permit bank, during a particular fishing year.

At-sea monitor, with respect to the NE multispecies fishery, means any person responsible for observing, verifying, and reporting area fished, catch, and discards of all species by gear type for sector trips as part of an approved sector at-sea monitoring program.

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

Atlantic croaker means *Micropogonias undulatus*.

Atlantic deep-sea red crab (red crab) means *Chaceon quinquedens*.

Atlantic hagfish means *Myxine glutinosa*.

Atlantic herring means *Clupea harengus*.

Atlantic herring carrier means a fishing vessel that may receive and transport herring caught by another fishing vessel, provided the vessel has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel.

Atlantic herring dealer means:

(1) Any person who purchases or receives for a commercial purpose other than solely for transport or pumping operations any herring from a vessel issued a Federal Atlantic herring permit, whether offloaded directly from the vessel or from a shore-based pump, for any purpose other than for the purchaser's own use as bait; or

(2) Any person owning or operating a processing vessel that receives any Atlantic herring from a vessel issued a Federal Atlantic herring permit whether at sea or in port.

Atlantic herring processor means a person who receives unprocessed Atlantic herring from a fishing vessel issued a Federal Atlantic herring permit or from an Atlantic herring dealer for the purposes of processing; or the owner or operator of a fishing vessel that processes Atlantic herring; or an Atlantic herring dealer who purchases Atlantic herring from a fishing vessel with a Federal Atlantic herring permit for resale as bait.

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

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

Atlantic salmon means *Salmo salar*.

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

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

Black sea bass means *Centropristis striata*.

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

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

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

Bluefish means *Pomotomus saltatrix*.

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

Bonito means *Sarda sarda*.

Border transfer (BT) means the amount of herring specified pursuant to § 648.200 that may be transferred to a Canadian transport vessel that is permitted under the provisions of Pub. L. 104–297, section 105(e).

Bottom-tending mobile gear, with respect to the NE multispecies and tilefish fisheries, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, nonhydraulic dredges, and seines (with the exception of a purse seine).

Brush-sweep trawl gear means trawl gear consisting of alternating roller discs and bristle brushes that are strung along cables, chains, or footropes, and aligned together to form the sweep of the trawl net, designed to allow the trawl sweep to maintain contact with the ocean floor, or any modification to trawl gear that is substantially similar in design or effect.

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft^3 (53.24 L) of surfclams or ocean quahogs in shell, or 1.24 ft^3 (35.24 L) of in-shell Atlantic sea scallops.

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

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

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

Circle hook, with respect to the NE multispecies fishery, means a fishing hook with the point turned perpendicularly back to the shank, or an offset circle hook where the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

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

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

Commission means the Atlantic States Marine Fisheries Commission.

Common pool trip, with respect to the NE multispecies fishery, means any trip taken by a common pool vessel under a NE multispecies DAS or under the provisions of a limited access NE multispecies Small Vessel or Handgear A permit, or an open access Handgear B permit that lands regulated species or ocean pout.

Common pool vessel, with respect to the NE multispecies fishery, means any vessel issued a limited access NE multispecies permit or open access NE multispecies Handgear B permit that is not a member of an approved sector for a particular fishing year and that is not operating under the provisions of an approved sector operations plan. Such vessels must use a NE multispecies DAS, or be fishing under the provisions of a limited access NE multispecies Small Vessel or Handgear A permit, or an open access Handgear B permit, to land regulated species or ocean pout, and must comply with effort controls, trip limits, gear restricted areas, and other provisions specified in this part. Vessels fishing under the provisions of the common pool are also referred to as non-sector vessels.

Conger eel means *Conger oceanicus*.

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies, monkfish, and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; Atlantic surfclam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

Councils with respect to the monkfish fishery and spiny dogfish fishery means the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC).

Cunner means *Tautogolabrus adspersus*.

DAS flip, with respect to the NE multispecies fishery, means ending fishing under a Regular B DAS and beginning fishing under a Category A DAS.

DAS Lease, with respect to the NE multispecies limited access fishery, means the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed a single fishing year.

DAS Lessee, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

DAS Lessor, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use of DAS to another NE multispecies limited access vessel.

Day(s)-at-Sea (DAS), with respect to the NE multispecies and monkfish fisheries (except as described in § 648.82(k)(1)(iv)), and the Atlantic sea scallop fishery, means the 24-hr period of time or any part thereof during which a fishing vessel is absent from port to fish for, possess, or land, or fishes for, possesses or lands, regulated species, monkfish, or scallops.

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from

the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part, unless otherwise exempted in this part.

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

De-hooker, with respect to the NE multispecies hook gear fishery, means the fairlead rollers when used in a manner that extracts fish hooks from caught fish, also known as ''crucifiers.''

Dockside/roving monitor, with respect to the NE multispecies fishery, means any person responsible for observing/verifying the offloads of all species by common pool or sector vessels either directly to a federally permitted dealer or to a truck for later delivery to a federally permitted dealer, and for certifying the accuracy of landed weights, as reported by federally permitted dealers, pursuant to this part.

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

Dredge bottom, with respect to scallops, means the rings and links found between the bail of the dredge and the club stick, which, when fishing, would be in contact with the sea bed. This includes the triangular shaped portions of the ring bag commonly known as ''diamonds.''

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

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

Electronic monitoring, with respect to the NE multispecies fishery, means any equipment that is used to monitor area fished and the amount and identity of species kept and discarded in lieu of at-sea monitors as part of an approved Sector at-sea monitoring program.

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

Fishing circle, with respect to the NE multispecies limited access fishery, means the calculated circumference of a bottom trawl based on the number of meshes and stretched mesh length at the narrow, aft end of the square of the net.

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

Fishing year means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year.

(2) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.

(3) For the tilefish fishery, from November 1 through October 31 of the following year.

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

Fixed gear, for the purposes of the Atlantic herring fishery, means weirs or stop seines.

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

FMP means fishery management plan.

Fourspot flounder means *Paralichthys oblongus*.

Full-processing (fully process or fully processed), with respect to the Atlantic deep-sea red crab fishery, means any activity that removes meat from any part of a red crab.

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

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

Hagfish means *Myxine glutinosa*.

Hail Weight means a good-faith estimate in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded for each trip.

Handgear, with respect to the NE multispecies fishery, means handline gear, rod and reel gear, and tub-trawl gear.

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

Harbor porpoise means *Phocoena phocoena*.

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

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

Hickory shad means *Alosa mediocris*.

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

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

Incidental Total Allowable Catch (TAC), with respect to the NE multispecies fishery, means the total amount of catch (both kept and discarded) of a regulated groundfish stock of concern that can be taken by vessels fishing under Category B DAS.

Individual Transferable Quota (ITQ) Program means, for the Atlantic surfclam and ocean quahog fishery, the annual individual allocation of quota specified at § 648.74.

Inshore exempted species means the following species:

Bay scallop—*Aequipecten irradians*.
Blood arc clam—*Anadara ovalis*.
Blood worm—*Glycera dibranchiata*.
Blue crab—*Callinectes similis* and *Callinectes sapidus*.
Blue mussel—*Mytilus edulis*.
Green crab—*Carcinus maenas*.
Hermit crab—*Clibanarius vittatus*, *Pagurus pollicaris* and *Pagurus longicarpus*.
Japanese shore crab—*Hemigrapsus sanguineus*.
Oyster—*Crassostrea virginica* and *Ostrea edulis*.
Quahog—*Mercenaria mercenaria*.
Razor clam—*Ensis directus*.
Sand worm—*Neresis virens*.
Soft clam—*Mya arenaria*.
Spider crab*Libinia emarginata*.

Interest in an IFQ allocation means: An allocation permanently or temporarily held by an individual; or by a company in which the individual is an owner, part owner, officer, shareholder, or partner; or by an immediate family member (an individual's parents, spouse, children, and siblings).

IVR System means the Interactive Voice Response reporting system established by the Regional Administrator for the purpose of monitoring harvest levels for certain species.

Jigging, with respect to the NE multispecies fishery, means fishing for regulated species with handgear, handline, or rod and reel using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved (''jigged'') with an up and down motion.

John Dory means *Zenopsis conchifera*.

JVPt, with respect to the Atlantic herring fishery, means the specification of the total amount of herring available for joint venture processing by foreign vessels in the EEZ and state waters.

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

Lessee means:

(1) A vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k); or

(2) A person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a), who receives temporarily transferred tilefish IFQ Allocation, as specified at § 648.294(e)(1).

Lessor means:

(1) A vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS Leasing Program specified at § 648.82(k); or

(2) An IFQ Allocation permit holder who temporarily transfers tilefish IFQ Allocation, as specified at § 648.294(e)(1).

Limited access general category (LAGC) scallop vessel means a vessel that has been issued an individual fishing quota (IFQ), Northern Gulf of Maine (NGOM), or incidental catch LAGC scallop permit pursuant to § 648.4(a)(2)(ii). An LAGC scallop vessel may also be issued a limited access scallop permit.

Limited access herring vessel means a vessel that has been issued a valid permit for any type of limited access herring vessel permit described in § 648.4.

Limited access scallop vessel means a vessel that has been issued a limited access full-time, part-time, or occasional scallop permit pursuant to § 648.4(a)(2)(i). A limited access scallop vessel may also be issued an LAGC scallop permit.

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

Link, with respect to the sea scallop fishery, means the material, usually made of a ⅜-inch (10-mm) or 7/16-inch (11-mm) diameter metal rod, that joins two adjacent rings within the ring bag of a dredge.

Little tunny means *Euthynnus alleteratus*.

Longfin squid means *Doryteuthis (Amerigo) pealeii* (formerly *Loligo pealeii*).

Longhorn sculpin means *Myoxocephalus octodecimspinosus*.

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

Mahogany Quahog see *Ocean Quahog*

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

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

Menhaden means Atlantic menhaden, *Brevoortia tyrannus*.

Midwater trawl gear means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The gear may not include discs, bobbins, or rollers on its footrope, or chafing gear as part of the net.

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

Monkfish, also known as *anglerfish* or *goosefish*, means *Lophius americanus*.

Monkfish gillnets means gillnet gear with mesh size no smaller than 10–inches (25.4 cm) diamond mesh that is designed and used to fish for and catch monkfish while fishing under a monkfish DAS.

Monkfish Monitoring Committee means a team of scientific and technical staff appointed by the NEFMC and MAFMC to review, analyze, and recommend adjustments to the management measures. The team consists of staff from the NEFMC and the MAFMC, NMFS Northeast Regional Office, NEFSC, the USCG, two fishing industry representatives selected by their respective Council chairman (one from each management area with at least one of the two representing either the Atlantic sea scallop or northeast multispecies fishery), and staff from affected coastal states, appointed by the Atlantic States Marine Fisheries Commission. The Chair is elected by the Committee from within its ranks, subject to the approval of the Chairs of the NEFMC and MAFMC.

MCSP means a Mobile Communications Service Provider, which is an operator of a mobile communications service used to provide wireless connectivity between mobile platforms and fixed platforms, and enables location transmission and two-way message exchange between the vessel and NMFS, when using a compatible MTU.

MTU means a Mobile Transmitting Unit, which is a transceiver or communications device, including antennae, dedicated message terminal and display, and an input device such as a keyboard installed on a fishing vessel participating in the VMS program.

Mullet means any species in the family Mugilidae.

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

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

NAFO means Northwest Atlantic Fisheries Organization.

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

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

NEFSC means the Northeast Fisheries Science Center, NMFS.

NE Skate Complex (skates) means *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea*(little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

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

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

Non-exempt species means species of fish not included under the GOM, GB and SNE Regulated Mesh Area exempted fisheries, as specified in § 648.80(a)(5); (a)(6); (a)(9) through (14); (b)(3)(i) and (ii); (b)(5) through (8); and (d), (e), (h), and (i).

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

American plaice—*Hippoglossoides platessoides*.
Atlantic cod—*Gadus morhua*.
Atlantic halibut—*Hippoglossus hippoglossus*.
Atlantic wolffish—*Anarhichas lupus*.
Haddock—*Melanogrammus aeglefinus*.
Ocean pout—*Macrozoarces americanus*.
Offshore hake—*Merluccius albidus*.
Pollock—*Pollachius virens*.
Redfish—*Sebastes fasciatus*.
Red hake—*Urophycis chuss*.
Silver hake (whiting)—*Merluccius bilinearis*.
White hake—*Urophycis tenuis*.
Windowpane flounder—*Scophthalmus aquosus*.
Winter flounder—*Pleuronectes americanus*.
Witch flounder—*Glyptocephalus cynoglossus*.
Yellowtail flounder—*Pleuronectes ferruginea*.

Northern shrimp means *Pandalus borealis*.

Observer/sea sampler means any person certified/approved by NMFS to collect operational fishing data, biological data, or economic data through direct observation and interaction with operators of commercial fishing vessels as part of NMFS' Northeast Fisheries Observer Program and Northeast At-sea Monitoring Program. Observer/sea samplers are also referred to as fisheries observers, fisheries observers/sea samplers, and NMFS-certified fisheries observers/sea samplers.

Ocean quahog means the species *Arctica islandica*.

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

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

Open areas, with respect to the Atlantic sea scallop fishery, means any area that is not subject to restrictions of the Sea Scallop Access Areas specified in §§ 648.59 and 648.60, Rotational Closed Areas specified in § 648.58, or EFH Closed Areas specified in § 648.61.

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

Out of the monkfish fishery means the period of time during which a vessel is not fishing for monkfish under the monkfish DAS program.

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

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

Parlor trap/pot means any structure or other device, other than a net, with more than one compartment inside designed to impede escape of lobsters or crabs from the device or structure, which is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching lobsters and/or red crabs.

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

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

Permit year means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year;

(2) For all other fisheries in this part, from May 1 through April 30 of the following year.

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

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

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

Potential Sector contribution (PSC), with respect to the NE multispecies fishery, means an individual vessel's share of the ACL for each stock of regulated species or ocean pout that is derived from the fishing history associated with the permit issued to that particular vessel for the purposes of participating in a sector and contributing to that sector's ACE for each stock allocated to sectors under the NE Multispecies FMP.

Prior to leaving port, with respect to the call-in notification system for NE multispecies, and the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category C, D, F, G, or H permit provisions that are also fishing under a NE multispecies DAS, means no more than 1 hour prior to the time a vessel leaves the last dock or mooring in port from which that vessel departs to engage in fishing, including the transport of fish to another port. With respect to the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category A or B permit provisions, it means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

Private recreational fishing vessel, with respect to the NE multispecies fishery, means a vessel engaged in recreational fishing that has not been issued a Federal NE multispecies permit, does not sell fish, and does not take passengers for hire.

Processing, or to process, with respect to the Atlantic herring fishery, means the preparation of Atlantic herring to render it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage, including but not limited to cooking, canning, roe extraction, smoking, salting, drying, freezing, or rendering into meat or oil.

Processor, with respect to the Atlantic surfclam and ocean quahog fisheries, means a person who receives surfclams or ocean quahogs for a commercial purpose and removes them from a cage.

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

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

Records, with respect to records required to be kept by § 648.7, means those that include, but are not limited to, any written, recorded, graphic, electronic, or digital material; as well as other information stored in or accessible through a computer or other information retrieval system; worksheets; weighout slips; preliminary, interim, and final tally sheets; tags; notes; logbooks; statements; receipts; checks; ledgers; notebooks; diaries; spreadsheets; diagrams; graphs; charts; tapes; disks; or computer printouts.

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

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

Red Crab Management Unit means an area of the Atlantic Ocean from 35° 15.3′ N. Lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the exclusive economic zone and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all Atlantic deep-sea red crab fished for, possessed, caught, or retained in or from such area.

Red crab trap/pot means any structure or other device, other than a net or parlor trap/pot, that is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching red crabs.

Red crab trip, with respect to the Atlantic deep-sea red crab fishery, means a trip on which a vessel fishes for, possesses, or lands, or intends to fish for, possess, or land red crab in excess of the incidental limit, as specified at § 648.263(b)(1).

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

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

Regulated species, means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, white hake, Atlantic halibut, and Atlantic wolffish. Regulated species is also referred to as regulated NE multispecies.

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

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

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

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

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

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

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

Rotational Closed Area, with respect to the Atlantic sea scallop fishery, means an area that is closed only to scallop fishing for a period defined in § 648.58.

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

Runaround gillnet or encircling gillnet means a rectangular net placed upright in the water column in a circular fashion with an opening equal to or less than ¼ the length of the net or with an opening greater than ¼ the length of the net, if the opening is obstructed in any fashion.

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

Scup means *Stenotomus chrysops*.

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

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

Sea Scallop Access Area, with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea Scallop Fishery Management Plan as an area with area-specific management measures that are designed to control fishing effort and mortality on only the portion of the scallop resource within the specified Sea Scallop Access Area. Such measures are not applicable in Open Areas defined above.

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

Sea raven means *Hemitripterus americanus*.

Searobin means any species of the family Triglidae.

Sector, with respect to the NE multispecies fishery, means a group of persons holding limited access NE multispecies permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and that have been allocated a portion of the TACs of species managed under the NE Multispecies FMP to achieve objectives consistent with the applicable goals and objectives of the FMP. Each sector must meet the sector eligibility and minimum size requirements specified in § 648.87(a)(3) and (4) to be approved by NMFS.

Sector trip, with respect to the NE multispecies fishery, means any trip taken by a sector vessel subject to the restrictions and conditions of an approved sector operations plan, as specified in § 648.87(c), in which the vessel declared its intent to fish in the NE multispecies fishery pursuant to § 648.10.

Sector vessel, with respect to the NE multispecies fishery, means any vessel assigned a permit that is a member of an approved sector for a particular fishing year and that is subject to the restrictions and conditions of an approved sector operations plan, as specified in § 648.87.

Set-only trip means a fishing trip on which any federally permitted vessel deploys gear with the intention of retrieving it on a separate trip and does not haul-back or retrieve any gear capable of catching fish on the set-only trip.

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

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

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

Skate means members of the Family Rajidae, including: *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate);

Raja eglanteria (clearnose skate); and *Leucoraja garmani* (rosette skate).

Skate Management Unit means an area of the Atlantic Ocean from 35°15.3′ N. lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the EEZ and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all skates fished for, possessed, caught, or retained in or from such area.

Small-mesh multispecies means the subset of Northeast multispecies that includes silver hake, offshore hake, and red hake.

Smooth dogfish means *Mustelis canis*.

Sorting machine, with respect to the Atlantic sea scallop fishery, means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

Spiny dogfish means *Squalus acanthias*.

Spiny Dogfish Monitoring Committee means a committee made up of staff representatives of the MAFMC, NEFMC, the NMFS Northeast Regional Office, the Northeast Fisheries Science Center, and the states, as well as two ex-officio industry members (one from each Council jurisdiction). The MAFMC Executive Director or a designee chairs the committee.

Spot means *Leiostomus xanthurus*.

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

Squid means longfin squid (*Doryteuthis (Amerigo) pealeii*, formerly *Loligo pealeii*) or *Illex illecebrosus*.

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

State-operated permit bank means a depository established and operated by a state through an agreement between NMFS and a state in which Federal grant funds have been used by the state to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated to qualified persons and that meets the requirement of § 648.87(e).

Static gear, with respect to the NE multispecies fishery, means stationary gear, usually left for a period of time in one place, that depends on fish moving to the gear, and includes gillnets, longlines, handgear, traps, and pots.

Stock of concern, with respect to the NE multispecies fishery, means a stock that is in an overfished condition, or that is subject to overfishing.

Stocks targeted by the default measures, with respect to the NE multispecies fishery, are: American plaice, and SNE/MA yellowtail flounder for the 2006 fishing year; and American plaice, GB cod, GOM cod, CC/GOM yellowtail flounder, SNE/MA yellowtail flounder, white hake and SNE/MA winter flounder for the 2009 fishing year.

Stretched mesh, with respect to the NE multispecies Ruhle Trawl, means mesh that is pulled so that slack in the mesh is eliminated and the mesh opening is closed.

Sub-lease, with respect to the NE multispecies fishery, means the leasing of DAS that have already been leased to another vessel.

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

Summer flounder means *Paralichthys dentatus*.

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

Surfclams means Atlantic surfclams of the species *Spisula solidissima*.

Sweep, with respect to the NE multispecies limited access fishery, means the part of a bottom trawl that, during normal use, is in contact with the sea floor along the outer edges of the lower webbing of the net.

Swordfish means *Xiphias gladius*.

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

Tautog (blackfish) means *Tautoga onitas*.

Tied up to the dock or *tying up at a dock* means tied up at a dock, on a mooring, or elsewhere in a harbor.

Tilefish means *Lopholatilus chamaeleonticeps*.

Tilefish FMP Monitoring Committee means a committee made up of staff representatives of the MAFMC, the NMFS Northeast Regional Office, the Northeast Fisheries Science Center, up to three state representatives (the New England states having one representative and the Mid-Atlantic states having a maximum of two representatives) and one non-voting industry member. The MAFMC Executive Director or his designee chairs the committee.

*Tilefish Management Unit*means an area of the Atlantic Ocean from the latitude of the VA and NC border (36°33.36′ N. Lat.), extending eastward from the shore to the outer boundary of the exclusive economic zone and northward to the United States-Canada border in which the United States exercises exclusive jurisdiction over all golden tilefish (*Lopholatilus chamaeleonticeps*) fished for, possessed, caught or retained in or from such area.

Total Length (TL) means the straight-line distance from the tip of the snout to the end of the tail (caudal fin) while the fish is lying on its side. For black sea bass, *Total Length (TL)* means the straight-line distance from the tip of the snout to the end of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side.

Transboundary Management Guidance Committee (TMGC), with respect to the NE multispecies fishery, means the technical sub-committee that provides non-binding guidance to the U.S./Canada Steering Committee, comprised of government and industry representatives from U.S. and Canada.

Transboundary Resource Advisory Committee (TRAC), with respect to the NE multispecies fishery, means a committee consisting of scientific staff from NMFS and Canada's Department of Fisheries and Oceans that jointly assess the status of the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder.

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

Transferee means a vessel owner who receives permanently transferred NE multispecies DAS and potentially other permits from another vessel through the DAS Transfer Program specified at § 648.82(l).

Transferor means a vessel owner who permanently transfers NE multispecies DAS and potentially other permits to another vessel through the DAS Transfer Program specified at § 648.82(l).

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

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

Trip Identifier means the complete serial number of the vessel logbook page completed for that trip.

Tub-trawl, with respect to the NE multispecies fishery, means gear designed to be set horizontally on the bottom, with an anchored mainline to which are attached three or more gangions and hooks. Tub-trawls are retrieved only by hand, not by mechanical means.

Tuna purse seine gear, with respect to the NE multispecies fishery, means encircling gear designed and utilized to harvest pelagic tuna.

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

Upon returning to port, means, for purposes of the call-in notification system for the NE multispecies and monkfish fisheries, upon first tying up at a dock at the end of a fishing trip.

U.S. at-sea processing (USAP), with respect to the Atlantic herring fishery, means the specification, pursuant to § 648.200, of the amount of herring available for processing by U.S. vessels issued an Atlantic herring processing permit as described in § 648.4(a)(10)(ii).

U.S./Canada Steering Committee, with respect to the NE multispecies fishery, means the joint U.S./Canada committee consisting of staff from NMFS and Canada's Department of Fisheries and Oceans that has overall responsibility for the U.S./Canada Resource Sharing Understanding.

Used DAS baseline, with respect to the NE multispecies fishery, means the number of DAS that represent the historic level of DAS use associated with a particular limited access permit, as described in § 648.82(1).

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

Vessel Monitoring System (VMS) means a vessel monitoring system or VMS unit as set forth in § 648.9 and approved by NMFS for use on Atlantic sea scallop, NE multispecies, monkfish, Atlantic herring, and Atlantic surfclam and ocean quahog vessels, as required by this part.

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

Weakfish means *Cynoscion regalis*.

Whiting means *Merluccius bilinearis*.

Whiting Monitoring Committee (WMC) means a team appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures addressing small-mesh multispecies. The team consists of staff from the NEFMC and MAFMC, NMFS Northeast Regional Office, the NEFSC, the USCG, at least one industry representative from each geographical area (northern New England, southern New England, and the Mid-Atlantic), and no more than two representatives, appointed by the Commission, from affected states.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 648.3 Relation to other laws.

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

(b) Nothing in these regulations supersedes more restrictive state management measures for any of the species referenced in § 648.1 and, for Atlantic salmon, more restrictive local management measures.

§ 648.4 Vessel permits.

(a) *Fishery specific permit information*—(1) *NE multispecies vessels*. Except for vessels that have been issued a valid High Seas Fishing Compliance permit, have declared their intent to fish, and fish exclusively in the NAFO Regulatory Area as provided in § 648.17, any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid multispecies permit to fish for, possess, or land multispecies finfish in or from the EEZ. Multispecies frames used as, or to be used as, bait on a vessel fishing exclusively with pot gear are deemed not to be multispecies finfish for purposes of this part provided that there is a receipt for the purchase of those frames on board the vessel.

(i) *Limited access multispecies permits*—(A) *Eligibility*. To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(A). For the fishing year beginning May 1, 2004, a vessel may apply for a limited access Handgear A permit described in § 648.82(b)(6), if it meets the criteria described under paragraphs (a)(1)(i)(A)(*1*) and (*2*) of this section.

(*1*) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(*2*) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years

from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to January 29, 2004.

(*3*) *Application/renewal restrictions*. The vessel owner must submit a complete application for an initial limited access handgear permit before May 1, 2005. For fishing years beyond the 2004 fishing year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

(B) *Application/renewal restrictions*. All limited access or moratorium permits established under this section must be issued on an annual basis by the last day of the permit year for which the permit is required, unless a confirmation of permit history (CPH) has been issued as specified in paragraph (a)(1)(i)(J) of this section. If a vessel is issued more than one limited access or moratorium permit under this section, these permits will be regarded as a permit suite. Permit renewal or relinquishment must be made at the time the first permit application is submitted for a new permit year. Application for limited access or moratorium permits must be received no later than 30 days before the last day of the permit year of the earliest expiration date for any permit in the suite of such permits issued to the vessel. Failure to renew a limited access or moratorium permit in any permit year bars the renewal of the permit in subsequent years. Open access permits may not be issued to a vessel eligible to renew a limited access or moratorium permit until such time that the vessel's limited access or moratorium permit(s) are renewed or voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section, or otherwise transferred from the vessel.

(C) *Qualification restriction*. Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a limited access permit or CPH based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit or CPH, based on one vessel's fishing and permit history, the Regional Administrator will determine who is entitled to qualify for the permit or CPH and any DAS allocation according to paragraph (a)(1)(i)(D) of this section.

(D) *Change in ownership*. The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(E) *Replacement vessels*. An owner of a vessel that has been issued any limited access or moratorium permit under this section is limited to one vessel replacement permit year, using the earliest permit year start date of the limited access or moratorium permits for which the vessel is eligible, unless the vessel has been rendered inoperable and non-repairable. With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), to be eligible for a limited access or moratorium permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

(*1*) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel's baseline specifications, as applicable.

(*2*) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel's baseline specifications, as applicable.

(F) *Upgraded vessel*. A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, only if the upgrade complies with the following:

(*1*) The vessels's horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(*2*) The vessel's length, GRT, and NT may be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size may not exceed 10

percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(G) *Consolidation restriction.* Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(k), and the NE Multispecies DAS Transfer Program as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, GRT, NT, horsepower) of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(I) *Limited access permit restrictions.* (*1*) A vessel may be issued a limited access NE multispecies permit in only one category during a fishing year. Vessels may not change limited access NE multispecies permit categories during the fishing year, except as provided in paragraph (a)(1)(i)(I)(*2*) of this section. A vessel issued a limited access NE multispecies Hook-gear permit or a limited access Handgear A permit may not change its limited access permit category at any time.

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(*1*) of this section. The owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon the vessel's permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel permit category will remain unchanged for the duration of the fishing year. A vessel may not fish in more than one multispecies permit category during a fishing year.

(J) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(1)(i)(E) of this section.

(K) *Abandonment or voluntary relinquishment of a limited access or moratorium permit*. If a vessel's limited access or moratorium permit for a particular fishery is voluntarily relinquished to the Regional Administrator or abandoned through failure to renew or otherwise, no limited access or moratorium permit for that fishery may be reissued or renewed based on that vessel's limited access or moratorium permit history or to any other vessel relying on that vessel's limited access or moratorium permit history.

(L) *Restriction on permit splitting*. A limited access permit issued pursuant to this section may not be issued to a vessel or its replacement or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(M) *Appeal of denial of permit—(1) Eligibility*. Any applicant eligible to apply for a limited access multispecies Handgear A permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on the grounds that the information used by the Regional Administrator was based on incorrect data, must be in writing, and must state the grounds for the appeal.

(*2*) *Appeal review*. The Regional Administrator will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal*. A vessel denied a limited access Handgear A multispecies permit may fish under the limited access multispecies Handgear A category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(ii) *Open access permits*. A vessel of the United States that has not been issued and is not eligible to be issued a limited access multispecies permit is eligible for and may be issued an ''open access multispecies'', ''handgear'', or ''charter/party'' permit, and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access mulitspecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

(2) *Atlantic sea scallop vessels*—Any vessel of the United States that fishes for, possesses, or lands Atlantic sea scallops, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid scallop vessel permit pursuant to this section.

(i) *Limited access scallop permits*. Any vessel of the United States that possesses or lands more than 600 lb (272.2 kg) of shucked scallops, or 50 bu (17.6

hL) of in-shell scallops per trip South of 42°20′ N. Lat., or 75 bu (26.4 hL) of in-shell scallops per trip North of 42°20′ N. Lat, or possesses more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

(A) *Eligibility*. To be eligible to apply for a limited access scallop permit, a vessel must have been issued a limited access scallop permit for the preceding year, be replacing a vessel that was issued a limited access scallop permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(1)(i)(H) of this section.

(I) *Limited access permit restrictions*. A vessel may be issued a limited access scallop permit in only one category during a fishing year. The owner of a vessel issued a limited access scallop permit must elect a permit category upon the vessels permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After this date, the vessel must remain in that permit category for the duration of the fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category.

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(M) *Percentage ownership restrictions*. (*1*) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel, and/or a confirmation of permit history, if, as a result of the issuance of the permit and/or confirmation of permit history, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in a total number of limited access scallop vessels and limited access scallop confirmations of permit history in excess of 5 percent of the number of all limited access scallop vessels and confirmations of permit history at the time of permit application.

(*2*) Vessel owners who were initially issued a 1994 limited access scallop permit or confirmation of permit history, or who were issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 1995 and thereafter, in compliance with the ownership restrictions in paragraph (a)(2)(i)(*M*)(1) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

(*3*) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(N) [Reserved]

(O) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(P) *VMS requirement*. A vessel issued a limited access scallop permit, as specified in paragraph (a)(2)(i) of this section, except a vessel issued an occasional scallop permit that is not fishing in a sea scallop access area, must have an operational VMS installed. Prior to issuance of a limited access scallop permit, NMFS must receive a signed VMS certification from the vessel owner and be notified by the VMS vendor that the unit has been installed and is operational.

(ii) *LAGC scallop permits*. Any vessel of the United States that has not been issued a limited access scallop permit pursuant to paragraph (a)(2)(i) of this section, and any vessel issued a limited access scallop permit that fishes for scallops outside of the scallop DAS program described in § 648.53(b) or the Area Access program described in § 648.60, that possesses, retains, or lands scallops in or from Federal waters, must be issued an LAGC scallop permit and must comply with the permit requirements described in paragraphs (a)(2)(ii)(A), (B), or (C) of this section. To be issued an LAGC scallop permit, a vessel owner must meet the qualification criteria specified in paragraphs (a)(2)(ii)(D) or (F) of this section and must comply with the application procedures specified in paragraph (a)(2)(ii)(H) of this section.

(A) *Individual fishing quota LAGC permit*. To possess or land up to 600 lb (272.2 kg) of shucked meats, or land up to 75 bu (26.4 hL) of in-shell scallops per trip, or possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS demarcation line, a vessel must have been issued an individual fishing quota LAGC scallop permit (IFQ scallop permit). Issuance of an initial IFQ scallop permit is contingent upon the vessel owner submitting the required application and other information that demonstrates that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(D) of this section.

(B) *Northern Gulf of Maine LAGC permit*. To possess or land up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) in-shell scallops per trip, or to possess up to 50 bu (17.6 hL) seaward of the VMS demarcation line in the NGOM Scallop Management Area, a vessel must have been issued a Northern Gulf of Maine LAGC scallop permit (NGOM scallop permit). A vessel issued a NGOM scallop permit may not fish for scallops outside of the NGOM Scallop Management Area as defined in § 648.62, and may not possess or land more than 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops at any time, except the vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line. Issuance of an initial NGOM scallop permit is contingent upon the vessel owner submitting the required application and other information that demonstrates that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(F) of this section.

(C) *Incidental catch LAGC permit*. To possess or land up to 40 lb (18.1 kg) of shucked or 5 bu (1.76 hL) in-shell scallops per trip, or possess up to 10 bu (3.52 hL) in-shell scallops per trip seaward of the VMS demarcation line, but not more than these amounts per trip, a vessel must have been issued an incidental catch general category scallop permit (Incidental scallop permit). A vessel issued an incidental catch general scallop permit may not possess or land more than 40 lb (18.1 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops at any time, except the vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS demarcation line. Issuance of an initial incidental catch category scallop permit is contingent upon the vessel owner submitting the required application and other information that demonstrates that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(G) of this section.

(D) *Eligibility for an IFQ scallop permit*. A vessel is eligible for and may be issued an IFQ scallop permit if it meets both eligibility criteria specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section, or is replacing a vessel that meets both the eligibility criteria specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section. A vessel owner may appeal NMFS's determination that a vessel does not meet the requirements specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section by complying with the appeal process, as specified in paragraph (a)(2)(ii)(O) of this section.

(*1*) *Permit criterion*. A vessel must have been issued a general category scallop permit in at least one scallop fishing year, as defined in § 648.2, between March 1, 2000, and November 1, 2004.

(*2*) *Landings criterion*. A vessel must have landed at least 1,000 lb (454 kg) of shucked scallops in any one year when the vessel also held a general category scallop permit as specified in paragraph (a)(2)(ii)(D)(*1*) of this section. To qualify, scallop landings in the 2004 fishing year must have occurred on or

before November 1, 2004. NMFS dealer data shall be used to make the initial determination of vessel eligibility. If a dealer reported more than 400 lb (181.4 kg) of scallops on a trip, only 400 lb (181.4 kg) will be credited toward the landings criteria. For dealer reports that indicate that the landings were bushels of in-shell scallops, a conversion of 8 lb (3.63 kg) of scallop meats per bushel will be used to calculate meat-weight, up to the maximum of 400 lb (181.4 kg) per trip. For dealer reports that indicate that the landings were reported in pounds of in-shell scallops, the weight shall be converted to meat-weight using the formula of one pound (0.45 kg) of scallop meats for 8.33 lb (3.78 kg) of in-shell scallops, up to the maximum of 400 lb (181.4 kg) per trip, for qualification purposes.

(E) *Contribution factor for determining a vessel's IFQ.* An eligible IFQ scallop vessel's best year of scallop landings during the qualification period of March 1, 2000, through November 1, 2004, as specified in § 648.53(h)(2)(ii)(A), and the vessel's number of years active, as specified in § 648.53(h)(2)(ii)(B), shall be used to calculate a vessel's contribution factor, as specified in § 648.53(h)(2)(ii)(C). A vessel owner that has applied for an IFQ scallop permit will be notified of the vessel's contribution factor at the time of issuance of the IFQ scallop permit, consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a. A vessel owner may appeal NMFS's determination of the IFQ scallop vessel's contribution factor by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section.

(F) *Eligibility for NGOM or Incidental scallop permit.* A vessel that is not eligible for, or for which the vessel's owner chooses not to apply for, an IFQ scallop permit, may be issued either a NGOM scallop permit or an Incidental scallop permit if the vessel was issued a general category scallop permit as of November 1, 2004, or if the vessel is replacing a vessel that was issued a general category scallop permit as of November 1, 2004. A vessel owner may appeal NMFS's determination that a vessel does not meet this criterion by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section. A vessel that qualifies for an IFQ scallop permit automatically qualifies for an NGOM or Incidental scallop permit if the vessel's owner chooses to be issued an NGOM or Incidental scallop permit instead of the IFQ scallop permit.

(G) *LAGC permit restrictions—(1) Change of permit category—(i) IFQ scallop permit.* A vessel issued an IFQ scallop permit may not change its general category scallop permit category at any time without voluntarily relinquishing its IFQ scallop permit eligibility as specified in paragraph (a)(2)(ii)(M) of this section. If the vessel owner has elected to relinquish the vessel's IFQ permit and instead be issued an NGOM or Incidental scallop permit, the IFQ permit shall be permanently relinquished.

(ii) NGOM and Incidental scallop permit. A vessel may be issued either an NGOM or Incidental scallop permit for each fishing year, and a vessel owner may not change his/her LAGC scallop permit category during the fishing year, except as specified in this paragraph, (a)(2)(ii)(G)*(1)(ii)*. The owners of a vessel issued an NOGM or Incidental scallop permit must elect a permit category in the vessel's permit application and shall have one opportunity each fishing year to request a change in its permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

(2) VMS requirement. A vessel issued a LAGC permit must have an operational VMS installed. Issuance of an Atlantic sea scallop permit requires the vessel owner to submit a copy of the vendor's installation receipt or provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9.

(H) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section. Applications for a LAGC permit described in paragraph (a)(2)(ii) of this section must be postmarked no later than August 30, 2008. Applications for LAGC permits that are not postmarked

on or before August 30, 2008, may be denied and returned to the sender with a letter explaining the denial. Such denials may not be appealed and shall be the final decision of the Department of Commerce. If NMFS determines that the vessel owner has failed to pay a cost recovery fee in accordance with the cost recovery requirements specified at § 648.53(h)(4)(ii), the IFQ permit shall not be renewed.

(I) *Qualification restriction*. (*1*) See paragraph (a)(1)(i)(C) of this section for restrictions applicable to limited access scallop permits.

(*2*) Notwithstanding paragraph (a)(1)(i)(L) of this section, scallop landings history generated by separate owners of a single vessel at different times during the qualification period for LAGC scallop permits may be used to qualify more than one vessel, provided that each owner applying for an LAGC scallop permit demonstrates that he/she created distinct fishing histories, that such histories have been retained, and if the vessel was sold, that each applicant's eligibility and fishing history is distinct.

(*3*) Notwithstanding paragraph (a)(1)(i)(L) of this section, a vessel owner applying for a LAGC permit who sold or transferred a vessel with non-scallop limited access permits, as specified in paragraph (a)(1)(i)(D) of this section, and retained only the general category scallop history of such vessel as specified in paragraph (a)(1)(i)(D) of this section, before July 1, 2008, may use the general category scallop history to qualify a different vessel for the initial IFQ scallop permit, regardless of whether the history from the sold or transferred vessel was used to qualify another vessel for another limited access permit.

(J) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(K) *Replacement vessels*. A vessel owner may apply to replace a qualified LAGC vessel with another vessel that he/she owns. There are no size or horsepower restrictions on replacing general LAGC vessels, unless the qualified vessel that will be replaced is subject to such restriction because of other limited access permits issued pursuant to § 648.4. In order for a LAGC that also has other limited access permits issued pursuant to § 648.4 to be replaced by a vessel that does not meet the replacement and upgrade restrictions specified for those other limited access permits, the other limited access permits must be permanently relinquished, as specified in paragraph (a)(1)(i)(K) of this section.

(L) *Confirmation of Permit History*. See paragraph (a)(1)(i)(J) of this section.

(M) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(N) *Restriction on permit splitting*. Except as provided in paragraphs (a)(2)(ii)(I)(*2*) and (*3*) of this section, paragraph (a)(1)(i)(L) of this section applies.

(O) *Appeal of denial of permit*—(*1*) *Eligibility*. Any applicant eligible to apply for an LAGC scallop permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was incorrect. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal.

(*2*) *Contribution factor appeals*. Any applicant eligible to apply for a IFQ scallop permit who disputes NMFS's determination of the vessel's contribution factor specified in paragraph (a)(2)(ii)(E) of this section may appeal NMFS's determination to the Regional Administrator within 30 days of the notification of the vessel's best year and years active. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was incorrect. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal. A vessel owner may appeal both the eligibility criteria and the contribution factor and must submit the appeal for both at the same time. An appeal of contribution factor determinations shall be reviewed concurrently with an eligibility appeal, if applicable.

(*3*) *Appeal review*. The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may request

a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*4*) *Status of vessels pending appeal.* A vessel denied an LAGC scallop permit may fish while under appeal, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator temporarily authorizing the vessel to fish under the limited access general category permit. The Regional Administrator shall issue such a letter that shall be effective only during the pendency of any appeal. The temporary letter of authorization must be carried on board the vessel and all requirements of the permit category for which the appeal has been made shall apply. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the temporary authorizing letter becomes invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the letter of denial, regardless of the date of the owner's receipt of the denial.

(3) *Summer flounder vessels.* Any vessel of the United States that fishes for or retains summer flounder in the EEZ must have been issued and carry on board a valid summer flounder permit, except for vessels other than party or charter vessels that observe the possession limit set forth in § 648.106.

(i) *Moratorium permits*—(A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain summer flounder in excess of the possession limit in § 648.106 in the EEZ, a vessel must have been issued a summer flounder moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, GRT, NT, horsepower) of the vessel as of March 22, 1999, unless the vessel is in the process of construction or rerigging or under agreement or written contract for construction or rerigging, as of the effective baseline specification date in which case the baseline specifications will be established no later than February 19, 2000.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(ii) *Party and charter boat permits.* Any party or charter boat is eligible for a permit to fish for summer flounder, other than a summer flounder moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits specified in § 648.106.

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.108(b)(1) must request a letter of authorization (LOA) from the Regional Administrator. Vessels must be enrolled in the exemption program for a minimum of 7 days. The Regional Administrator may impose temporary additional procedural requirements by

publishing a notification in the FEDERAL REGISTER. If a summer flounder charter or party requirement of this part differs from a summer flounder charter or party management measure required by a state, any vessel owners or operators fishing under the terms of a summer flounder charter/party vessel permit in the EEZ for summer flounder must comply with the more restrictive requirement while fishing in state waters, unless otherwise authorized under § 648.107.

(4) *Surfclam and ocean quahog vessels.* Any vessel of the United States that fishes for surfclams or ocean quahogs, except vessels taking surfclams and ocean quahogs for personal use or fishing exclusively within state waters, must have been issued and carry on board a valid surfclam or ocean quahog permit, respectively.

(i) *Maine mahogany quahog permit.* (A) A vessel is eligible for a Maine mahogany quahog permit to fish for ocean quahogs in the Maine mahogany quahog zone if it meets the following eligibility criteria in paragraphs (a)(1) and (a)(2) of this section, and an application for a Maine mahogany quahog permit is submitted by May 19, 1999. After May 19, 1999, to be eligible to apply for a Maine mahogany quahog permit, a vessel must have been issued a Maine mahogany quahog permit for the preceding year, be replacing a vessel that was issued a Maine mahogany quahog permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(*1*) The vessel was issued a Federal Maine Mahogany Quahog Experimental Permit during one of the experimental fisheries authorized by the Regional Administrator between September 30, 1990, and September 30, 1997; and,

(*2*) The vessel landed at least one Maine bushel of ocean quahogs from the Maine mahogany quahog zone as documented by fishing or shellfish logs submitted to the Regional Administrator prior to January 1, 1998.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Appeal of denial of a permit.* (*1*) Any applicant denied a Maine mahogany quahog permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator's designee erred in concluding that the vessel did not meet the criteria in paragraph (a)(4)(i)(A) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator's designee was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator.

(*3*) The hearing officer shall make a recommendation to the Regional Administrator.

(*4*) The Regional Administrator will make a final decision based on the criteria in paragraph (a)(4)(i)(A) of this section and on the available record, including any relevant documentation submitted by the applicant and, if a hearing is held, the recommendation of the hearing officer. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(ii) *VMS Requirement.* (A) *Surfclam and ocean quahog open access permits.* In order to be eligible for issuance of an open access surfclam or ocean quahog permit, the vessel owner must have installed on the vessel an operational VMS unit that meets the criteria set forth in § 648.9. The vessel owner/operator must activate the VMS unit and

provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9. Verification is done by completing, signing, and mailing or faxing a VMS certification form to the NMFS Northeast Region Office of Law Enforcement.

(B) *Maine mahogany quahog limited access permit.* In order to be eligible for issuance of a Maine mahogany quahog permit, the vessel owner must have installed on the vessel an operational VMS unit that meets the criteria set forth in § 648.9. By January 1, 2009, unless otherwise exempted under paragraph (a)(4)(ii)(B)(*1*) of this section. The vessel owner/operator must activate the VMS unit and provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9. Verification is done by completing, signing, and mailing or faxing a VMS certification form to the NMFS Northeast Region Office of Law Enforcement.

(*1*) *Special VMS exemption for Maine mahogany quahog vessels.* Vessel owners eligible to renew a limited access Maine mahogany quahog permit may do so without proof of installation of a VMS, provided the vessel does not fish for, catch, or possess; or attempt to fish for, catch, or posses; Maine mahogany quahogs. Proof of VMS installation must be provided to the NMFS Northeast Region Office of Law Enforcement prior to departure on any fishing trip on which ocean quahogs may be caught or landed. Once a vessel issued a Maine mahogany quahog permit has elected to participate in the Maine mahogany quahog fishery, the vessel must keep the VMS unit turned on and functioning as specified under § 648.9. Once a limited access Maine mahogany quahog permitted vessel has participated in the Maine mahogany quahog fishery, this exemption no longer applies.

(*2*) [Reserved]

(5) *Mackerel, squid, and butterfish vessels.* Any vessel of the United States, including party and charter vessels, must have been issued and carry on board a valid vessel permit to fish for, possess, or land Atlantic mackerel, squid, or butterfish in or from the EEZ.

(i) Longfin squid/butterfish and *Illex* squid moratorium permits.

(A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain longfin squid, butterfish, or *Illex* squid in excess of the incidental catch allowance in paragraph (a)(5)(ii) of this section in the EEZ, a vessel must have been issued a longfin squid and butterfish moratorium permit or *Illex* squid moratorium permit, as applicable, for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(ii) *Squid/butterfish incidental catch permit.* Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of longfin squid or butterfish, or up to 10,000 lb (4.54 mt) of *Illex* squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.22.

(iii) *Limited access Atlantic mackerel permits.* (A) *Vessel size restriction.* A vessel of the United States is eligible for and may be issued an Atlantic mackerel permit to fish for, possess, or land Atlantic mackerel in or from the EEZ, except for any vessel that is greater than or equal to 165 ft (50.3 m) in length overall (LOA), or greater than 750 gross registered tons (680.4 mt), or the vessel's total main propulsion machinery

is greater than 3,000 horsepower. Vessels that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified in § 648.6(a)(2)(i).

(B) *Limited access mackerel permits.* A vessel of the United States that fishes for, possesses, or lands more than 20,000 lb (7.46 mt) of mackerel per trip, except vessels that fish exclusively in state waters for mackerel, must have been issued and carry on board one of the limited access mackerel permits described in paragraphs (a)(5)(iii)(B)(*1*) through (*3*) of this section, including both vessels engaged in pair trawl operations.

(*1*) *Tier 1 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land mackerel not subject to a trip limit, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*2*) *Tier 2 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land up to 135,000 lb (50 mt) of mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*3*) *Tier 3 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land up to 100,000 lb (37.3 mt) of mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(C) *Eligibility criteria for mackerel permits.* A vessel is eligible for and may be issued a Tier 1, Tier 2, or Tier 3 Limited Access Mackerel Permit if it meets the permit history criteria in paragraph (a)(5)(iii)(C)(*1*) of this section and the relevant landings requirements specified in paragraphs (a)(5)(iii)(C)(*2*) through (*4*) of this section. The permit criteria and landings requirement must either be derived from the same vessel, or joined on a vessel through replacement prior to March 21, 2007.

(*1*) *Permit history criteria for Limited Access Mackerel Permits.* (*i*) The vessel must have been issued a Federal mackerel permit that was valid as of March 21, 2007. The term ''as of'' means that the vessel must have had a valid mackerel permit on March 21, 2007.

(*ii*) The vessel is replacing a vessel that was issued a Federal mackerel permit that was valid as of March 21, 2007. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the mackerel permit and all mackerel landings history.

(*iii*) If the vessel sank, was destroyed, or was transferred before March 21, 2007, and a mackerel permit was not issued to a replacement vessel as of March 21, 2007, the permit issuance criteria may be satisfied if the vessel was issued a valid Federal mackerel permit at any time between March 21, 2006, and March 21, 2007.

(*2*) *Landings criteria for Limited Access Mackerel Permits.* (*i*) *Tier 1.* The vessel must have landed at least 400,000 lb (149.3 mt) of mackerel in any one calendar year between January 1, 1997, and December 31, 2005, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(5)(iii)(C)(*2*)(*iv*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(5)(iii)(C)(*1*)(*ii*) of this section.

(*ii*) *Tier 2.* The vessel must have landed at least 100,000 lb (37.3 mt) of mackerel in any one calendar year between March 1, 1994, and December 31, 2005, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph

(a)(5)(iii)(C)(*2*)(*iv*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(5)(iii)(C)(*1*)(*ii*) of this section.

(*iii*) *Tier 3*. The vessel must have landed at least 1,000 lb (0.4 mt) of mackerel in any one calendar year between March 1, 1994, and December 31, 2005, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(5)(iii)(C)(*2*)(*iv*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(5)(iii)(C)(*1*)(*ii*) of this section.

(*iv*) *Landings criteria for vessels using landings from pair trawl operations*. To qualify for a limited access permit using landings from pair trawl operations, the owners of the vessels engaged in that operation must agree on how to divide such landings between the two vessels and apply for the permit jointly, as supported by the required NMFS dealer reports or signed dealer receipts.

(*3*) *CPH*. A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirement in paragraphs (a)(5)(iii)(B)(*1*) and (*2*) of this section that has sunk, been destroyed, or transferred to another person without its fishing and permit history, and that has not been replaced, may apply for and receive a CPH. A CPH allows for a replacement vessel to obtain the relevant limited access mackerel permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(5)(iii)(C)(*1*)(*ii*) of this section. If the vessel sank, was destroyed, or was transferred before March 21, 2007, the permit issuance criteria may be satisfied if the vessel was issued a valid Federal mackerel permit at any time between March 21, 2006, and March 21, 2007.

(D) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section. Applications for a limited access mackerel permit described in paragraph (a)(5)(iii) of this section must be postmarked no later than February 28, 2013. Applications for limited access mackerel permits that are not postmarked before February 28, 2013, will not be processed because of this regulatory restriction, and returned to the sender with a letter explaining the reason for its return.

(E) *Qualification restrictions*. (*1*) See paragraph (a)(1)(i)(C) of this section. The following restrictions in paragraphs (a)(5)(iii)(E)(*2*) and (*3*) of this section are applicable to limited access mackerel permits.

(*2*) Mackerel landings history generated by separate owners of a single vessel at different times during the qualification period for limited access mackerel permits may be used to qualify more than one vessel, provided that each owner applying for a limited access mackerel permit demonstrates that he/she created distinct fishing histories, that such histories have been retained, and if the vessel was sold, that each applicant's eligibility and fishing history is distinct. In such a case, each applicant would still need to have been issued a valid mackerel permit as of March 21, 2007, in order to create a full eligibility, as detailed in paragraph (a)(5)(iii)(C) of this section.

(*3*) A vessel owner applying for a limited access mackerel permit who sold or transferred a vessel with non-mackerel limited access permits, as specified in paragraph (a)(1)(i)(D) of this section, and retained only the mackerel permit and landings history of such vessel as specified in paragraph (a)(1)(i)(D) of this section, before April 3, 2009, may use the mackerel history to qualify a different vessel for the initial limited access mackerel permit, regardless of whether the history from the sold or transferred vessel was used to qualify for any other limited access permit. Such eligibility may be used if the vessel for which the initial limited access mackerel permit has been submitted meets the upgrade restrictions described at paragraph (a)(5)(iii)(H) of this section. Applicants must be able to provide baseline documentation for both vessels in order to be eligible to use this provision.

(F) *Change of ownership.* See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(H) *Vessel baseline specification.* (*1*) In addition to the baseline specifications specified in paragraph (a)(1)(i)(H) of this section, the volumetric fish hold capacity of a vessel at the time it was initially issued a Tier 1 or Tier 2 limited access mackerel permit will be considered a baseline specification. The fish hold capacity measurement must be certified by an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS) or from an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS). Vessels that are sealed by the Maine State Sealer of Weights and Measures will also be deemed to meet this requirement. Owners whose vessels qualify for a Tier 1 or Tier 2 mackerel permit must submit a certified fish hold capacity measurement to NMFS by December 31, 2012, or with the first vessel replacement application after a vessel qualifies for a Tier 1 or Tier 2 mackerel permit, whichever is sooner.

(*2*) If a mackerel CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated, unless the applicant has a vessel under contract prior to the submission of the mackerel limited access application. The replacement application to move permits onto the contracted vessel must be received by December 31, 2013. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, then the baseline specifications associated with other limited access permits in the CPH suite will be used to establish the mackerel baseline specifications. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, the limited access mackerel eligibility was established on another vessel, and there are no other limited access permits in the CPH suite, then the applicant must submit valid documentation of the baseline specifications of the vessel that established the eligibility. The hold capacity baseline for such vessels will be the hold capacity of the first replacement vessel after the permits are removed from CPH. Hold capacity for the replacement vessel must be measured pursuant to paragraph (a)(5)(iii)(H)(*1*) of this section.

(I) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section. In addition, for Tier 1 and Tier 2 limited access mackerel permits, the replacement vessel's volumetric fish hold capacity may not exceed by more than 10 percent the volumetric fish hold capacity of the vessel's baseline specifications. The modified fish hold, or the fish hold of the replacement vessel, must be resurveyed by a surveyor (accredited as in paragraph (a)(5)(iii)(H) of this section) unless the replacement vessel already had an appropriate certification.

(J) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(K) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(L) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(M) *Appeal of permit denial.* (*1*) *Eligibility.* Any applicant eligible to apply for a limited access mackerel permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial.

(*2*) *Appeal review.* Applicants have two opportunities to appeal the denial of a limited access mackerel permit. The review of initial appeals will be conducted under the authority of the Regional Administrator at NMFS's Northeast Regional Office. The Regional Administrator shall appoint a hearing officer for review of second denial appeals.

(*i*) An appeal of the denial of an initial permit application (first level of appeal) must be made in writing to NMFS Northeast Regional Administrator. Appeals must be based on the grounds that the information used by the Regional Administrator in denying the permit was incorrect. The only items subject to appeal are the accuracy of the amount of landings, and the correct assignment of landings to a vessel and/or permit holder. Appeals

must be submitted to the Regional Administrator, postmarked no later than 30 days after the denial of an initial limited access mackerel permit application. The appeal shall set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error. The appeal must be in writing, must state the specific grounds for the appeal, and include information to support the appeal. The appellant may also request a letter of authorization (LOA), as described in paragraph (a)(5)(iii)(M)(*3*) of this section. If the appeal of the denial of the permit application is not made within 30 days, the denial of the permit application shall constitute the final decision of the Department of Commerce. The appeal will not be reviewed without submission of information in support of the appeal. The Regional Administrator will appoint a designee to make the initial decision on the appeal.

(*ii*) Should the appeal of the denial of the permit application be denied, the applicant may request a hearing to review the Regional Administrator's initial decision denying the first level appeal (second level of appeal). Such a request must be in writing, postmarked no later than 30 days after the appeal decision, must state the specific grounds for the hearing request, and must include information to support the hearing request. If the request for a hearing to review of the decision denying the first level of appeal is not made within 30 days, the initial decision will constitute the final decision of the Department of Commerce. If the hearing request is submitted without information in support of the request, the appeal will not be reviewed in a hearing, and the initial decision will constitute the final decision of the Department of Commerce. The Regional Administrator will appoint a hearing officer or the hearing process may take place within the National Appeals program. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. The Regional Administrator's decision is the final decision of the Department of Commerce.

(*3*) A vessel denied a limited access mackerel permit may fish for mackerel while the decision on the appeal is pending within NMFS, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category for which the applicant has submitted an appeal. A request for an LOA must be made when submitting an appeal of the denial of the permit application. The Regional Administrator will issue such a letter for the pending period of any appeal. The LOA must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after the receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

(iv) *Atlantic mackerel incidental catch permits.* Any vessel of the United States may obtain a permit to fish for or retain up to 20,000 lb (7.46 mt) of Atlantic mackerel as an incidental catch in another directed fishery, provided that the vessel does not exceed the size restrictions specified in paragraph (a)(5)(iii)(A) of this section. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.21.

(v) *Party and charter boat permits.* The owner of any party or charter boat must obtain a permit to fish for, possess, or retain in or from the EEZ mackerel, squid, or butterfish while carrying passengers for hire.

(6) *Scup vessels.* Beginning on January 1, 1997, and subject to the eligibility requirements specified in paragraphs (a)(6)(i) and (a)(6)(ii) of this section, the owner of a vessel of the United States, including a party or charter vessel, must obtain a permit issued under this part to fish for or retain scup for sale, barter or trade, in or from the EEZ north of 35°15.3′ N. lat. Any vessel, other than a party or charter boat, that observes the possession limit restrictions established pursuant to, and the prohibition on sale specified in, § 648.128 is exempt from the permit requirement.

(i) *Moratorium permit*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain scup, a vessel must have been issued a scup moratorium permit for the preceding year, be replacing a vessel that was issued a scup moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restriction*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(ii) *Party and charter boat permit*. Any party or charter boat is eligible for a permit to fish for scup, other than a scup moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits established pursuant to, and the prohibitions on sale specified in, § 648.125.

(7) *Black sea bass vessels*. Beginning June 1, 1997, any vessel of the United States that fishes for or retains black sea bass in or from the EEZ north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, must have been issued and carry on board a valid black sea bass moratorium permit, except for vessels other than party or charter vessels that observe the possession limit established pursuant to § 648.145.

(i) *Moratorium permits*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain black sea bass in excess of the possession limit established pursuant to § 648.145 in the EEZ north of 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, NC, a vessel must have been issued a black sea bass moratorium permit for the preceding year, be replacing a vessel that was issued a black sea bass moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(ii) *Party and charter boat permit*. The owner of any party or charter boat must obtain a permit to fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, while carrying passengers for hire.

(8) *Atlantic bluefish vessels*. (i) *Commercial*. Any vessel of the United States including party and charter boats not carrying passengers for hire, that fishes for, possesses, or lands Atlantic bluefish in or from the EEZ in excess of the recreational possession limit specified at § 648.164 must have been issued and carry on board a valid commercial bluefish vessel permit.

(ii) *Party and charter vessels*. All party or charter boats must have been issued and carry on board a valid party or charter boat permit to fish for, possess, or land Atlantic bluefish in or from the EEZ if carrying passengers for hire. Persons on board such vessels must observe the possession limits established pursuant to § 648.164 and the prohibitions on sale specified in § 648.14(q).

(9) *Monkfish vessels*. Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid monkfish permit to fish for, possess, or land any monkfish in or from the EEZ.

(i) *Limited access monkfish permits*. (A) *Eligibility*. A vessel may be issued a limited access monkfish permit if it meets any of the following limited access monkfish permits criteria:

(*1*) *Category A permit (vessels without NE multispecies or scallop limited access DAS permits)*. The vessel landed at least 50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*2*) *Category B permit (vessels less than 51 gross registered tonnage (GRT) without NE multispecies or scallop limited access DAS permits that do not qualify for a Category A permit)*. The vessel landed at least 7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*3*) *Category C permit (vessels with NE multispecies or scallop limited access DAS permits)*. The vessel landed at least 50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995; or

(*4*) *Category D permit (all vessels with NE multispecies limited access DAS permits and vessels less than 51 GRT with scallop limited access DAS permits that do not qualify for a Category C permit)*. The vessel landed at least 7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995.

(*5*) *Category F permit (vessels electing to participate in the Offshore Fishery Program*). To fish in the Offshore Fishery Program, as described under § 648.95, vessels must apply for and be issued a Category F permit and fish under this permit category for the entire fishing year. The owner of a vessel, or authorized representative, may change the vessel's limited access monkfish permit category within 45 days of the effective date of the vessel's permit, provided the vessel has not fished under the monkfish DAS program during that fishing year. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel's permit category will remain unchanged for the duration of the fishing year.

(*6*) *Category G permit (vessels restricted to fishing south of 38°40′ N. lat. As described in § 648.92(b) that do not qualify for a monkfish limited access Category A, B, C, or D permit)*. The vessel landed at least 50,000 lb (22,680 kg) tail weight or 166,000 lb (75,296 kg) whole weight of monkfish in the area south of 38°00′ N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(*7*) *Category H permit (vessels restricted to fishing south of 38°40′ N. lat. As described in § 648.92(b) that do not qualify for a monkfish limited access Category A, B, C, D, or G permit)*. The vessel landed at least 7,500 lb (3,402 kg) tail weight or 24,900 lb (11,294 kg) whole weight of monkfish in the area south of 38°00′ N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(B) *Application/renewal restrictions*. No one may apply for an initial limited access monkfish permit for a vessel after November 7, 2000, unless otherwise allowed in this paragraph (a)(9)(i)(B). Vessels applying for an initial limited access Category G or H permit, as described in paragraphs (a)(9)(i)(A)(*6*) and (*7*) of this section, must do so on or before April 30, 2006.

(C) *Qualification restrictions*. (*1*) See paragraph (a)(1)(i)(C) of this section.

(*2*) *Vessels under agreement for construction or under reconstruction*. A vessel may be issued a limited access monkfish permit if the vessel was under written agreement for construction or reconstruction between February 28, 1994, and February 27, 1995, and such vessel meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(D) *Change in ownership*. (*1*) See paragraph (a)(1)(i)(D) of this section.

(*2*) A vessel may be issued a limited access monkfish permit if it was under written agreement for purchase as of February 27, 1995 and meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(E) *Replacement vessels*. (*1*) See paragraph (a)(1)(i)(E) of this section.

(*2*) A vessel ≥51 GRT that lawfully replaced a vessel <51 GRT between February 27, 1995, and October 7, 1999, that meets the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(*2*) or (*4*) of this section, may qualify for and fish under the permit category for which the replaced vessel qualified.

(*3*) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(*4*) A vessel that replaced a vessel that fished for and landed monkfish between March 15 through June 15 in the years 1995 through 1998, may use the replaced vessel's history in lieu of, or in addition to, such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(6) and (7) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provision of paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel*. (*1*) See paragraph (a)(1)(i)(F) of this section.

(*2*) A vessel ≥51 GRT that upgraded from a vessel size <51 GRT between February 27, 1995, and October 7, 1999, that meets any of the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraphs (a)(9)(i)(A)(*2*) and (*4*) of this section, may qualify for and fish under the permit category of the smaller vessel.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specification*. See paragraph (a)(1)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. A limited access monkfish permit may not be issued to a vessel or to its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(ii) *Monkfish incidental catch vessels (Category E)*. A vessel of the United States that is subject to these regulations and that has not been issued a limited access monkfish permit under paragraph (a)(9)(i)(A) of this section is eligible for and may be issued a monkfish incidental catch (Category E) permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).

(10) *Atlantic herring vessels*—(i) Except as provided herein, any vessel of the United States must have been issued and have on board a valid Atlantic herring permit to fish for, possess, or land Atlantic herring in or from the EEZ. This requirement does not apply to the following:

(A) A vessel that possesses herring solely for its use as bait, providing the vessel does not use or have on board purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on any trip in which herring is fished for, possessed, or landed, and does not transfer, sell, trade, or barter such herring;

(B) A skiff or other similar craft used exclusively to deploy the net in a purse seine operation during a fishing trip of a vessel that is duly permitted under this part; or

(C) At-sea processors that do not harvest fish, provided that at-sea processor vessels are issued the at-sea processor permit specified under § 648.6(a)(2).

(ii) *Atlantic herring carrier*. An Atlantic herring carrier must have been issued and have on board a herring permit and a letter of authorization to receive and transport Atlantic herring caught by another permitted fishing

vessel. The letter of authorization exempts such a vessel from the VMS and IVR vessel reporting requirements as specified in § 648.7 and subpart K of this part, except as otherwise required by this part. An Atlantic herring carrier vessel must request and obtain a letter of authorization from the Regional Administrator, and must report all herring carried from each vessel on a given trip in its Fishing Vessel Trip Report. The Fishing Vessel Trip Report must include the vessel name. Carrier vessels under a letter of authorization may not conduct fishing activities except for purposes of transport or possess any fishing gear on board the vessel; must be used exclusively as an Atlantic herring carrier vessel; and must carry observers if required by NMFS. There is a minimum enrollment period of 7 calendar days. While operating under a valid LOA, such vessels are exempt from any herring possession limits associated with the herring vessel permit categories. Herring carrier vessels under an LOA may not possess, transfer, or land any species except for Atlantic herring, except that they may possess Northeast multispecies transferred by vessels issued either an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, consistent with the applicable possession limits for such vessels.

(iii) *Vessel size limitation*. A vessel of the United States is eligible for and may be issued an Atlantic herring permit to fish for, possess, or land Atlantic herring in or from the EEZ, except for any vessel that is ≥165 ft (50.3 m) in length overall (LOA), or > 750 GRT (680.4 mt), or the vessel's total main propulsion machinery is > 3,000 horsepower. Vessels that exceed the size or horsepower restrictions are eligible to be issued an at-sea processing permit specified under § 648.6(a)(2)(ii).

(iv) *Limited access herring permits*. (A) A vessel of the United States that fishes for, possesses, or lands more than 6,600 lb (3 mt) of herring, except vessels that fish exclusively in state waters for herring, must have been issued and carry on board one of the limited access herring permits described in paragraphs (a)(10)(iv)(A)(*1*)–(*3*) of this section, including both vessels engaged in pair trawl operations.

(*1*) *All Areas Limited Access Herring Permit*. A vessel may fish for, possess, and land unlimited amounts of herring from all herring areas, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*2*) *Areas 2 and 3 Limited Access Herring Permit*. A vessel may fish for, possess, and land unlimited amounts of herring from herring Areas 2 and 3, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*3*) *Limited Access Incidental Catch Herring Permit*. (*i*) A vessel that does not qualify for either of the permits specified in paragraphs (a)(10)(iv)(A)(*1*) and (*2*) of this section may fish for, possess, and land up to 55,000 lb (25 mt) of herring from any herring area, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*ii*) A vessel that does not qualify for an All Areas Limited Access Herring Permit specified in paragraph (a)(10)(iv)(A)(*1*) of this section, but qualifies for the Areas 2 and 3 Limited Access Herring Permit specified in paragraph (a)(10)(iv)(A)(*2*) of this section, may fish for, possess, and land up to 55,000 lb (25 mt) of herring from Area 1, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(B) *Eligibility for All Areas and Areas 2 and 3 Limited Access Herring Permits, and Confirmation of Permit History (CPH)*. A vessel is eligible for and may be issued either an All Areas or Areas 2 and 3 Limited Access Herring Permit if it meets the permit history criteria in paragraph (a)(10)(iv)(B)(*1*) of this section and the relevant landing requirements in paragraphs (a)(10)(iv)(B)(*2*) and (*3*) of this section.

(*1*) *Permit history criteria for All Areas and Areas 2 and 3 Permits*. (*i*) The vessel must have been issued a Federal herring permit (Category 1 or 2) that was valid as of November 10, 2005; or

(*ii*) The vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To

qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring landings history.

(*2*) *Landings criteria for the All Areas Limited Access Herring Permit*–(*i*) The vessel must have landed at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to their landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction, or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*2*)(*i*) of this section through December 31, 2004.

(*iii*) Landings criteria for vessels using landings from pair trawl operations. To qualify for a limited access permit using landings from pair trawl operations, the owners of the vessels engaged in that operation must agree on how to divide such landings between the two vessels and apply for the permit jointly, as verified by dealer reports submitted to NMFS or valid dealer receipts, if dealer reports were not required by NMFS.

(*3*) *Landings criteria for the Areas 2 and 3 Limited Access Herring Permit.* (*i*) The vessel must have landed at least 250 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to their landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*3*)(*i*) of this section through December 31, 2004.

(*iii*) *Landings criteria for vessels using landings from pair trawl operations.* See paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section.

(*4*) *CPH.* A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(B) of this section that has

sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and consistent with (a)(10)(iv)(N) of this section.

(C) *Eligibility for Incidental Catch Limited Access Herring Permit, and CPH.* A vessel is eligible for and may be issued an Incidental Limited Access Herring Permit if it meets the permit history criteria specified in paragraph (a)(10)(iv)(C)(*1*) of this section and the landings criteria in paragraph (a)(10)(iv)(C)(*2*) of this section.

(*1*) *Permit history criteria.* (*i*) The vessel must have been issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, longfin or *Illex* squid, or butterfish that was valid as of November 10, 2005; or

(*ii*) The vessel is replacing a vessel that was issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, longfin or *Illex* squid, or butterfish that was issued between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring landings history.

(*2*) *Landings criteria for Incidental Catch Limited Access Herring Permit.* (*i*) The vessel must have landed at least 15 mt of herring in any calendar year between January 1, 1988, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to the vessel's landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(C)(*2*)(*i*) of this section through December 31, 2004.

(*3*) *CPH.* A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(C) of this section that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and consistent with (a)(10)(iv)(N) of this section.

(D) *Application/renewal restrictions.* (*1*) No one may apply for an initial limited access Atlantic herring permit or a CPH under paragraph (a)(10)(iv)(L) of this section after May 31, 2008, or after the abandonment or voluntary relinquishment of permit history as specified in paragraph (a)(10)(iv)(M) of this section.

(*2*) An applicant who submits written proof that an eligible vessel was sold,

with the seller retaining the herring history through a written agreement signed by both parties to the sale or transfer, may not utilize such history if the vessel's history was used to qualify another vessel for another limited access permit.

(*3*) All limited access permits established under this section must be issued on an annual basis by April 30, the last day of the year for which the permit is issued, unless a CPH has been issued as specified in paragraph (a)(10)(iv)(L) of this section. Application for such permits must be received no later than March 31, which is 30 days before the last day of the permit year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(E) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(F) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(H) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(I) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(J) *Vessel baseline specifications*. See paragraph (a)(1)(i)(H) of this section. If a herring CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated.

(K) *Limited access permit restrictions*. [Reserved]

(L) *Confirmation of Permit History*. See paragraph (a)(1)(i)(J) of this section.

(M) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(N) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section. Notwithstanding paragraph (a)(1)(i)(L), vessel owners applying for a limited access herring permit who sold vessels with limited access permits and retained the herring history before applying for the initial limited access herring permit may not use the herring history to qualify a vessel for the initial limited access herring permit, if the issuance of such permit would violate the restrictions on permit splitting. Furthermore, notwithstanding paragraph (a)(1)(i)(L), for the purposes of the Atlantic herring fishery, herrings landings history generated by separate owners of a single vessel at different times may be used the qualify more than one vessel, provided that each owner applying for a limited access permit, demonstrates that he/she created distinct fishing histories, and that such histories have been retained.

(O) *Appeal of denial of permit–(1) Eligibility*. Any applicant eligible to apply for a limited access herring permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was based on incorrect data. The appeal must be in writing, and must state the specific grounds for the appeal.

(*2*) *Appeal review*. The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal*. A vessel denied a limited access herring permit may fish under the limited access herring permit, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator shall issue such a letter for the pendency of any appeal. The letter of authorization must be carried

on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

(v) *Open access herring permit*. A vessel that has not been issued a limited access Atlantic herring permit may obtain an open access incidental Atlantic herring permit to possess up to 6,600 lb (3 mt) of herring per trip, and is limited to one landing per calendar day.

(11) *Spiny dogfish vessels*. Any vessel of the United States that commercially fishes for, possesses, or lands spiny dogfish in or from the EEZ must have been issued and carry on board a valid commercial spiny dogfish vessel permit.

(12) *Tilefish vessels*. Any vessel of the United States must have been issued, under this part, and carry on board, a valid vessel permit to fish for, possess, or land tilefish, in or from the Tilefish Management Unit, and must fish under the authorization of a tilefish IFQ Allocation permit, issued pursuant to § 648.294, to possess, or land tilefish in excess of the trip limit as specified under § 648.295.

(i) *Party and charter vessel permits*. Any party or charter vessel must have been issued, under this part, a Federal Charter/Party vessel permit to fish for tilefish in the Tilefish Management Unit, if it carries passengers for hire. Recreational fisherman fishing onboard such a vessel must observe the recreational possession limits as specified at § 648.296 and the prohibition on sale.

(ii) [Reserved]

(13) *Red Crab vessels*. Any vessel of the United States must have been issued and have on board a valid red crab vessel permit to fish for, catch, possess, transport, land, sell, trade, or barter, any red crab or red crab part in or from the EEZ portion of the Red Crab Management Unit.

(i) *Limited access red crab permit*—(A) *Eligibility*. Any vessel of the United States that possesses or lands more than the incidental amount of red crab, as specified in § 648.263(b), per red crab trip must have been issued and carry on board a valid limited access red crab permit.

(B) *Application/renewal restrictions*. The provisions of paragraph (a)(1)(i)(B) of this section apply.

(C) *Qualification restrictions*. The provisions of paragraph (a)(1)(i)(C) of this section apply.

(D) *Change in ownership*. The provisions of paragraph (a)(1)(i)(D) of this section apply.

(E) *Replacement vessels*. (*1*) To be eligible for a limited access permit under this section, the replacement vessel's length, GRT, and NT may not exceed by greater than 10 percent the length, GRT, and NT of the vessel's baseline specifications. The replacement vessel must also meet any other applicable criteria under paragraph (a)(13)(i)(F) of this section.

(*2*) A vessel that lawfully replaced a vessel that meets the qualification criteria set forth in paragraph (a)(13)(i)(A) of this section may qualify for and fish under the permit category for which the replaced vessel qualified.

(F) *Upgraded vessel*. A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, provided that the vessel's length, GRT, and NT is increased no more than once. Any increase in any of the aforementioned specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any increase in any of the aforementioned specifications of vessel size occurs, any increase in the other specifications must be performed at the same time.

(G) *Consolidation restriction*. The provisions of paragraph (a)(1)(i)(G) of this section apply.

(H) *Vessel baseline specifications*. The vessel baseline specifications in this section are the respective specifications (length, GRT, and NT) of the vessel indicated on the vessel's initial limited access permit as of the date the initial vessel applies for such permit.

(I) *Limited access permit restrictions*. A vessel issued a limited access red crab permit may not be issued a red crab incidental catch permit during the same fishing year.

(J) *Confirmation of permit history (CPH).* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person and has not been replaced, must apply for and receive a CPH that confirms the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel met the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(13)(i)(E) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* The provisions of paragraph (a)(1)(i)(K) of this section apply.

(L) *Restriction on permit splitting.* The provisions of paragraph (a)(1)(i)(L) of this section apply.

(ii) *Red crab incidental catch permit.* A vessel of the United States that is subject to these regulations and that has not been issued a red crab limited access permit is eligible for and may be issued a red crab incidental catch permit to catch, possess, transport, land, sell, trade, barter, up to 500 lb (226.8 kg) of red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit. Such vessel is subject to the restrictions in § 648.263(b).

(14) *Skate vessels.* Any vessel of the United States must have been issued and have on board a valid skate vessel permit to fish for, possess, transport, sell, or land skates in or from the EEZ portion of the Skate Management Unit.

(b) *Permit conditions.* (1)(i) Any person who applies for and is issued or renews a fishing permit under this section agrees, as a condition of the permit, that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ; and without regard to where such fish or gear are possessed, taken, or landed); are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part, except tilefish, must comply with the more restrictive requirement. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the tilefish management unit for tilefish managed under this part must comply with the more restrictive

requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium; or a spiny dogfish or bluefish commercial vessel permit, must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the FEDERAL REGISTER stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish limited access permit must agree not to land tilefish after NMFS has published a notification in the FEDERAL REGISTER stating that the quota for the tilefish limited access category under which a vessel is fishing has been harvested. Owners or operators fishing for surfclams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surfclam and ocean quahog requirement of this part differs from a surfclam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surfclams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surfclam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters.

(ii) Any person who applies for or has been issued a limited access or moratorium permit on or after September 4, 2007 agrees, as a condition of the permit, that the vessel may not fish for, catch, possess, or land, in or from Federal or state waters, any species of fish authorized by the permit, unless and until the permit has been issued or renewed in any subsequent permit year, or the permit either has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

(2) A vessel that is issued or renewed a limited access or moratorium permit on or after September 4, 2007 for any fishery governed under this section is prohibited from fishing for, catching, possessing, and/or landing any fish for which the vessel would be authorized under the respective limited access or moratorium permit in or from state and/or Federal waters in any subsequent permit year, unless and until the limited access or moratorium permit has been issued or renewed pursuant to paragraph (a)(1)(i)(B) of this section and the valid permit is on board the vessel. This prohibition does not apply to a vessel for which the limited access or moratorium permit has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

(c) *Permit applications*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Administrator. The application must be signed and submitted to the Regional Administrator at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application pursuant to this section. Vessel owners who are eligible to apply for limited access or moratorium permits under this part shall provide information with the application sufficient for the Regional Administrator to determine whether the vessel meets the applicable eligibility requirements specified in this section.

(2) *Vessel permit information requirements.* (i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Administrator: Vessel name, owner name or name of

the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable), home port and principal port of landing, length overall, GRT, NT, engine horsepower, year the vessel was built, type of construction, type of propulsion, approximate fish hold capacity, type of fishing gear used by the vessel, number of crew, number of party or charter passengers licensed to be carried (if applicable), permit category, if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, the names of all owners having a 25-percent interest or more; and permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

(ii) An application for an initial limited access multispecies hook-gear permit must also contain the following information:

(A) If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to July 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit before July 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1 year of the date on which the contract was signed.

(B) If the length, GRT, or NT was changed or a contract to change the length, GRT, or NT had been entered into prior to July 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit, sufficient documentation to ascertain the different length, GRT, or NT. However, the upgrade must be completed within 1 year from the date on which the contract was signed.

(iii) An application for a limited access NE multispecies permit must also contain the following information:

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags, unless the vessel already possesses valid gillnet tags, as identified by the Regional Administrator. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining valid tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete only for the purposes of obtaining authorization to fish in the NE multispecies gillnet fishery and otherwise will be processed or issued without a gillnet authorization.

(B) [Reserved]

(iv) An application for a scallop permit must also contain the following information:

(A) For every person named by applicants for limited access scallop permits pursuant to paragraph (c)(2)(i) of this section, the names of all other vessels in which that person has an ownership interest and for which a limited access scallop permit has been issued or applied for.

(B) If applying for a VMS general scallop permit, or full-time or part-time limited access scallop permit, or if opting to use a VMS unit, a copy of the vendor installation receipt or proof of vendor activation of the VMS from a NMFS-approved VMS vendor. NMFS-

approved vendors are described in § 648.9.

(C) If applying to fish under the small dredge program set forth under § 648.51(e), an annual declaration into the program.

(v) An application for a surf clam and ocean quahog permit must also contain the pump horsepower.

(vi) Prior to issuance of a limited access Atlantic herring permit, a VMS unit provided by a NMFS-approved vendor must be installed and NMFS must receive a notice from the vendor that the VMS is activated.

(vii) The owner of a vessel that has been issued a Tier 1 or Tier 2 limited access mackerel must submit a volumetric fish hold certification measurement, as described in paragraph (a)(5)(iii)(H) of this section, with the permit renewal application for the 2013 fishing year.

(d) *Fees*. The Regional Administrator may charge a fee to recover administrative expenses of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance*. (1) Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue a permit within 30 days of receipt of the application, unless the application is deemed incomplete for the following reasons:

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified in § 648.7;

(ii) The application was not received by the Regional Administrator by the applicable deadline set forth in this section;

(iii) The applicant and applicant's vessel failed to meet all applicable eligibility requirements set forth in this section;

(iv) An applicant for a limited access multispecies combination vessel or individual DAS permit, a limited access scallop permit (except an occasional scallop permit), an LAGC scallop permit, or electing to use a VMS, has failed to meet all of the VMS requirements specified in §§ 648.9 and 648.10; or

(v) The applicant has failed to meet any other application requirements stated in this part.

(2) *Incomplete applications*. Upon receipt of an incomplete or improperly executed application for any permit under this part, the Regional Administrator shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Change in permit information*. Any change in the information specified in paragraphs (c)(2) or (c)(3) of this section must be submitted by the applicant in writing to the Regional Administrator within 15 days of the change, or the permit is void.

(g) *Expiration*. A permit expires upon the renewal date specified in the permit.

(h) *Duration*. A permit will continue in effect unless it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as specified in paragraph (f) of this section. However, the Regional Administrator may authorize the continuation of a permit if the new owner so requests. Applications for permit continuations must be addressed to the Regional Administrator.

(i) *Alteration*. Any permit that has been altered, erased, or mutilated is invalid.

(j) *Reissuance*. A permit may be reissued by the Regional Administrator when requested in writing, stating the need for reissuance, the name of the

vessel (if applicable), and the fishing permit number assigned. An application for the reissuance of a permit will not be considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

(k) *Transfer*. A permit issued under this part is not transferable or assignable. A permit will be valid only for the fishing vessel, owner and/or person for which it is issued.

(l) *Display*. A vessel permit must be carried, at all times, on board the vessel for which it is issued and shall be subject to inspection upon request by any authorized officer. A person issued a permit under this section must be able to present the permit for inspection when requested by an authorized officer. Permits must be maintained in legible condition.

(m) *Sanctions*. The Assistant Administrator may suspend, revoke, or modify, any permit issued or sought under this section. Procedures governing enforcement-related permit sanctions or denials are found at subpart D of 15 CFR part 904.

(n) *Federal grant awards*. The Regional Administrator may suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, issued pursuant to this section, including the rights thereto, held by a person, corporation, non-profit organization, or government entity if the terms and conditions of any Federal grant award used to obtain said permit, or an associated memorandum of understanding or agreement, are violated by the grant recipient.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 648.5 Operator permits.

(a) *General*. Any operator of a vessel fishing for or possessing: Atlantic sea scallops, NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or Atlantic bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued pursuant to part 622 or part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

(b) *Operator permit application*. Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Administrator. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application, pursuant to this section.

(c) *Condition*. Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed) are subject to all requirements of this part while fishing in the EEZ or on board a vessel for which a permit is issued under § 648.4, unless exempted from such requirements under § 648.12. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that, if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be aboard any fishing vessel issued a Federal fisheries permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part

must comply with the more restrictive requirement.

(d) *Information requirements*. An applicant must provide at least all the following information and any other information required by the Regional Administrator: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; and signature of the applicant. The applicant must also provide two recent (no more than 1 year old), color, passport-size photographs.

(e) *Fees*. Same as § 648.4(d).

(f) *Issuance*. Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue an operator's permit within 30 days of receipt of a completed application, if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration*. Same as § 648.4(g).

(h) *Duration*. A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Administrator as specified in paragraph (k) of this section.

(i) *Reissuance*. Reissued permits, for otherwise valid permits, may be issued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the Federal operator permit number assigned. An applicant for a reissued permit must also provide two recent, color, passport-size photos of the applicant. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer*. Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in permit application information*. Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Administrator within 15 days of the change in information. If written notice of the change in information is not received by the Regional Administrator within 15 days, the permit is void.

(l) *Alteration*. Same as § 648.4(i).

(m) *Display*. Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer or NMFS official.

(n) *Sanctions*. Vessel operators with suspended or revoked permits may not be aboard a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility*. Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 64 FR 57593, Oct. 26, 1999; 64 FR 66587, Nov. 29, 1999; 65 FR 45851, July 26, 2000; 65 FR 77465, Dec. 11, 2000; 66 FR 49143, Sept. 26, 2001; 67 FR 63231, Oct. 10, 2002; 68 FR 49699, Aug. 19, 2003; 69 FR 62821, Oct. 28, 2004; 70 FR 21982, Apr. 28, 2005; 73 FR 20119, Apr. 14, 2008]

§ 648.6 Dealer/processor permits.

(a) *General*. (1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surfclam and ocean quahog processors; Atlantic hagfish dealers and/or processors, and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species.

(2) *At-sea processors*–(i) *At-sea mackerel processors*. Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess, and process Atlantic mackerel harvested in

or from the EEZ by a lawfully permitted vessel of the United States.

(ii) *Atlantic herring at-sea processing permit*. A vessel of the United States, including a vessel that is > 165 ft (50.3 m) length overall, or > 750 GRT (680.4 mt), is eligible to obtain an Atlantic herring at-sea processing permit to receive and process Atlantic herring subject to the U.S. at-sea processing (USAP) allocation published by the Regional Administrator pursuant to § 648.200. Such a vessel may not receive and process Atlantic herring caught in or from the EEZ unless the vessel has been issued and has on board an Atlantic herring at-sea processing permit.

(iii) *Reporting requirements*. An at-sea processor receiving Atlantic mackerel or Atlantic herring is subject to dealer reporting requirements specified in § 648.7(a).

(b) *Dealer/processor permit applications*. Same as § 648.5(b).

(c) *Information requirements*. Applications must contain at least the following information, as applicable, and any other information required by the Regional Administrator: Company name, place(s) of business (principal place of business if applying for a surfclam and ocean quahog permit), mailing address(es) and telephone number(s), owner's name, dealer permit number (if a renewal), name and signature of the person responsible for the truth and accuracy of the application, a copy of the certificate of incorporation if the business is a corporation, and a copy of the partnership agreement and the names and addresses of all partners, if the business is a partnership, name of at-sea processor vessel, and current vessel documentation papers.

(d) *Fees*. Same as § 648.4(d).

(e) *Issuance*. Except as provided in subpart D of 15 CFR part 904, the Regional Administrator will issue a permit at any time during the fishing year to an applicant, unless the applicant fails to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 648.7 during the 12 months immediately preceding the application. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration*. Same as § 648.4(g).

(g) *Duration*. A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as required by paragraph (j) of this section.

(h) *Reissuance*. Reissued permits, for otherwise valid permits, may be issued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the Federal dealer permit number assigned. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer*. Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information*. Same as § 648.5(k).

(k) *Alteration*. Same as § 648.4(i).

(l) *Display*. Same as § 648.5(m).

(m) *Federal versus state requirements*. If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions*. Same as § 648.4(m).

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 64 FR 57593, Oct. 26, 1999; 65 FR 45851, July 26, 2000; 65 FR 77465, Dec. 11, 2000; 66 FR 49144, Sept. 26, 2001; 68 FR 49699, Aug. 19, 2003; 69 FR 4864, Feb. 2, 2004; 69 FR 16178, Mar. 29, 2004; 69 FR 30841, June 1, 2004; 72 FR 20038, Apr. 23, 2007; 72 FR 11273, Mar. 12, 2007; 76 FR 60649, Sept. 29, 2011]

§ 648.7 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Detailed report*. Federally permitted dealers, and any individual acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time period specified in paragraph (f) of this section, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The following information, and any other information required by the Regional Administrator, must be provided in each report:

(i) *Required information*. All dealers issued a dealer permit under this part must provide: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under this part; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) *Exceptions*. The following exceptions apply to reporting requirements for dealers permitted under this part:

(A) Inshore Exempted Species, as defined in § 648.2, are not required to be reported under this part;

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Northeast Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Northeast Region under this part, and American lobster, managed under part 697 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Northeast Region, which are not affected by this provision; and

(C) Dealers issued a permit for Atlantic bluefin tuna under part 635 of this chapter are not required to report their purchases or receipts of Atlantic bluefin tuna under this part. Other reporting requirements, as specified in § 635.5 of this chapter, apply to the receipt of Atlantic bluefin tuna.

(iii) *Dealer reporting requirements for skates*. In addition to the requirements under paragraph (a)(1)(i) of this section, dealers shall report the species of skates received. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. NMFS will provide dealers with a skate species identification guide.

(2) *System requirements*. All persons required to submit reports under paragraph (a)(1) of this section are required to have the capability to transmit data via the Internet. To ensure compatibility with the reporting system and database, dealers are required to utilize a personal computer, in working condition, that meets the minimum specifications identified by NMFS. The affected public will be notified of the minimum specifications via a letter to all Federal dealer permit holders.

(3) *Annual report*. All persons issued a permit under this part are required to submit the following information on an annual basis, on forms supplied by the Regional Administrator:

(i) All dealers and processors issued a permit under this part must complete all sections of the Annual Processed Products Report for all species that were processed during the previous year. Reports must be submitted to the address supplied by the Regional Administrator.

(ii) Surfclam and ocean quahog processors and dealers whose plant processing capacities change more than 10 percent during any year shall notify

the Regional Administrator in writing within 10 days after the change.

(iii) Atlantic herring processors, including processing vessels, must complete and submit all sections of the Annual Processed Products Report.

(iv) Atlantic hagfish processors must complete and submit all sections of the Annual Processed Products Report.

(4) *Facilitation of a dockside/roving monitor report.* Any federally permitted dealer, or any individual acting in the capacity of a dealer, that purchases or receives fish from a vessel operating under the provisions of an approved sector operations plan, as specified in § 648.87(c), or from a common pool vessel starting in fishing year 2012 must provide a copy of any weigh-out documents or dealer receipts for that particular offloading event to the dockside/roving monitor and vessel and allow the dockside/roving monitor to sign a copy of the official weigh-out document or dealer receipt retained by the dealer, or sign a dockside monitoring report provided by a dockside/roving monitor that verifies the amount of each species offloaded, as instructed by the Regional Administrator.

(b) *Vessel owners or operators*—(1) *Fishing Vessel Trip Reports*—(i) The owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. As stated in paragraph (f)(2)(i) of this section, if no fishing trip is made during a week or month, a report stating so must be submitted for each week or month, as applicable, based upon whether any fishing activity occurred during a particular reporting week or month (i.e., starting a trip, landing, or offloading catch will constitute fishing during a reporting week or month). If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, ''small'' (i.e., less than 23 inches (58.42 cm), total length) or ''large'' (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

(ii) *Surfclam and ocean quahog vessel owners and operators.* The owner or operator of any vessel conducting any surfclam and ocean quahog fishing operations, except those conducted exclusively in waters of a state that requires cage tags or when he/she has surrendered the surfclam and ocean quahog fishing vessel permit, shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Administrator, showing at least: Name and permit number of the vessel, total amount in bushels of each species taken, date(s) caught, time at sea, duration of fishing time, locality fished, crew size, crew share by percentage, landing port, date sold, price per bushel, buyer, tag numbers from cages used, quantity of surfclams and ocean quahogs discarded, and allocation permit number.

(iii) *Vessel reporting requirements for skates.* In addition to the requirements under paragraph (b)(1)(i) of this section, the owner or operator of any vessel issued a skate permit shall report the species of all skates landed. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate,

barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Discards of skates shall be reported according to two size classes, large skates (greater than or equal to 23 inches (58.42 cm) in total length) and small skates (less than 23 inches (58.42 cm) in total length). All other vessel reporting requirements remain unchanged. NOAA Fisheries will provide vessel owners or operators that intend to land skates with a skate identification guide to assist in this data collection program.

(2) *IVR system reports*—(i) *Atlantic herring owners or operators issued an open access permit*. The owner or operator of a vessel issued an open access permit to fish for herring must report catch (retained and discarded) of herring to an IVR system for each week herring was caught, unless exempted by the Regional Administrator. IVR reports are not required for weeks when no herring was caught. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; week in which herring are caught; management areas fished; and pounds retained and pounds discarded of herring caught in each management area. The IVR reporting week begins on Sunday at 0001 hr (12:01 a.m.) local time and ends Saturday at 2400 hr (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight each Tuesday, eastern time, for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

(B) *Reporting requirements for vessels transferring herring at sea*. A vessel that transfers herring at sea must comply with these requirements in addition to those specified at § 648.13(f).

(*1*) A vessel that transfers herring at sea to a vessel that receives it for personal use as bait must report all transfers on the Fishing Vessel Trip Report.

(*2*) A vessel that transfers herring at sea to an authorized carrier vessel must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

(*3*) A vessel that transfers herring at sea to an at-sea processor must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the at-sea processing vessel is defined as a trip for the purposes of the reporting requirements and possession allowances. For each trip, the vessel must submit a Fishing Vessel Trip Report and the at-sea processing vessel must submit the detailed dealer report specified in paragraph (a)(1) of this section.

(*4*) A transfer between two vessels issued open access permits requires each vessel to submit a Fishing Vessel Trip Report, filled out as required by the LOA to transfer herring at sea, and a weekly IVR report for the amount of herring each vessel lands.

(ii) *Tilefish vessel owners or operators*. The owner or operator of any vessel fishing under a tilefish IFQ Allocation permit, issued under this part, as described in § 648.294(a), must submit a tilefish catch report by using the IVR system within 48 hr after returning to port and offloading. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, trip during which tilefish are caught, pounds landed, VTR pre-printed serial number, and the Federal dealer number for the dealer who purchases the tilefish. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.

(3) *VMS Catch Reports*. (i) *Atlantic herring owners or operators issued a limited access permit*. The owner or operator of a vessel issued a limited access permit to fish for herring must report catches (retained and discarded) of herring daily via VMS, unless exempted by the Regional Administrator. The report shall include at least the following information, and any other information

required by the Regional Administrator: Fishing Vessel Trip Report serial number; month and day herring was caught; pounds retained for each herring management area; and pounds discarded for each herring management area. Daily Atlantic herring VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr of the following day. Reports are required even if herring caught that day has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) The owner or operator of any vessel issued a limited access herring permit must submit an Atlantic herring catch report via VMS each day, regardless of how much herring is caught (including days when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) Atlantic herring VMS reports are not required from Atlantic herring carrier vessels.

(C) *Reporting requirements for vessels transferring herring at sea.* The owner or operator of a vessel issued a limited access permit to fish for herring that transfers herring at sea must comply with these requirements in addition to those specified at § 648.13(f).

(*1*) A vessel that transfers herring at sea to a vessel that receives it for personal use as bait must report all transfers on the Fishing Vessel Trip Report.

(*2*) A vessel that transfers herring at sea to an authorized carrier vessel must report all catch daily via VMS and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

(*3*) A vessel that transfers herring at sea to an at-sea processor must report all catch daily via VMS and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the at-sea processing vessel is defined as a trip for the purposes of the reporting requirements and possession allowances. For each trip, the vessel must submit a Fishing Vessel Trip Report and the at-sea processing vessel must submit the detailed dealer report specified in paragraph (a)(1) of this section.

(*4*) A transfer between two vessels issued limited access permits requires each vessel to submit a Fishing Vessel Trip Report, filled out as required by the LOA to transfer herring at sea, and a daily VMS catch report for the amount of herring each vessel catches.

(ii) [Reserved]

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out with all required information, except for information not yet ascertainable, prior to entering port. Information that may be considered unascertainable prior to entering port includes dealer name, dealer permit number, and date sold. Log reports must be completed as soon as the information becomes available. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surfclams or ocean quahogs.

(d) *Inspection.* Upon the request of an authorized officer or an employee of NMFS designated by the Regional Administrator to make such inspections, all persons required to submit reports under this part must make immediately available for inspection copies of reports, and all records upon which those reports are or will be based, that are required to be submitted or kept under this part.

(e) *Record retention*—(1) *Dealer records.* Any record, as defined in § 648.2, related to fish possessed, received, or purchased by a dealer that is required to be reported, must be retained and made available for immediate review for a total of 3 years after the date the fish were first possessed, received, or purchased. Dealers must retain the required records and reports at their principal place of business.

(2) *VTRs.* Copies of fishing log reports must be kept on board the vessel and available for review for at least 1 year, and must be retained for a total of 3 years after the date the fish were last possessed, landed, and sold.

(3) *Dockside/roving and at-sea monitor reports.* Any record, as defined in § 648.2, related to fish offloaded and observed by a dockside/roving or at-sea monitor, including any reports provided to

NMFS, sector managers, or another third-party service provider specified in paragraph (h) of this section, must be retained and made available for immediate review for a total of 3 years after the date the fish were first offloaded. Dockside/roving and at-sea monitor providers must retain the required records and reports at their principal place of business.

(f) *Submitting reports*—(1) *Dealer or processor reports.* (i) Detailed reports required by paragraph (a)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week. If no fish are purchased or received during a reporting week, the report so stating required under paragraph (a)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week.

(ii) [Reserved]

(iii) Dealers who want to make corrections to their trip-level reports via the electronic editing features may do so for up to 3 business days following submission of the initial report. If a correction is needed more than 3 business days following the submission of the initial trip-level report, the dealer must contact NMFS directly to request an extension of time to make the correction.

(iv) Through April 30, 2005, to accommodate the potential lag in availability of some required data, the trip identifier, price and disposition information required under paragraph (a)(1) may be submitted after the detailed weekly report, but must be received within 16 days of the end of the reporting week or the end of the calendar month, whichever is later. Dealers will be able to access and update previously submitted trip identifier, price, and disposition data.

(v) Effective May 1, 2005, the trip identifier required under paragraph (a)(1) of this section must be submitted with the detailed report, as required under paragraphs (f)(1)(i) of this section. Price and disposition information may be submitted after the initial detailed report, but must be received within 16 days of the end of the reporting week.

(vi) Annual reports for a calendar year must be postmarked or received by February 10 of the following year. Contact the Regional Administrator (see Table 1 to § 600.502) for the address of NMFS Statistics.

(2) *Fishing vessel log reports.* (i) For any vessel not issued a NE multispecies, Atlantic herring permit, or Tier 3 Limited Access mackerel permit, fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. If no fishing trip is made during a particular month for such a vessel, a report stating so must be submitted, as instructed by the Regional Administrator. For any vessel issued a NE multispecies permit, Atlantic herring permit, or a Tier 3 Limited Access mackerel permit, fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If no fishing trip is made during a reporting week for such a vessel, a report stating so must be submitted and received by NMFS by midnight of the first Tuesday following the end of the reporting week, as instructed by the Regional Administrator. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month that the VTR must be submitted to NMFS, as appropriate. Any fishing activity during a particular reporting week (*i.e.*, starting a trip, landing, or offloading catch) will constitute fishing during that reporting week and will eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel issued a NE multispecies permit, Atlantic herring permit, or Tier 3 Limited Access Mackerel Vessel begins a fishing trip on Wednesday, but returns to port and offloads its catch on the following Thursday (*i.e.*, after a trip lasting 8 days), the VTR for the fishing trip would need to be submitted by midnight Tuesday of the third week, but a negative report (*i.e.*, a ''did not fish'' report) would not be required for either earlier week.

(ii) Surfclam and ocean quahog log reports, required by paragraph (b)(1)(ii) of this section, must be postmarked or received within 3 days after the end of each reporting week.

(3) *At-sea purchasers and processors.* With the exception of the owner or operator of an Atlantic herring carrier vessel, the owner or operator of an at-sea purchaser or processor that purchases or processes any Atlantic herring, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea must submit information identical to that required by paragraph (a)(1) of this section and provide those reports to the Regional Administrator or designee by the same mechanism and on the same frequency basis.

(g) *Additional data and sampling.* Federally permitted dealers must allow access to their premises and make available to an official designee of the Regional Administrator any fish purchased from vessels for the collection of biological data. Such data include, but are not limited to, length measurements of fish and the collection of age structures such as otoliths or scales.

(h) *Dockside/roving monitor reports.* Any dockside/roving monitor assigned to observe the offload of a vessel on a sector trip must record the amounts of all species offloaded and report such amounts to that particular vessel's sector manager and a third-party service provider, if specified in the operations plan or the private contract between the dockside/roving monitor service provider and an individual sector. Such reports must be made available to dealers for signature, as instructed by the Regional Administrator.

(i) *At-sea monitor/electronic monitoring reports.* Any at-sea monitor assigned to observe a sector trip and any third-party service provider analyzing data from electronic monitoring equipment deployed on a sector trip must submit reports on catch, discard, and other data elements specified by the Regional Administrator to NMFS, the sector manager, and monitoring contractor, as instructed by the Regional Administrator.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 648.8 Vessel identification.

(a) *Vessel name and official number.* Each fishing vessel subject to this part and over 25 ft (7.6 m) in registered length must:

(1) Affix permanently its name on the port and starboard sides of the bow and, if possible, on its stern.

(2) Display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the USCG documentation number or the vessel's state registration number for vessels not required to be documented under title 46 U.S.C.

(b) *Numerals.* Except as provided in paragraph (d) of this section, the official number must be displayed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in USCG or state records.

(c) *Duties of owner.* The owner of each vessel subject to this part shall ensure that—

(1) The vessel's name and official number are kept clearly legible and in good repair.

(2) No part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(d) *Non-permanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the above requirements.

(e) *New Jersey surfclam or ocean quahog vessels.* Instead of complying with paragraph (a) of this section, surfclam or ocean quahog vessels licensed under

New Jersey law may use the appropriate vessel identification markings established by that state.

[61 FR 34968, July 3, 1996, as amended at 76 FR 60649, Sept. 29, 2011]

§ 648.9 VMS vendor and unit requirements.

(a) *Approval*. The type approval requirements for VMS MTUs and MCSPs for the Northeast Region are those as published by the NMFS Office of Law Enforcement in the FEDERAL REGISTER, and are available upon request. Both the minimum national standards and any established regional standards must be met in order to receive approval for use in the Northeast Region. The Regional Administrator shall approve all MTUs and MCSPs operating in the Northeast Region.

(b) *Maintenance*. Once approved, VMS units must maintain the minimum standards for which they were approved in the type approval requirements. Any changes made to the original submission for approval of an MTU or MCSP by NMFS must follow the procedures outlined in the type approval requirements.

(c) *Notification*. A list of approved VMS vendors will be published on the Northeast Regional Office Web site and in each proposed and final rule for implementing or modifying VMS requirements for specific fisheries.

(d) *Revocations*. In the event that a VMS vendor is deleted from the list of approved vendors, vessel owners that purchased a VMS unit from that vendor to meet Northeast requirements will be considered authorized to use that unit for the remainder of the unit's service life.

[74 FR 20530, May 4, 2009]

§ 648.10 VMS and DAS requirements for vessel owners/operators.

(a) *VMS Demarcation Line*. The VMS Demarcation Line is defined by straight lines connecting the following coordinates in the order stated (a copy of a map showing the line is available from the Regional Administrator upon request):

VMS DEMARCATION LINE

Description	N. lat.	W. long.
1. Northern terminus point (Canada landmass)	45°03′	66°47′
2. A point east of West Quoddy Head Light	44°48.9′	66°56.1′
3. A point east of Little River Light	44°39.0′	67°10.5′
4. Whistle Buoy "8BI" (SSE of Baker Island)	44°13.6′	68°10.8′
5. Isle au Haut Light	44°03.9′	68°39.1′
6. A point south of Monhegan Island	43°43.3′	69°18.6′
7. Pemaquid Point Light	43°50.2′	69°30.4′
8. A point west of Halfway Rock	43°38.0′	70°05.0′
9. A point east of Cape Neddick Light	43°09.9′	70°34.5′
10. Merrimack River Entrance "MR" Whistle Buoy	42°48.6′	70°47.1′
11. Halibut Point Gong Buoy "1AHP"	42°42.0′	70°37.5′
12. Connecting reference point	42°40′	70°30′
13. Whistle Buoy "2" off Eastern Point	42°34.3′	70°39.8′
14. The Graves Light (Boston)	42°21.9′	70°52.2′
15. Minots Ledge Light	42°16.2′	70°45.6′
16. Farnham Rock Lighted Bell Buoy	42°05.6′	70°36.5′
17. Cape Cod Canal Bell Buoy "CC"	41°48.9′	70°27.7′
18. A point inside Cape Cod Bay	41°48.9′	70°05′
19. Race Point Lighted Bell Buoy "RP"	42°04.9′	70°16.8′
20. Peaked Hill Bar Whistle Buoy "2PH"	42°07.0′	70°06.2′
21. Connecting point, off Nauset Light	41°50′	69°53′
22. A point south of Chatham "C" Whistle Buoy	41°38′	69°55.2′
22. A point in eastern Vineyard Sound	41°30′	70°33′
24. A point east of Martha's Vineyard	41°22.2′	70°24.6′
25. A point east of Great Pt. Light, Nantucket	41°23.4′	69°57′
26. A point SE of Sankaty Head, Nantucket	41°13′	69°57′
27. A point west of Nantucket	41°15.6′	70°25.2′
28. Squibnocket Lighted Bell Buoy "1"	41°15.7′	70°46.3′
29. Wilbur Point (on Sconticut Neck)	41°35.2′	70°51.2′
30. Mishaum Point (on Smith Neck)	41°31.0′	70°57.2′
31. Sakonnet Entrance Lighted Whistle Buoy "SR"	41°25.7′	71°13.4′
32. Point Judith Lighted Whistle Buoy "2"	41°19.3′	71°28.6′
33. A point off Block Island Southeast Light	41°08.2′	71°32.1′
34. Shinnecock Inlet Lighted Whistle Buoy "SH"	40°49.0′	72°28.6′
35. Scotland Horn Buoy "S", off Sandy Hook (NJ)	40°26.5′	73°55.0′

VMS DEMARCATION LINE—Continued

Description	N. lat.	W. long.
36. Barnegat Lighted Gong Buoy "2"	39°45.5′	73°59.5′
37. A point east of Atlantic City Light	39°21.9′	74°22.7′
38. A point east of Hereford Inlet Light	39°00.4′	74°46′
39. A point east of Cape Henlopen Light	38°47′	75°04′
40. A point east of Fenwick Island Light	38°27.1′	75°02′
41. A point NE of Assateague Island (VA)	38°00′	75°13′
42. Wachapreague Inlet Lighted Whistle Buoy "A"	37°35.0′	75°33.7′
43. A point NE of Cape Henry	36°55.6′	75°58.5′
44. A point east of Currituck Beach Light	36°22.6′	75°48′
45. Oregon Inlet (NC) Whistle Buoy	35°48.5′	75°30′
46. Wimble Shoals, east of Chicamacomico	35°36′	75°26′
47. A point SE of Cape Hatteras Light	35°12.5′	75°30′
48. Hatteras Inlet Entrance Buoy "HI"	35°10′	75°46′
49. Ocracoke Inlet Whistle Buoy "OC"	35°01.5′	76°00.5′
50. A point east of Cape Lookout Light	34°36.5′	76°30′
51. Southern terminus point	34°35′	76°41′

(b) *Vessels required to use VMS*. The following vessels must have installed on board an operational VMS unit that meets the minimum performance criteria specified in, or as modified pursuant to § 648.9(a):

(1) A scallop vessel issued a Full-time or Part-time limited access scallop permit, or an LAGC scallop permit;

(2) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.60;

(3) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section;

(4) A vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE multispecies Category A or B DAS, or catches regulated species or ocean pout while on a sector trip; or a vessel issued a limited access NE multispecies small vessel category or Handgear A permit that fishes in multiple stock areas pursuant to paragraph (k)(2) of this section;

(5) A vessel issued a surfclam (SF 1) or an ocean quahog (OQ 6) open access permit;

(6) Effective January 1, 2009, a vessel issued a Maine mahogany quahog (OQ 7) limited access permit, unless otherwise exempted under paragraph § 648.4(a)(4)(ii)(B)(*1*);

(7) A limited access monkfish vessel electing to fish in the Offshore Fishery Program in the SFMA, as provided in § 648.95; and

(8) A vessel issued a limited access herring permit (*i.e.*, All Areas Limited Access Permit, Areas 2 and 3 Limited Access Permit, Incidental Catch Limited Access Permit).

(c) *Operating requirements for all vessels*. (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by paragraph (c)(1)(ii) of this section, all vessels required to use VMS units, as specified in paragraph (b) of this section, must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section:

(i) At least every hour, 24 hr a day, throughout the year; or

(ii) At least twice per hour, 24 hr a day, throughout the year, for vessels issued a scallop permit.

(2) *Power-down exemption*. (i) Any vessel required to transmit the vessel's location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) For vessels fishing with a valid NE multispecies limited access permit,

a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), or an Atlantic sea scallop limited access permit, the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter;

(C) The vessel has been issued a limited access herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must re-power the VMS and submit a valid VMS activity declaration prior to leaving port; or

(D) The vessel has been issued an LAGC permit, is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power-down code that the VMS will be powered down, and the vessel is not required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must re-power the VMS and submit a valid VMS activity declaration prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator.

(ii) *Letter of exemption*—(A) *Application*. A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; the exact time period for which an exemption is needed (*i.e.*, the time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 consecutive hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance*. Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under this paragraph (c)(2), and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

(d) *Presumption*. If a VMS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was properly declared out of the scallop fishery, NE multispecies fishery, or monkfish fishery, as applicable, or while the vessel was not at sea.

(e) *VMS notifications*—(1) *VMS installation notification*. (i) The owner of such a vessel specified in paragraph (b) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(4) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under paragraph (b) of this section.

(ii) Vessel owners must confirm the VMS unit's operation and communications service to NMFS by calling the Office of Law Enforcement (OLE) to ensure that position reports are automatically sent to and received by NMFS OLE.

(iii) NMFS does not regard the fishing vessel as meeting the VMS requirements until automatic position reports and a manual declaration are received.

(iv) If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall

allow at least 30 days for the vessel to install an operational VMS unit that meets the minimum performance criteria, and for the owner to provide documentation of such installation to the Regional Administrator.

(v) The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE multispecies Category A or B DAS, or that catches regulated species or ocean pout while on a sector trip, as specified in paragraph (b)(4) of this section, must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board, meeting all requirements of this part, prior to fishing under a NE multispecies DAS or under the provisions of an approved sector operations plan.

(vi) NMFS shall provide notification to all affected permit holders providing detailed information on procedures pertaining to VMS purchase, installation, and use.

(2) *Replacement VMS installations.* Should a VMS unit require replacement, a vessel owner must submit documentation to the Regional Administrator, within 3 days of installation and prior to the vessel's next trip, verifying, as described in this paragraph (e), that the new VMS unit is an operational approved system as described under § 648.9(a).

(3) *Access.* As a condition to obtaining a limited access scallop, multispecies, an Atlantic herring, a surfclam, ocean quahog, or Maine mahogany quahog permit; or as a condition of using a VMS unit; all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS data, if applicable, and to location data obtained from its VMS unit, if required, at the time of or after its transmission to the vendor or receiver, as the case may be.

(4) *Tampering.* Tampering with a VMS, a VMS unit, or a VMS signal, is prohibited. Tampering includes any activity that may affect the unit's ability to operate or signal properly, or to accurately compute or report the vessel's position.

(5) *Fishery participation notification.* (i) A vessel subject to the VMS requirements of § 648.9 and paragraphs (b) through (d) of this section that has crossed the VMS Demarcation Line under paragraph (a) of this section is deemed to be fishing under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period. NMFS must be notified by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

(ii) Notification that the vessel is not under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or any other fishery requiring the operation of VMS, must be received by NMFS prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip, unless the vessel is a scallop vessel and is exempted, as specified in paragraph (f) of this section.

(iii) DAS counting for a vessel that is under the VMS notification requirements of paragraph (b) of this section, with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in paragraph (e)(5) of this section, begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port.

(iv) For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the first location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel

elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

(v) The Regional Administrator may authorize or require the use of the call-in system instead of the use of VMS, as described under paragraph (h) of this section. Furthermore, the Regional Administrator may authorize or require the use of letters of authorization as an alternative means of enforcing possession limits, if VMS cannot be used for such purposes.

(f) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hr prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by transmitting the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, LAGC scallop fishery, or will be fishing outside of the scallop fishery under the requirements of its other Federal permits, or that the vessel will be steaming to another location prior to commencing its fishing trip by transmitting a ''declared out of fishery'' VMS code. If the owner or authorized representative of a scallop vessel declares out of the fishery for the steaming portion of the trip, the vessel cannot possess, retain, or land scallops, or fish for any other fish. Prior to commencing the fishing trip following a ''declared out of fishery'' trip, the owner or authorized representative must notify the Regional Administrator by transmitting the appropriate VMS code, before first crossing the VMS Demarcation Line, that the vessel will be participating in the scallop DAS program, Area Access Program, or LAGC scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(1) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery (i.e., agrees that the vessel will not possess, retain, or land scallops while declared out of the fishery) by notifying the Regional Administrator through the VMS. If the vessel has not fished for any other fish (i.e., steaming only), after declaring out of the fishery, leaving port, and steaming to another location, the owner or authorized representative of an IFQ scallop vessel may declare into the IFQ fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line. An IFQ scallop vessel that is fishing north of 42°20′ N. lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops while under such a declaration. After declaring out of the fishery, leaving port, and steaming to another location, if the IFQ scallop vessel has not fished for any other fish (i.e., steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(2) *NGOM scallop fishery.* A NGOM scallop vessel is deemed to be fishing in Federal waters of the NGOM management area and will have its landings applied against the NGOM management area TAC, specified in § 648.62(b)(1), unless:

(i) Prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops while under such a declaration. After declaring out of the fishery, leaving port, and steaming to another location, if the NGOM scallop vessel has not fished for any other fish (i.e., steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(ii) The vessel has specifically declared into the state-only NGOM fishery, thus is fishing exclusively in the state waters portion of the NGOM management area.

(3) *Incidental scallop fishery*. An Incidental scallop vessel that has crossed the VMS Demarcation Line on any declared fishing trip for any species is deemed to be fishing under the Incidental scallop fishery.

(4) *Catch reports*. (i) The owner or operator of a limited access or LAGC IFQ vessel that fishes for, possesses, or retains scallops, and is not fishing under a NE Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.60(a)(9), and trips accompanied by a NMFS-approved observer. The reports must be submitted for each day (beginning at 0000 hr and ending at 2400 hr) and not later than 0900 hours of the following day. Such reports must include the following information:

(A) FVTR serial number;

(B) Date fish were caught;

(C) Total pounds of scallop meats kept;

(D) Total pounds of yellowtail flounder kept;

(E) Total pounds of yellowtail flounder discarded; and

(F) Total pounds of all other fish kept.

(ii) *Scallop Pre-Landing Notification Form for IFQ and NGOM vessels*. Using the Scallop Pre-Landing Notification Form, a vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Notification Form on trips that are not declared as scallop trips, but on which scallops are kept incidentally. A limited access vessel that also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Notification Form only when fishing under the provisions of the vessel's IFQ or NGOM permit. VMS Scallop Pre-Landing Notification forms must be submitted no less than 6 hr prior to crossing the VMS Demarcation Line on the way back to port, and, if scallops will be landed, must include the vessel's captain/operator name, the amount of scallop meats and/or bushels to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, the VTR serial number recorded from that trip's VTR, and whether any scallops were caught in the NGOM. If the scallop harvest ends less than 6 hr prior to landing, then the Scallop Pre-Landing Notification form must be submitted immediately upon leaving the fishing grounds. If no scallops will be landed, the form only requires the vessel's captain/operator name, the VTR serial number recorded from that trip's VTR, and indication that no scallops will be landed. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report.

(5) *Scallop vessels fishing under exemptions*. Vessels fishing under the exemptions provided by § 648.54 (a) and/or (b)(1) must comply with the exemption requirements and notify the Regional Administrator by VMS notification or by call-in notification as follows:

(i) *VMS notification for scallop vessels fishing under exemptions*. (A) Notify the Regional Administrator, via their VMS, prior to each trip of the vessel under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

(B) Notify the Regional Administrator, via their VMS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(ii) *Call-in notification for scallop vessels fishing under exemptions*. (A) Notify the Regional Administrator by using the call-in system and providing the following information at least 7 days prior to fishing under the exemption:

(*1*) Owner and caller name and address;

(*2*) Vessel name and permit number; and

(*3*) Beginning and ending dates of the exemption period.

(B) Remain under the exemption for a minimum of 7 days.

(C) If, under the exemption for a minimum of 7 days and wishing to withdraw earlier than the designated end of

the exemption period, notify the Regional Administrator of early withdrawal from the program by calling the call-in system, providing the vessel's name and permit number and the name and phone number of the caller, and stating that the vessel is withdrawing from the exemption. The vessel may not leave port to fish in the EEZ until 48 hr after notification of early withdrawal is received by the Regional Administrator.

(D) The Regional Administrator will furnish a phone number for call-ins upon request.

(E) Such vessels must comply with the VMS notification requirements specified in paragraph (e) of this section by notifying the Regional Administrator by entering the appropriate VMS code that the vessel is fishing outside of the scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(g) *VMS notification requirements for other fisheries.* (1) Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (e)(1)(iv) of this section, the owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b) of this section, unless exempted under paragraph (f) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip.

(2) Notification of a vessel's intended fishing activity includes, but is not limited to, gear and DAS type to be used; area to be fished; and whether the vessel will be declared out of the DAS fishery, or will participate in the NE multispecies and monkfish DAS fisheries, including approved special management programs.

(3) A vessel cannot change any aspect of its VMS activity code outside of port, except as follows:

(i) NE multispecies vessels are authorized to change the category of DAS used (*i.e.,* flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A).

(ii) Vessels issued both a NE multispecies permit and a monkfish permit are authorized to change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS, while remaining subject to the to the NE multispecies DAS usage requirements under § 648.92(b)(1)(i), during the course of a trip, as provided at § 648.92(b)(1)(iii)(A).

(iii) The vessel carries onboard a valid limited access or LAGC scallop permit, has declared out of the fishery in port, and is steaming to another location, pursuant to paragraph (f) of this section.

(4) VMS activity codes and declaration instructions are available from the Regional Administrator upon request.

(h) *Call-in notification.* The owner of a vessel issued a limited access monkfish permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the occasional category that has not elected to fish under the VMS notification requirements of paragraph (e) of this section and is not participating in the Sea Scallop Area Access program as specified in § 648.60, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (i) of this section, are subject to the following requirements:

(1) Less than 1 hr prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in paragraph (h) of this section, or an occasional scallop permit as specified in this paragraph (h), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the call-in system and providing the following information:

(i) Owner and caller name and phone number;

(ii) Vessel name and permit number;

(iii) Type of trip to be taken;

(iv) Port of departure; and

(v) That the vessel is beginning a trip.

(2) A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (e)(2)(iii) of this section.

(3) Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a monkfish Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(i) are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (h) for those monkfish DAS when there is not a concurrent NE multispecies DAS.

(4) The vessel's confirmation numbers for the current and immediately prior NE multispecies or monkfish fishing trip must be maintained on board the vessel and provided to an authorized officer immediately upon request.

(5) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information:

(i) Owner and caller name and phone number;

(ii) Vessel name and permit number;

(iii) Port of landing; and

(iv) That the vessel has ended its trip.

(6) A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, or when a vessel enters port at the end of a fishing trip, whichever occurs later, unless otherwise specified in paragraph (e)(2)(iii) of this section.

(7) The Regional Administrator will furnish a phone number for DAS notification call-ins upon request.

(8) Regardless of whether a vessel's owner or authorized representative provides correct notification as required by paragraphs (e) through (h) of this section, a vessel meeting any of the following descriptions shall be deemed to be in its respective fishery's DAS or Scallop Access Area Program for the purpose of counting DAS or scallop access area trips/pounds, and, shall be charged DAS from the time of sailing to landing:

(i) Any vessel issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops;

(ii) A vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops, unless otherwise specified in § 648.60(d)(2);

(iii) Any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops;

(iv) Any vessel issued a limited access scallop and LAGC IC scallop permit that possesses or lands more than 40 lb (18.1 kg) of scallops;

(v) Any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(h)(9)(ii), 648.17, and 648.89; and

(vi) Any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c).

(9) *Vessels electing to use VMS.* (i) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit must use the call-in system specified in paragraph (h) of this section, unless the owner of such vessel has elected to provide the notifications required by paragraph (g) of this section, through VMS as specified under paragraph (h)(9)(ii) of this section. Any vessel issued a limited access monkfish or an Occasional scallop permit that has elected to provide notifications through VMS must continue to provide notifications through VMS for the entire fishing year.

(ii) A vessel issued a limited access monkfish or Occasional scallop permit may be authorized by the Regional Administrator to provide the notifications required by paragraph (e) of this section using the VMS specified in paragraph (b) of this section. For the vessel to become authorized, the vessel owner must provide documentation to the Regional Administrator at the time of application for a limited access

permit that the vessel has installed on board an operational VMS as provided under § 648.9(a). A vessel that is authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (e)(2)(i) through (v) of this section. This paragraph (h) does not apply to vessels electing to use the VMS.

(i) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (h) of this section, instead of using the VMS. If use of the call-in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the FEDERAL REGISTER, e-mail, or other appropriate means.

(j) *Additional NE multispecies call-in requirements*—(1) *Spawning season call-in.* With the exception of a vessel issued a valid Small Vessel category permit or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through the IVR system (or through VMS, if required by the Regional Administrator) and provide the following information:

(i) Vessel name and permit number;

(ii) Owner and caller name and phone number; and

(iii) Commencement date of the 20-day period.

(2) *Gillnet call-in.* A vessel subject to the gillnet restriction described in § 648.82 must notify the Regional Administrator of the commencement of its time out of the NE multispecies gillnet fishery using the procedure described in paragraph (k)(1) of this section.

(k) *Area-specific reporting requirements for NE multispecies vessels.*—(1) *Reporting requirements for all limited access NE multispecies vessel owners or operators.* In addition to any other reporting requirements specified in this part, the owner or operator of any vessel issued a limited access NE multispecies permit on either a common pool or sector trip must declare the following information via VMS or IVR, as instructed by the Regional Administrator:

(i) *Broad stock area(s) to be fished.* To fish in any of the broad stock areas, the vessel owner or operator must declare his/her intent to fish within one or more of the NE multispecies broad stock areas, as defined in paragraph (k)(3) of this section, prior to leaving port at the start of a fishing trip;

(ii) *VTR serial number.* On its return to port, prior to crossing the VMS demarcation line, as defined at § 648.10, the vessel owner or operator must provide the VTR serial number for the first page of the VTR for that particular trip, or other applicable trip ID specified by NMFS; and

(iii) *Trip-end hail report.* Unless otherwise required to comply with both the dockside/roving monitoring trip-start and trip-end hail reports pursuant to § 648.87(b)(5), beginning in fishing year 2011 (May 1, 2011), upon its return to port and prior to crossing the VMS demarcation line as defined in § 648.10, the owner or operator of any vessel issued a limited access NE multispecies permit that is subject to the VMS requirements specified in paragraph (b)(4) of this section must submit a trip-end hail report to NMFS via VMS, as instructed by the Regional Administrator. The trip-end hail report must include at least the following information, as instructed by the Regional Administrator: The vessel permit number; VTR serial number, or other applicable trip ID specified by NMFS; intended offloading location(s), including the dealer name/offload location, port/harbor, and state for the first dealer/facility where the vessel intends to offload catch and the port/harbor, and state for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; and the estimated total amount of all species retained, including species managed by other FMPs (in pounds, landed weight), on board at the time the vessel first offloads its catch from a particular trip. The trip-end hail report must be submitted at least 6 hr in advance of landing for all trips of at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-

end hail reports must be submitted upon the completion of the last tow or hauling of gear, as instructed by the Regional Administrator.

(2) *Reporting requirements for NE multispecies vessel owners or operators fishing in more than one broad stock area per trip.* Unless otherwise provided in this paragraph (k)(2), the owner or operator of any vessel issued a NE multispecies limited access permit that has declared its intent to fish within multiple NE multispecies broad stock areas, as defined in paragraph (k)(3) of this section, on the same trip must submit a trip-level hail report via VMS detailing the amount of each regulated species retained (in pounds, landed weight) and the total amount of all species retained (in pounds, landed weight), including NE multispecies and species managed by other FMPs, from each broad stock area prior to crossing the VMS demarcation line, as defined in § 648.10, upon its return to port following each fishing trip on which regulated species were caught, as instructed by the Regional Administrator. This reporting requirement is in addition to the reporting requirements specified in paragraph (k)(1) of this section and any other reporting requirements specified in this part. A vessel is exempt from the reporting requirements specified in this paragraph (k)(2) if it is fishing in a special management program, as specified in § 648.85, and is required to submit daily VMS catch reports consistent with the requirements of that program. The Regional Administrator may adjust the reporting frequency specified in this paragraph and may exempt vessels on a sector trip from the reporting requirements specified in this paragraph (k)(2) if it is determined that such reporting requirements would duplicate those specified in § 648.87(b).

(3) *NE multispecies broad stock areas.* For the purposes of the area-specific reporting requirements listed in paragraphs (k)(1) and (2) of this section, the NE multispecies broad stock areas are defined in paragraphs (k)(3)(i) through (iv) of this section. Copies of a map depicting these areas are available from the Regional Administrator upon request.

(i) *GOM Stock Area 1.* The GOM Stock Area 1 is bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

GOM STOCK AREA 1

Point	N. latitude	W. longitude
G1	(1)	(1)
CII3	(1)	67°20′
G6	42°20′	67°20′
G10	42°20′	70°00′
G9	(2)	70°00′

[1] The intersection of the shoreline and the U.S.-Canada maritime boundary.
[2] The intersection of the Cape Cod, MA, coastline and 70°00′ W. long.

(ii) *Inshore GB Stock Area 2.* The inshore GB Stock Area is defined by straight lines connecting the following points in the order stated:

INSHORE GB STOCK AREA 2

Point	N. latitude	W. longitude
G9	(1)	70°00′
G10	42°20′	70°00′
IGB1	42°20′	68°50′
IGB2	41°00′	68°50′
IGB3	41°00′	69°30′
IGB4	41°10′	69°30′
IGB5	41°10′	69°50′
IGB6	41°20′	69°50′
IGB7	41°20′	70°00′
G12	(2)	70°00′

[1] The intersection of the Cape Cod, MA, coastline and 70°00′ W. long.
[2] South-facing shoreline of Cape Cod, MA.

(iii) *Offshore GB Stock Area 3.* The Offshore GB Stock Area 3 is bounded on the east by the U.S./Canadian maritime boundary and defined by straight lines connecting the following points in the order stated:

OFFSHORE GB STOCK AREA 3

Point	N. latitude	W. longitude
IGB1	42°20′	68°50′
G6	42°20′	67°20′
CII3	(1)	67°20′
SNE2	39°00′	(1)
SNE3	39°00′	69°00′
SNE4	39°50′	69°00′
SNE5	39°50′	68°50′
IGB1	42°20′	68°50′

[1] The U.S.-Canada maritime boundary as it intersects with the EEZ.

(iv) *SNE/MA Stock Area 4.* The SNE/MA Stock Area 4 is the area bounded on the north and west by the coastline of the United States, bounded on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with

the EEZ, and bounded on the east by straight lines connecting the following points in the order stated:

SNE/MA STOCK AREA 4

Point	N. latitude	W. longitude
G12	(1)	70°00′
IGB7	41°20′	70°00′
IGB6	41°20′	69°50′
IGB5	41°10′	69°50′
IGB4	41°10′	69°30′
IGB3	41°00′	69°30′
IGB2	41°00′	68°50′
SNE4	39°50′	68°50′
SNE3	39°50′	69°00′
SNE5	39°00′	69°00′
SNE6	39°00′	(2)

[1] South-facing shoreline of Cape Cod, MA.
[2] The U.S.-Canada maritime boundary as it intersects with the EEZ.

(l) *Area-specific reporting requirements for limited access Atlantic herring vessels fishing in Atlantic Herring Management Areas 1A, 1B, and 3*—(1) *Reporting requirements for vessel operators*. The owner or operator of any vessel issued a limited access herring permit that fishes any part of a tow with midwater trawl gear (including midwater pair-trawl gear) in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (f)(3), must report the estimated total amount of all species retained (in pounds, landed weight) from each of the GOM and GB modified haddock stock areas as defined in paragraph (l)(2) of this section, via the required reporting method specified for Atlantic herring owners or operators at § 648.7(b)(2)(i), unless otherwise specified by § 648.201.

(2) *GOM and GB Modified Haddock Stock Areas*. For the sole purpose of the area-specific reporting requirements in paragraph (l)(2) of this section, the GOM and GB Modified Haddock Stock Areas are defined in paragraphs (l)(2)(i) and (l)(2)(ii) of this section. Copies of a map depicting these areas are available from the Regional Administrator upon request.

(i) *GOM Modified Haddock Stock Area*. The GOM Modified Haddock Stock Area is bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

GOM MODIFIED HADDOCK STOCK AREA

Point	N. latitude	W. longitude
GMH1	(1)	(1)
GMH2	42°20′	(2)
GMH4	42°20′	70°00′
GMH4	(3)	70°00′

[1] The intersection of the shoreline and the U.S.-Canada maritime boundary.
[2] The intersection of 42°20 N. lat. and the U.S./Canada maritime boundary.
[3] The intersection of the Cape Cod, MA, coastline and 70° 00′ W. long.

(ii) *GB Modified Haddock Stock Area*. The GB Modified Haddock Stock Area is bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

GB MODIFIED HADDOCK STOCK AREA

Point	N. latitude	W. longitude
GBM1	(1)	70°00′
GBM2	42°20′	70°00′
GBM3	42°20′	(2)
GBM4	40°30′	(2)
GBM5	40°30′	66°40′
GBM6	39°50′	66°40′
GBM7	39°50′	70°00′
GBM8	(3)	70°00′

[1] The intersection of the North-facing shoreline of Cape Cod, MA and 70°00′ W. long.
[2] The U.S.-Canada maritime boundary as it intersects with the EEZ.
[3] The intersection of the South-facing shoreline of Cape Cod, MA and 70°00′ W. long.

[74 FR 20530, May 4, 2009, as amended at 75 FR 18311, 18370, Apr. 9, 2010; 75 FR 36569, June 28, 2010; 75 FR 63722, Oct. 18, 2010; 76 FR 23070, Apr. 25, 2011; 76 FR 42582, July 19, 2011; 76 FR 43761, July 21, 2011; 76 FR 56996, Sept. 15, 2011; 76 FR 60382, Sept. 29, 2011; 77 FR 20736, Apr. 6, 2012]

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specific in paragraph (g) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive

economic zone must carry a NMFS-certified fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section.

(b) If requested by the Regional Administrator to carry an observer or sea sampler, it is the responsibility of the vessel owner to arrange for and facilitate observer or sea sampler placement. Owners of vessels selected for sea sampler/observer coverage must notify the appropriate Regional or Science and Research Director, as specified by the Regional Administrator, before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in selection letters to vessel owners.

(c) The Regional Administrator may waive the requirement to carry a sea sampler or observer if the facilities on a vessel for housing the observer or sea sampler, or for carrying out observer or sea sampler functions, are so inadequate or unsafe that the health or safety of the observer or sea sampler, or the safe operation of the vessel, would be jeopardized.

(d) An owner or operator of a vessel on which a NMFS-approved sea sampler/observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the sea sampler/observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the sea sampler's/observer's duties.

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer/sea sampler, and allow the sea sampler/observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the sea sampler/observer in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the sea sampler/observer, as specified by the Regional Administrator, ensuring that transfers of observers/sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea samplers/ observers involved.

(6) Allow the sea sampler/observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(7) Allow the sea sampler/observer to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, a skate permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skates (including discards) or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skates, tilefish, or other specimens taken by the vessel.

(f) NMFS may accept observer coverage funded by outside sources if:

(1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer guidelines and procedures.

(2) The owner or operator of the vessel complies with all other provisions of this part.

(3) The observer is approved by the Regional Administrator.

(g) *Atlantic sea scallop observer program*—(1) *General*. Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with

this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and LAGC IFQ vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

(2) *Vessel notification procedures—(i) Limited access vessels.* Limited access vessel owners, operators, or managers shall notify NMFS/NEFOP by telephone not more than 10 days prior to the beginning of any scallop trip of the time, port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(ii) *LAGC IFQ vessels.* LAGC IFQ vessel owners, operators, or managers must notify the NMFS/NEFOP by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start a scallop trip in an access area. If selected, up to two Sea Scallop Access Area trips that start during the specified week (Sunday through Saturday) can be selected to be covered by an observer. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

(3) *Selection of scallop trips for observer coverage.* Based on predetermined coverage levels for various permit categories and areas of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified scallop trip, within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective scallop trip, as specified in paragraph (g)(2) of this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver. A vessel may not fish in an area with an observer waiver confirmation number that does not match the scallop trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date; and

(4) *Procurement of observer services by scallop vessels.* (i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the NMFS/NEFOP from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/NEFOP Web site at *http://www.nefsc.noaa.gov/femad/fsb/*. The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 48 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/NEFOP from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel

manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS/NEFOP shall issue such a waiver within 24 hr, if the conditions of this paragraph (g)(4)(ii) are met. A vessel may not begin the trip without being issued a waiver.

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area scallop trips or additional scallop catch per day in Sea Scallop Access Areas in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

(i) Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS scallop trip consistent with paragraphs (g)(5)(i)(A) and (B), respectively, of this section.

(A) *Access Area trips*. (*1*) For purposes of determining the daily rate for an observed scallop trip on a limited access vessel in a Sea Scallop Access Area when that specific Access Area's observer set-aside specified in § 648.60(d)(1) has not been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time at sea equals 27 hr, which would equate to 2 full ''days.''

(*2*) For purposes of determining the daily rate in a specific Sea Scallop Access Area for an observed scallop trip on a limited access vessel taken after NMFS has announced the industry-funded observer set-aside in that specific Access Area has been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(*3*) For purposes of determining the daily rate in a specific Sea Scallop Access Area for observed scallop trips on an LAGC vessel, regardless of the status of the industry-funded observer set-aside, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(B) *Open area scallop trips*. For purposes of determining the daily rate for an observed scallop trip for open area DAS trips, a service provider shall charge dock to dock where ''day'' is defined as a 24-hour period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, so the provider would charge 1 day and 3 hours.

(ii) NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in a Sea Scallop Access Area for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified through the Small Entity Compliance Guide of any DAS accrual rate changes and any changes in additional pounds of scallops determined by

the Regional Administrator to be necessary. Vessel owners and observer providers shall be notified by NMFS of any adjustments.

(6) When the available DAS or TAC set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section, and shall be responsible for paying for the cost of the observer, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

(h) *Observer service provider approval and responsibilities*—(1) *General*. An entity seeking to provide observer services to the Atlantic sea scallop fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St. Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop vessel owners and shall be posted on NMFS' Web page, as specified in paragraph (g)(4) of this section.

(2) [Reserved]

(3) *Contents of application*. An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business email address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is $5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the Department of Labor (DOL) guidelines for observers. Observers shall be compensated as Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified observers on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among

multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an ''at sea'' emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) *Application evaluation*. (i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a sea scallop fishery observer service provider, as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS' Web site specified in paragraph (g)(4) of this section, and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or NMFS concludes that the applicant does not have the ability to perform the duties and responsibilities of a sea scallop fishery observer service provider. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information, in writing, to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

(5) *Responsibilities of observer service providers*. (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 48 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An observer's first three deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer will be certified.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop vessel or to attend a NMFS/NEFOP Sea Scallop Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS' Web site specified in paragraph (g)(4) of this section under the Sea Scallop Program, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager

for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hr per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop fishery.

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hr a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP Minimum Eligibility Standards for observers as described on the NMFS/NEFOP Web site.

(vii) *Reports* —(A) *Observer deployment reports.* The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hr of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 24 hr of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hr, which should be within 4 business days of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip that has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hr of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, either in-person or via phone, at NMFS' discretion, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any observed trip. If requested by NMFS, an observer that is at sea during the 2-week period must contact NMFS upon his or her return.

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers by 5 p.m., Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports.* The observer provider must report possible observer

harassment, discrimination, concerns about vessel safety or marine casualty, or observer illness or injury; and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior, to NMFS/NEFOP within 24 hr of the event or within 24 hr of learning of the event.

(G) *Observer status report.* Providers must provide NMFS/NEFOP with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is ''in service,'' indicating when the observer has requested leave and/or is not currently working for the industry funded program.

(H) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

(I) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

(J) Providers must submit to NMFS/NEFOP, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

(viii) *Refusal to deploy an observer.* (A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.

(C) The observer service provider may refuse to deploy an observer on a scallop vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS

within 30 days of the notification of removal, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or automatically if no timely rebuttal is submitted, shall be the final decision of the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) *Observer certification.* (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program Web site: *http://www.st.nmfs.gov/st4/nop/.*

(2) *Observer training.* In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) *Observer requirements.* All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP Web site specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section; and

(iv) Hold a current Red Cross (or equivalence) CPR/first aid certification.

(v) Observers must accurately record their sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment.

(4) *Probation and decertification.* NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the Web site at: *http://www.nefsc.noaa.gov/femad/fsb/.*

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraphs (i)(1) through (3) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service provider via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of the Department of Commerce.

(j) In the event that a vessel is requested by the Regional Administrator to carry a NMFS-certified fisheries observer pursuant to paragraph (a) of this section and is also selected to carry an at-sea monitor as part of an approved sector at-sea monitoring program specified in § 648.87(b)(1)(v) for the same trip, only the NMFS-certified fisheries observer is required to go on that particular trip.

(k) *NE multispecies observer coverage*—(1) *Pre-trip notification.* Unless otherwise specified in this paragraph (k), or notified by the Regional Administrator, the owner, operator, or manager of a vessel (i.e., vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a sector trip, as defined in this part, must provide advanced notice to NMFS of the vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; area to be fished; and gear type to be used at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85, as instructed by the Regional Administrator, for the purposes of selecting vessels for observer deployment. For trips lasting 48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly notifications, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that they intend to complete at least one NE multispecies DAS or sector trip during the following week and provide the date, time, port of departure, area to be fished, and gear type to be used for each trip during that week. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued an observer notification or a waiver by NMFS.

(2) *Vessel selection for observer coverage.* NMFS shall notify the vessel owner, operator, or manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified trip within 24 hr of the vessel owner's, operator's or manager's notification of the prospective trip, as specified in paragraph (k)(1) of this section. All trip notifications shall be issued a unique confirmation number. A vessel may not fish in an area with an observer waiver confirmation number that does not match the trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are valid for 48 hr from the intended sail date. If a trip is interrupted and returns to port due to bad weather or other circumstance beyond the operator's control, and goes back out within 48 hr, the same confirmation number and observer status remains. If the layover time is greater than 48 hr, a new trip notification must be made by the

operator, owner, or manager of the vessel.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surfclam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), and O (skates) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

(a) The Regional Administrator may not grant such an exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the management objectives of the respective FMP, the provisions of the Magnuson-Stevens Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the respective resources and fishery;

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(b) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of the respective FMP, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Administrator to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

(c) Experimental fishing for surfclams or ocean quahogs will not require an allocation permit.

(d) *Temporary possession letter of authorization (LOA)*: The Regional Administrator (RA), or the RA's designee, may issue an LOA to eligible researchers on board federally permitted fishing vessels on which species of fish that otherwise could not be legally retained would be possessed temporarily for the purpose of collecting catch data. Under this authorization, such species of fish could be retained temporarily for data collection purposes, but shall be discarded as soon as practicable following data collection.

(1) *Eligible activities*. An LOA may be issued by the RA, or the RA's designee, to temporarily exempt a vessel, on which a qualified fishery research technician is collecting catch data, from the following types of fishery regulations: Minimum fish size restrictions; fish possession limits; species quota closures; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions.

(2) *Eligibility criteria*. Only personnel from the following bodies are eligible for a temporary possession LOA: Foreign government agency; U.S. Government agency; U.S. state or territorial agency; university (or other educational institution accredited by a recognized national or international accreditation body); international treaty organization; or scientific institution.

(3) *Application requirements*. To obtain a temporary possession LOA, an eligible applicant, as defined under paragraph (d)(2) of this section, is required to submit a complete application, which must contain the following information: The date of the application; the applicant's name, mailing address, and telephone number; a statement of the purposes and goals for which the LOA is needed; the name(s) and affiliation of the fishery research technicians will collect the data; a statement demonstrating the qualifications of the research technician that will collect the data; the species (target and incidental) expected to be harvested under

the LOA; the proposed disposition of all regulated species harvested under the LOA; the approximate time(s) and place(s) fishing will take place; the type, size, and amount of gear to be used; and the signature of the applicant. In addition, for each vessel to be covered by the LOA, as soon as the information is available and before operations begin, the applicant is required to supply to NMFS the vessel operator name, the vessel's Federal fishing permit number, and the vessel registration or documentation number.

[61 FR 58466, Nov. 15, 1996, as amended at 62 FR 37156, July 11, 1997; 65 FR 45852, July 26, 2000; 65 FR 77466, Dec. 11, 2000; 66 FR 49144, Sept. 26, 2001; 68 FR 49700, Aug. 19, 2003; 75 FR 1022, Jan. 8, 2010; 76 FR 60649, Sept. 29, 2011]

§ 648.13 Transfers at sea.

(a) Only vessels issued a longfin squid and butterfish moratorium or *Illex* moratorium permit under § 648.4(a)(5) and vessels issued a squid/butterfish incidental catch permit and authorized in writing by the Regional Administrator to do so, may transfer or attempt to transfer or receive longfin squid, *Illex*, or butterfish.

(b)(1) Except as provided in paragraph (b)(2) of this section, vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one vessel to another vessel, except that vessels issued a Federal multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Administrator to do so, may transfer species other than regulated species from one vessel to another vessel.

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer from one vessel to another, for use as bait, up to 500 lb (226.8 kg) of silver hake and unlimited amounts of red hake, per trip, provided:

(i) The transferring vessel possesses a Federal multispecies permit as specified under § 648.4(a)(1);

(ii) The transferring vessel has a letter of authorization issued by the Regional Administrator on board; and

(iii) The receiving vessel possesses a written receipt for any small-mesh multispecies purchased at sea.

(c) All persons are prohibited from transferring or attempting to transfer NE multispecies or scallops from one vessel to another vessel, except in accordance with paragraph (b) of this section.

(d) All persons are prohibited from transferring or attempting to transfer at sea summer flounder from one vessel to another vessel, except for vessels that have not been issued a Federal permit and fish exclusively in state waters.

(e) Vessels issued a letter of authorization from the Regional Administrator to transfer small-mesh multispecies at sea for use as bait will automatically have 500 lb (226.8 kg) deducted from the vessel's combined silver hake and offshore hake possession limit, as specified under § 648.86(c), for every trip during the participation period specified on the letter of authorization, regardless of whether a transfer of small-mesh multispecies at sea occurred or whether the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(f) *Atlantic herring*. With the exception of transfers made to an at-sea processing vessel issued the required permit under § 648.6(a)(2)(ii), any person or vessel, including any vessel issued an Atlantic herring permit, is prohibited from transferring, receiving, or attempting to transfer or receive any Atlantic herring taken from the EEZ, except as authorized in this paragraph (f), and in compliance with reporting requirements at § 648.7 (b)(2)(i)(D).

(1) *Personal use as bait*. (i) The operator of a vessel that is not issued an Atlantic herring permit may purchase and/or receive Atlantic herring at sea for personal use as bait, provided the vessel receiving the transfer does not have purse seine, midwater trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board;

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to another vessel for personal use as bait:

(A) Provided the transferring vessel is issued a letter of authorization to

transfer fish. The operator of the transferring vessel must show the letter of authorization to a representative of the vessel receiving fish or any authorized officer upon request; and

(B) Provided that the transfer of herring at sea to another vessel for personal use as bait does not exceed the possession limit specified for the transferring vessel in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to fishing as specified in § 648.201.

(2) *Atlantic herring carrier vessels.* (i) A vessel issued an Atlantic herring permit may operate as a herring carrier vessel and receive herring provided it is issued a carrier vessel letter of authorization and complies with the terms of that authorization, as specified in § 648.4(a)(10)(ii).

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to an Atlantic herring carrier up to the applicable possession limits specified in § 648.204, provided it is issued a letter of authorization for the transfer of herring and that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, an area closed to directed fishing as specified in § 648.201.

(3) If a herring management area has been closed to fishing as specified in § 648.201, a vessel may not transfer Atlantic herring harvested from or in the area to an IWP or Joint Venture vessel.

(4) If the amount of herring transshipped to a Canadian transshipment vessel would cause the amount of the border transfer specified pursuant to § 648.200 to be exceeded, a vessel may not transfer Atlantic herring to a Canadian transshipment vessel permitted in accordance with Public Law 104–297.

(5) *Transfer to at-sea processors.* A vessel issued an Atlantic herring permit may transfer herring to a vessel issued an at-sea processing permit specified in § 648.6(a)(2)(ii), up to the applicable possession limit specified in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to directed fishing as specified in § 648.201.

(6) *Transfers between herring vessels.* A vessel issued a valid Atlantic herring permit may transfer and receive herring at sea, provided such vessel has been issued a letter of authorization from the Regional Administrator to transfer or receive herring at sea. Such vessel may not transfer, receive, or possess at sea, or land per trip herring in excess of the applicable possession limits specified in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught, transferred, received, or possessed at sea, or landed per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to directed fishing as specified in § 648.201.

(g) All persons are prohibited from transferring at sea, either directly or indirectly, or attempting to transfer at sea to any vessel, any red crab or red crab parts, taken in or from the EEZ portion of the Red Crab Management Unit.

(h) *Skates.* (1) Except as provided in paragraph (h)(2) of this section, all persons or vessels issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea any skates to any vessel, and all persons or vessels not issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea to any vessel any skates while in the EEZ, or skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Vessels and vessel owners or operators issued Federal skate permits under § 648.4(a)(14) may transfer at sea skates taken in or from the EEZ portion of the Skate Management Unit, provided:

(i) The transferring vessel possesses on board a valid letter of authorization issued by the Regional Administrator as specified under § 648.322(c); and

(ii) The transferring vessel and vessel owner or operator comply with the requirements specified at § 648.322(c).

(i) *Scup.* (1) Except as provided in paragraph (i)(2) of this section, all persons or vessels issued a Federal scup permit are prohibited from transferring, or attempting to transfer, at sea

any scup to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any scup while in the EEZ, or any scup taken in or from the EEZ portion of the Scup Management Unit.

(2) The owner or operator of a vessel issued a Federal scup permit under § 648.4(a)(6)(i)(A) may transfer at sea scup taken in or from the EEZ portion of the Scup Management Unit, provided:

(i) The transfer occurs between two vessels with Federal scup permits;

(ii) The transfer occurs seaward of a boundary line that begins at 40°50′ N. lat., 70°00′ W. long., and runs south to connect points at 40°15′ N. lat., 73°30′ W. long.; 37°50′ N. lat., 75°00′ W. long.; and 35°30′ N. lat., 75°00′ W. long.;

(iii) The donating and receiving vessels possess gear that meets the requirements at § 648.125(a)(2), (3), and (4) for commercial scup fishing gear;

(iv) The transfer occurs in the Winter I or Winter II periods of the scup fishing year;

(v) There is only one transfer per fishing trip for the donor vessel;

(vi) The donor vessel removes only enough scup from the net to attain the scup possession limit;

(vii) After removal of scup from the net by the donor vessel, the entire codend, with all its contents, is transferred to the receiving vessel;

(viii) Only scup in an amount not to exceed the possession limit are retained by the receiving vessel;

(ix) While fishing for scup, all other nets are stored in accordance with § 648.23(b)(1); and

(x) The donating and receiving vessels report the transfer amount on the vessel trip report for each vessel.

[61 FR 34968, July 3, 1996, as amended at 62 FR 28642, May 27, 1997; 62 FR 63875, Dec. 3, 1997; 65 FR 16774, Mar. 29, 2000; 65 FR 77466, Dec. 11, 2000; 67 FR 63232, Oct. 10, 2002; 68 FR 22336, Apr. 28, 2003; 68 FR 49700, Aug. 19, 2003; 69 FR 16178, Mar. 29, 2004; 72 FR 11274, Mar. 12, 2007; 74 FR 20535, May 4, 2009; 75 FR 11450, Mar. 11, 2010; 75 FR 34058, June 16, 2010; 76 FR 60615, Sept. 29, 2011; 77 FR 16480, Mar. 21, 2012]

§ 648.14 Prohibitions.

(a) *General prohibitions*. It is unlawful for any person to do any of the following:

(1) Violate any provision of this part, the Magnuson-Stevens Act, or any regulation, notice, or permit issued under the Magnuson-Stevens Act, or any other statute administered by NOAA.

(2) Assist, aid, or abet in the commission of any act prohibited by the Magnuson-Stevens Act; or any regulation, notice, or permit issued under the Magnuson-Stevens Act; or any other statute administered by NOAA.

(3) Fail to report to the Regional Administrator within 15 days any change in the information contained in any permit or permit application.

(4) Falsify or fail to affix and maintain vessel markings as required by § 648.8.

(5) Make any false statement or provide any false information on, or in connection with, an application, declaration, record or report under this part.

(6) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, or other requirements of § 648.7, or submit or maintain false information in records and reports required to be kept or filed under § 648.7.

(7) Possess, import, export, transfer, land, or have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters by a vessel not issued a permit under this part or whose permit has been surrendered in accordance with applicable regulations.

(8) Fail to comply with any sea turtle conservation measure specified in 50 CFR parts 222 and 223, including any sea turtle conservation measure implemented by notification in the FEDERAL REGISTER.

(9) Violate any provision of an in-season action to adjust trip limits, gear usage, season, area access and/or closure, or any other measure authorized by this part.

(10) *Food safety program*. (i) Purchase, receive for a commercial purpose other than transport to a testing facility, or process; or attempt to purchase, receive for commercial purpose other than transport to a testing facility; or process, outside Maine, ocean quahogs

harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(ii) Land ocean quahogs outside Maine that are harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(iii) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels, with the exception of sea scallops harvested only for adductor muscles and shucked at sea, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 43° 00′ N. lat., 71° 00′ W. long.;

(B) 43° 00′ N. lat., 69° 00′ W. long.;

(C) 41° 39′ N. lat., 69° 00′ W. long;

(D) 41° 39′ N. lat., 71° 00′ W. long.; and then ending at the first point.

(iv) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any sea scallops, except for sea scallops harvested only for adductor muscles and shucked at sea, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 41° 39′ N. lat., 71° 00′ W. long.;

(B) 41° 39′ N. lat., 69° 00′ W. long.;

(C) 40° 00′ N. lat., 69° 00′ W. long.;

(D) 40° 00′ N. lat., 71° 00′ W. long.; and then ending at the first point.

(b) *Vessel and operator permits.* It is unlawful for any person to do any of the following:

(1) Fish for, take, catch, harvest or land any species of fish regulated by this part in or from the EEZ, unless the vessel has a valid and appropriate permit issued under this part and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) Alter, erase, or mutilate any permit issued under this part or any document submitted in support of an application for any such permit.

(3) Operate or act as operator of a vessel that fishes for or possesses any species of fish regulated by this part, or that is issued a vessel permit pursuant to this part, without having been issued and possessing a valid operator's permit.

(4) Fish for, possess, or land species regulated under this part with or from a vessel that is issued a limited access or moratorium permit under § 648.4(a) and that has had the horsepower, length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(5) Fish for, take, catch, harvest or land any species of fish regulated by this part for which the vessel is eligible to possess under a limited access or moratorium permit prior to the time the vessel has been reissued the applicable limited access or moratorium permit by NMFS.

(6) Attempt to replace a limited access or moratorium fishing vessel, as specified at § 648.4(a)(1)(i)(E), more than once during a permit year, unless the vessel has been rendered permanently inoperable.

(7) Purchase, possess, or receive from a vessel for a commercial purpose, other than solely for transport on land, any species of fish for which a vessel permit is required under this part, unless the vessel possesses a valid vessel permit issued under this part.

(8) Transfer, remove, or offload, for a commercial purpose; or attempt to transfer, remove, land, or offload, for a

commercial purpose; at sea, any species regulated under this part, unless the transferring vessel has been issued and carries on board a valid LOA from the Regional Administrator, or is otherwise exempted, and the receiving vessel has been issued and has on board a valid Federal permit for the species that is being transferred.

(9) Fish for, possess, or retain fish, during a fishing trip, aboard a Federally permitted vessel that, in the absence of an emergency, has not been operating under its own power for the entire trip.

(c) *Dealer permits*. It is unlawful for any person to do any of the following:

(1) Purchase, possess or receive for a commercial purpose; or attempt to purchase, possess or receive for a commercial purpose; other than solely for transport on land, any species regulated under this part unless in possession of a valid dealer permit issued under this part, except that this prohibition does not apply to species that are purchased or received from a vessel not issued a permit under this part that fished exclusively in state waters, or pursuant to the § 648.17 NAFO Regulatory Area exemptions.

(2) Sell, barter, trade, or transfer; or attempt to sell, barter, trade, or transfer; other than solely for transport on land, any Atlantic herring, multispecies, or monkfish from a vessel that fished for such species in the EEZ, unless the dealer or transferee has a valid dealer permit issued under § 648.6. A person who purchases and/or receives Atlantic herring at sea for his own personal use as bait, and does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board, is exempt from the requirement to possess an Atlantic herring dealer permit.

(d) *VMS*. It is unlawful for any person to do any of the following:

(1) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, VMS unit, or VMS signal required to be installed on or transmitted by vessel owners or operators required to use a VMS by this part.

(2) Fail to submit the appropriate VMS activity code for the intended activity at the appropriate time, in accordance with § 648.10.

(3) Fail to comply with the appropriate VMS reporting requirements, as specified in § 648.10.

(e) *Observer program*. It is unlawful for any person to do any of the following:

(1) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved observer or sea sampler conducting his or her duties; any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part; any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in § 648.7(g); or any dockside/roving monitor conducting his or her duties, including those duties authorized in § 648.82(n)(2) or § 648.87(b)(1)(v)(B)(*1*).

(2) Refuse to carry onboard a vessel an observer or sea sampler if requested to do so by the Regional Administrator or the Regional Administrator's designee.

(3) Fail to provide information, notification, accommodations, access, or reasonable assistance to either a NMFS-approved observer or sea sampler conducting his or her duties aboard a vessel as specified in § 648.11.

(4) Submit false or inaccurate data, statements, or reports.

(f) *Research and experimental fishing*. It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or fail to keep such letter on board the vessel during the period of the experiment.

(g) *Squid, mackerel, and butterfish*—(1) *All persons*. Unless participating in a research activity as described in § 648.22(g), it is unlawful for any person to do any of the following:

(i) *Possession and landing*. Take, retain, possess, or land more mackerel, squid or butterfish than specified under, or after the effective date of, a notification issued under § 648.22.

(ii) *Transfer and purchase*. (A) Purchase or otherwise receive for a commercial purpose; other than solely for transport on land; mackerel, squid, or butterfish caught by a vessel that has

not been issued a Federal mackerel, squid, and butterfish vessel permit, unless the vessel fishes exclusively in state waters.

(B) Transfer longfin squid, *Illex*, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued a valid longfin squid and butterfish or *Illex* moratorium permit and are transferring species for which the vessels are permitted, or have a valid squid/butterfish incidental catch permit and the appropriate LOA from the Regional Administrator.

(2) *Vessel and operator permit holders*. Unless participating in a research activity as described in § 648.22(g), it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit, to do any of the following:

(i) *General requirement*. Fail to comply with any measures implemented pursuant to § 648.22.

(ii) *Possession and landing*. (A) Possess more than the incidental catch allowance of longfin or butterfish, unless issued a longfin squid and butterfish fishery moratorium permit.

(B) Possess more than the incidental catch allowance of *Illex* squid, unless issued an *Illex* squid moratorium permit.

(C) Possess more than the incidental catch allowance of mackerel, unless issued a Limited Access mackerel permit.

(D) Take, retain, possess, or land mackerel, squid, or butterfish in excess of a possession limit specified in § 648.26.

(E) Possess 5,000 lb (2.27 mt) or more of butterfish, unless the vessel meets the minimum mesh requirements specified in § 648.23(a).

(F) Take, retain, possess, or land mackerel, squid, or butterfish after a total closure specified under § 648.24.

(iii) *Gear and vessel requirements*. (A) Fish with or possess nets or netting that do not meet the gear requirements for Atlantic mackerel, longfin squid, *Illex*, or butterfish specified in § 648.23(a); or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless the nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a)(3)(ii).

(B) Fish for, retain, or possess Atlantic mackerel in or from the EEZ with a vessel that exceeds either 165 ft (50.3 m) in length overall and 750 GRT, or a shaft horsepower (shp) of 3,000 shp, except for the retention and possession of Atlantic mackerel for processing by a vessel holding a valid at-sea processor permit pursuant to § 648.6(a)(2). It shall be presumed that the Atlantic mackerel on board were harvested in or from the EEZ, unless the preponderance of reliable evidence available indicates otherwise.

(C) Enter or fish in the mackerel, squid, and butterfish bottom trawling restricted areas, as described in § 648.23(a)(4).

(D) If fishing with midwater trawl or purse seine gear, fail to comply with the requirements of § 648.80(d) and (e).

(iv) *Observer requirements for longfin squid fishery*. Fail to comply with any of the provisions specified in § 648.27.

(3) *Charter/party restrictions*. Unless participating in a research activity as described in § 648.22(g), it is unlawful for the owner and operator of a party or charter boat issued a mackerel, squid, and butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

(i) Violate any recreational fishing measures established pursuant to § 648.22(d).

(ii) Sell or transfer mackerel, squid, or butterfish to another person for a commercial purpose.

(iii) Carry passengers for hire while fishing commercially under a mackerel, squid, and butterfish fishery permit.

(4) *Presumption*. For purposes of this part, the following presumption applies: All mackerel and butterfish possessed on board a party or charter boat issued a mackerel, squid, and butterfish fishery permit are deemed to have been harvested from the EEZ.

(h) *Atlantic salmon*. Unless participating in a research activity as described in § 648.22(g), it is unlawful for any person to do any of the following:

(1) *Possession and landing*. (i) Use any vessel of the United States for taking, catching, harvesting, fishing for, or

landing any Atlantic salmon taken from or in the EEZ. It shall be presumed that the Atlantic salmon on board were harvested in or from the EEZ, unless the preponderance of reliable evidence available indicates otherwise.

(ii) Transfer, directly or indirectly; or attempt to transfer, directly or indirectly; to any vessel any Atlantic salmon taken in or from the EEZ.

(2) [Reserved]

(i) *Atlantic sea scallops*—(1) *All persons*. It is unlawful for any person to do any of the following:

(i) *Permit requirement*. Fish for, possess, or land, scallops without the vessel having been issued and carrying onboard a valid scallop permit in accordance with § 648.4(a)(2), unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

(ii) *Gear and crew requirements*. Have a shucking or sorting machine on board a vessel while in possession of more than 600 lb (272.2 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(iii) *Possession and landing*. (A) Fish for or land per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport on land:

(*1*) In excess of 40 lb (18.1 kg) of shucked scallops at any time, 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(*i*) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(*ii*) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS or Area Access program.

(*iii*) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit and is properly declared into the IFQ scallop fishery or is properly declared into the NE multispecies or Atlantic surfclam or quahog fishery and is not fishing in a sea scallop access area.

(*iv*) The scallops were harvested by a vessel that has been issued and carries on board an NGOM or IFQ scallop permit, and is properly declared into the NGOM scallop management area, and the NGOM TAC specified in § 648.62 has been harvested.

(*v*) [Reserved]

(*2*) In excess of 200 lb (90.7 kg) of shucked scallops at any time, 25 bu (8.8 hL) of in-shell scallops inside the VMS Demarcation Line, or 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(*i*) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(*ii*) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS or Area Access program.

(*iii*) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A), is fishing outside of the NGOM scallop management area, and is properly declared into the general category scallop fishery or is properly declared into the NE multispecies or Atlantic surfclam or quahog fishery and is not fishing in a sea scallop access area.

(*iv*) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54.

(*v*) [Reserved]

(*3*) In excess of 600 lb (272.2 kg) of shucked scallops at any time, 50 bu (17.6 hL) of in-shell scallops per trip South of 42°20′ N. Lat. and shoreward of the VMS Demarcation Line, or 75 bu (26.4 hL) of in-shell scallops per trip North of 42°20′ N. Lat and shoreward of the VMS demarcation line, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless:

(*i*) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(*ii*) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit issued pursuant to § 648.4(a)(2)(i)

and is properly declared into the scallop DAS or Area Access program.

(*iii*) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54.

(*iv*) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit, is carrying an at-sea observer, and is authorized by the Regional Administrator to have, and the vessel does not exceed, an increased possession limit to compensate for the cost of carrying the observer.

(iv) *Transfer and purchase.* (A) Land, offload, remove, or otherwise transfer; or attempt to land, offload, remove or otherwise transfer; scallops from one vessel to another, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(B) Sell, barter, or trade, or otherwise transfer scallops from a vessel; or attempt to sell, barter or trade, or otherwise transfer scallops from a vessel; for a commercial purpose, unless the vessel has been issued a valid scallop permit pursuant to § 648.4(a)(2), or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(C) Purchase, possess, or receive for commercial purposes; or attempt to purchase or receive for commercial purposes; scallops from a vessel other than one issued a valid limited access or LAGC scallop permit, unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

(D) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any scallops harvested from the EEZ by a vessel issued a Federal scallop permit, unless the transferee has a valid scallop dealer permit.

(E) Fish for, possess, or retain scallops in Federal waters of the NGOM management area on a vessel that has been issued and carries on board a NGOM permit and has declared into the state waters fishery of the NGOM management area.

(v) *Ownership cap.* Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits and confirmations of permit history, except as provided in § 648.4(a)(2)(i)(M).

(vi) *Closed area requirements.* (A) Fish for scallops in, or possess or land scallops from, the areas specified in §§ 648.58 and 648.61.

(B) Transit or be in the areas described in §§ 648.58 or 648.61 in possession of scallops, except when all fishing gear is unavailable for immediate use as defined in § 648.23(b), or unless there is a compelling safety reason to be in such areas.

(vii) *Scallop sectors.* Fail to comply with any of the requirements or restrictions for general category scallop sectors specified in § 648.63.

(viii) *Scallop research.* Fail to comply with any of the provisions specified in § 648.56.

(ix) *Observer program.* (A) Refuse, or fail, to carry onboard an observer after being requested to by the Regional Administrator or the Regional Administrator's designee.

(B) Fail to provide information, notification, accommodations, access, or reasonable assistance to a NMFS-approved observer conducting his or her duties aboard a vessel, as specified in § 648.11.

(C) Fail to comply with the notification, observer services procurement, and observer services payment requirements of the sea scallop observer program specified in § 648.11(g).

(x) *Presumption.* For purposes of this section, the following presumption applies: Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of evidence demonstrates that such scallops were harvested by a vessel without a scallop permit and fishing exclusively for scallops in state waters.

(2) *Limited access scallop vessel permit holders.* It is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(i) *Minimum shell height.* Land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(ii) *Vessel, gear, and crew restrictions.* (A) Possess more than 40 lb (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops, or participate in the scallop DAS or Area Access programs, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(1), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(B) While under or subject to the DAS allocation program, in possession of more than 40 lb (18.1 kg) of shucked scallops or 5 bu (1.76 hL) of in-shell scallops, or fishing for scallops in the EEZ:

(*1*) Fish with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(*2*) Fail to comply with any chafing gear or other gear obstruction restrictions specified in § 648.51(a)(3).

(*3*) After April 30, 2013, fail to comply with the turtle deflector dredge vessel gear restrictions specified in § 648.51(b)(5), and turtle dredge chain mat requirements in § 223.206(d)(11) of this chapter.

(*4*) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(*5*) Fish under the small dredge program specified in § 648.51(e) with more than five persons on board the vessel, including the operator, unless otherwise authorized by the Regional Administrator or unless participating in the Area Access Program pursuant to the requirements specified in § 648.60.

(*6*) Participate in the DAS allocation program with more persons on board the vessel than the number specified in § 648.51(c), including the operator, when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator, or unless participating in the Area Access Program pursuant to the requirements specified in § 648.60.

(*7*) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Administrator.

(*8*) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(*9*) Fail to comply with the restriction on twine top described in § 648.51(b)(4)(iv).

(iii) *Possession and landing.* (A) Land scallops after using up the vessel's annual DAS allocation or land scallops on more than one trip per calendar day when not participating under the DAS allocation program pursuant to § 648.10, unless exempted from DAS allocations as provided in the state waters exemption, specified in § 648.54.

(B) Fish for, possess, or land more than 50 bu (17.62 hL) of in-shell scallops once inside the VMS Demarcation Line on or by a vessel that, at any time during the trip, fished in or transited any area south of 42°20′ N. lat; or fished in any Sea Scallop Area Access Program specified in § 648.60, except as provided in the state waters exemption, as specified in § 648.54.

(C) Fish for or land per trip, or possess at any time, scallops in the NGOM scallop management area after notification in the FEDERAL REGISTER that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20′ N. lat. and the vessel only transits the NGOM scallop management area with the vessel's fishing gear properly stowed and unavailable for immediate use in accordance with § 648.23.

(D) Discard yellowtail flounder that meet the minimum size restrictions specified under § 648.83(a)(1) and (2).

(iv) *DAS.* (A) Fish for, possess, or land scallops after using up the vessel's annual DAS allocation and Access Area trip allocations, or when not properly

declared into the DAS or an Area Access program pursuant to § 648.10, unless the vessel has been issued an LAGC scallop permit pursuant to § 648.4(a)(2)(ii) and is lawfully fishing in a LAGC scallop fishery, unless exempted from DAS allocations as provided in state waters exemption, specified in § 648.54.

(B) Combine, transfer, or consolidate DAS allocations, except as allowed for one-for-one Access Area trip exchanges as specified in § 648.60(a)(3)(ii).

(C) Fail to comply with any requirement for declaring in or out of the DAS allocation program or other notification requirements specified in § 648.10.

(v) *VMS requirements.* (A) Fail to have an approved, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in § 648.10.

(B) If the vessel is not subject to VMS requirements specified in § 648.10(b), fail to comply with the requirements of the call-in system specified in § 648.10(c).

(C) If a limited access scallop vessel declares a scallop trip before first crossing the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear unavailable for immediate use as defined in § 648.23(b), until declared into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), change its VMS declaration until the trip has ended and scallop catch has been offloaded.

(vi) *Scallop access area program.* (A) Fail to comply with any of the provisions and specifications of § 648.60.

(B)–(C) [Reserved]

(D) Possess more than 50 bu (17.6 hL) of in-shell scallops outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Area Access Program as specified in § 648.60.

(E) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(F) Unless specified in paragraph (i)(2)(vi)(F)(*1*) of this section, a full-time vessel shall not fish for, possess, or retain more than a combined total of 18,000 lb (8,165 kg; the equivalent of one full-time access area trip) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

(*1*) If the owner of a full-time vessel has exchanged a trip(s) with another full-time vessel owner(s), as specified in § 648.60(a)(3)(ii), so that the vessel has a total access area trip allocation of four combined trips into the Delmarva and Hudson Canyon Access Areas (e.g., two Hudson Canyon trip and two Delmarva trips; one Hudson Canyon trip and three Delmarva trips, three Hudson Canyon trips and one Delmarva trip; no Hudson Canyon trips and four Delmarva trips; or four Hudson Canyon trips and no Delmarva trips) that vessel must not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg; the equivalent of two full-time access area trips) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in

§ 648.60(d), that occur during observed trips between June 15 through October 31.

(2) [Reserved]

(G) Part-time vessels shall not fish for, possess, or retain more than a combined total of 14,400 lb (6,532 kg; the equivalent of one part-time access area trip) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

(vii) *State waters exemption program.* Fail to comply with any requirement for participating in the State Waters Exemption Program specified in § 648.54.

(viii) Fish for scallops in, or possess scallops or land scallops from, the yellowtail flounder accountability measure closed areas specified in § 648.64 during the period specified in the notice announcing the closure and based on the closure table specified in § 648.64.

(3) *LAGC scallop vessels.* It is unlawful for any person owning or operating a vessel issued an LAGC scallop permit to do any of the following:

(i) *Permit requirements.* (A) Fail to comply with the LAGC scallop permit restrictions as specified in § 648.4(a)(2)(ii)(G) through (O).

(B) Fish for, possess, or land scallops on a vessel that is declared out of scallop fishing unless the vessel has been issued an Incidental scallop permit.

(ii) *Gear requirements.* (A) Possess or use trawl gear that does not comply with any of the provisions or specifications in § 648.51(a), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(B) Possess or use dredge gear that does not comply with any of the provisions or specifications in § 648.51(b).

(iii) *Possession and landing.* (A) Land scallops more than once per calendar day.

(B) Possess in-shell scallops while in possession of the maximum allowed amount of shucked scallops specified for each LAGC scallop permit category in § 648.52.

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the FEDERAL REGISTER stating that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

(D) Fish for, possess, or land scallops in or from the NGOM scallop management area after the effective date of a notification published in the FEDERAL REGISTER that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20′ N. lat., the vessel is transiting the NGOM scallop management area, and the vessel's fishing gear is properly stowed and unavailable for immediate use in accordance with § 648.23.

(iv) *VMS requirements.* (A) Fail to comply with any of the VMS requirements specified in §§ 648.10, 648.60, or 648.62.

(B) Fail to comply with any requirement for declaring in or out of the LAGC scallop fishery or other notification requirements specified in § 648.10(b).

(C) If an LAGC scallop vessel declares a scallop trip shoreward of the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear unavailable for immediate use as defined in § 648.23(b), until declared into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), change its VMS declaration until the trip has ended and scallop catch has been offloaded.

(v) *Scallop access area program.* (A) Fail to comply with any of the requirements specified in § 648.60.

(B) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of a notification published in the FEDERAL REGISTER stating that the number of LAGC trips have been taken, as specified in § 648.60.

(C) [Reserved]

(D) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(vi) *Sectors*. Fail to comply with any of the requirements and restrictions for General Category sectors and harvesting cooperatives specified in § 648.63.

(4) *IFQ scallop permit*. It is unlawful for any person owning or operating a vessel issued an IFQ scallop permit to do any of the following:

(i) *Possession and landing*. (A) Fish for or land per trip, or possess at any time, in excess of 600 lb (272.2 kg) of shucked, or 75 bu (26.4 hL) of in-shell scallops per trip, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless the vessel is carrying an observer as specified in § 648.11 while participating in the Area Access Program specified in § 648.60 and an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.60(d)(2).

(B) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.8 hL) of in-shell scallops in the NGOM scallop management area, unless the vessel is seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.6 hL) of in-shell scallops, or when the vessel is not declared into the NGOM scallop management area and is transiting the NGOM scallop management area with gear properly stowed and unavailable for immediate use in accordance with § 648.23.

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the FEDERAL REGISTER stating that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

(D) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line and not be participating in the Access Area Program, or possess or land per trip more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless exempted from DAS allocations as provided in § 648.54.

(E) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Access Area Program as specified in § 648.60.

(F) Fish for, possess, or land scallops in excess of a vessel's IFQ.

(G) Fish for, possess, or land more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, when the vessel is not declared into the IFQ scallop fishery, unless the vessel is fishing in compliance with all of the requirements of the State waters exemption program, specified at § 648.54.

(H) Land scallops more than once per calendar day.

(ii) *Owner and allocation cap*. (A) Have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop ACL as specified in § 648.53(a)(5)(ii) and (iii).

(B) Have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop ACL as specified in § 648.53(a)(4)(i).

(iii) *IFQ Transfer Program*. (A) Apply for an IFQ transfer that will result in the transferee having an aggregate ownership interest in more than 5 percent of the total IFQ scallop ACL.

(B) Apply for an IFQ transfer that will result in the receiving vessel having an IFQ allocation in excess of 2.5 percent of the total IFQ scallop ACL as specified in § 648.53(a)(4)(i).

(C) Fish for, possess, or land transferred IFQ prior to approval of the transfer by the Regional Administrator as specified in § 648.53(h)(5).

(D) Request to transfer IFQ that has already been temporarily transferred from an IFQ scallop vessel in the same fishing year.

(E) Transfer scallop IFQ to a vessel after the transferring vessel has landed scallops in the same fishing year.

(F) [Reserved]

(G) Transfer scallop IFQ to, or receive scallop IFQ from, a vessel that has not been issued a valid IFQ scallop permit.

(iv) *Cost Recovery Program.* Fail to comply with any of the cost recovery requirements specified under § 648.53(g)(4).

(5) *NGOM scallop permit.* It is unlawful for any person owning or operating a vessel issued an NGOM scallop permit to do any of the following:

(i) Declare into, or fish for or possess scallops outside of the NGOM Scallop Management Area as defined in § 648.62.

(ii) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops in or from the NGOM scallop management area, or seaward of the VMS Demarcation Line more than 50 bu (17.6 hL) of in-shell scallops.

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the FEDERAL REGISTER that the NGOM scallop management area TAC has been harvested as specified in § 648.62.

(iv) Fish for, possess, or retain scallops in Federal waters of the NGOM after declaring a trip into NGOM state waters.

(6) *Incidental scallop permit.* It is unlawful for any person owning or operating a vessel issued an Incidental scallop permit to fish for, possess, or retain, more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops while seaward of the VMS Demarcation Line.

(j) *Atlantic surfclam and ocean quahog.* It is unlawful for any person to do any of the following:

(1) *Possession and landing.* (i) Fish for surfclams or ocean quahogs in any area closed to surfclam or ocean quahog fishing.

(ii) Shuck surfclams or ocean quahogs harvested in or from the EEZ at sea, unless permitted by the Regional Administrator under the terms of § 648.74.

(iii) Fish for, retain, or land both surfclams and ocean quahogs in or from the EEZ on the same trip.

(iv) Fish for, retain, or land ocean quahogs in or from the EEZ on a trip designated as a surfclam fishing trip under § 648.15(b); or fish for, retain, or land surfclams in or from the EEZ on a trip designated as an ocean quahog fishing trip under § 648.15(b).

(v) Fail to offload any surfclams or ocean quahogs harvested in the EEZ from a trip discontinued pursuant to § 648.15(b) prior to commencing fishing operations in waters under the jurisdiction of any state.

(vi) Land or possess any surfclams or ocean quahogs harvested in or from the EEZ without having been issued, or in excess of, an individual allocation.

(2) *Transfer and purchase.* (i) Receive for a commercial purpose other than solely for transport on land, surfclams or ocean quahogs harvested in or from the EEZ, whether or not they are landed under an allocation under § 648.70, unless issued a dealer/processor permit under this part.

(ii) Transfer any surfclams or ocean quahogs harvested in or from the EEZ to any person for a commercial purpose, other than solely for transport on land, without a surfclam or ocean quahog processor or dealer permit.

(iii) Offload unshucked surfclams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(3) *Gear and tags requirements.* (i) Alter, erase, mutilate, duplicate or cause to be duplicated, or steal any cage tag issued under this part.

(ii) Produce, or cause to be produced, cage tags required under this part without written authorization from the Regional Administrator.

(iii) Tag a cage with a tag that has been rendered null and void or with a tag that has been previously used.

(iv) Tag a cage of surfclams with an ocean quahog cage tag, or tag a cage of ocean quahogs with a surfclam cage tag.

(v) Possess an empty cage to which a cage tag required by § 648.75 is affixed, or possess any cage that does not contain surfclams or ocean quahogs and to

which a cage tag required by § 648.75 is affixed.

(vi) Land or possess, after offloading, any cage holding surfclams or ocean quahogs without a cage tag or tags required by § 648.75, unless the person can demonstrate the inapplicability of the presumptions set forth in § 648.75(h).

(vii) Sell null and void tags.

(4) *VMS requirements.* (i) Fail to maintain an operational VMS unit as specified in § 648.9, and comply with any of the notification requirements specified in § 648.15(b) including:

(A) Fish for, land, take, possess, or transfer surfclams or ocean quahogs under an open access surfclam or ocean quahog permit without having provided proof to the Regional Administrator that the vessel has a fully functioning VMS unit on board the vessel and declared a surfclam, ocean quahog, or Maine mahogany quahog fishing activity code via the VMS unit prior to leaving port as specified at § 648.15(b).

(B) Fish for, land, take, possess, or transfer ocean quahogs under a limited access Maine mahogany quahog permit without having provided proof to the Regional Administrator of NMFS that the vessel has a fully functioning VMS unit on board the vessel and declared a fishing trip via the VMS unit as specified at § 648.15(b).

(5) *Maine mahogany quahog zone.* (i) Land unshucked surfclams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages.

(ii) Land unshucked surfclams and ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages unless, with respect to ocean quahogs, the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(iii) Offload unshucked surfclams harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(iv) Offload unshucked ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages, unless the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(v) Land or possess ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone after the effective date published in the FEDERAL REGISTER notifying participants that Maine mahogany quahog quota is no longer available for the respective fishing year, unless the vessel is fishing for an individual allocation of ocean quahogs under § 648.70.

(6) *Presumptions.* For purposes of this part, the following presumptions apply:

(i) Possession of surfclams or ocean quahogs on the deck of any fishing vessel in closed areas, or the presence of any part of a vessel's gear in the water in closed areas is prima facie evidence that such vessel was fishing in violation of the provisions of the Magnuson-Stevens Act and these regulations.

(ii) Surfclams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.70(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.70.

(iii) Surfclams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and are deemed to be part of an individual's allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.70; or, unless the preponderance of available evidence demonstrates that he/she has surrendered his/her surfclam and ocean quahog permit issued under § 648.4 and he/she conducted fishing operations exclusively within waters under the jurisdiction of any state. Surfclams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this part, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under § 648.70 or § 648.75(b).

(k) *NE multispecies*—(1) *Permit requirements for all persons*. It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) Fish for, possess, or land NE multispecies, unless:

(A) The NE multispecies are being fished for or were harvested in or from the EEZ by a vessel holding a valid Federal NE multispecies permit under this part, or a letter under § 648.4(a)(1), and the operator on board such vessel has a valid operator's permit and has it on board the vessel.

(B) The NE multispecies were harvested by a vessel not issued a Federal NE multispecies permit, nor eligible to renew or be reissued a limited access NE multispecies permit as specified in § 648.4(b)(2), that fishes for NE multispecies exclusively in state waters.

(C) The NE multispecies were harvested in or from the EEZ by a recreational fishing vessel.

(D) Any haddock, and up to 100 lb (45 kg) of other regulated NE. multispecies other than haddock, were harvested by a vessel issued an All Areas Limited Access Herring Permit and/or an Area 2 and 3 Limited Access Herring Permit on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear, pursuant to the requirements in § 648.80(d) and (e), and such fish are not sold for human consumption.

(E) Otherwise specified in § 648.17.

(ii) Land, offload, remove, or otherwise transfer; or attempt to land, offload, remove or otherwise transfer; NE multispecies from one vessel to another vessel, unless both vessels have not been issued Federal NE multispecies permits and both fish exclusively in state waters, unless authorized in writing by the Regional Administrator, or otherwise allowed.

(iii) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer; for a commercial purpose any NE multispecies from a trip, unless:

(A) The vessel is holding a Federal NE multispecies permit, or a letter under § 648.4(a)(1), and is not fishing under the charter/party vessel restrictions specified in § 648.89.

(B) The NE multispecies were harvested by a vessel without a Federal NE multispecies permit that fishes for NE multispecies exclusively in state waters.

(C) Or as otherwise specified in § 648.17.

(iv) Operate or act as an operator of a vessel fishing for or possessing NE multispecies in or from the EEZ, or holding a Federal NE multispecies vessel permit without having been issued and possessing a valid operator's permit.

(2) *Permit requirements for vessel and operator permit holders*. It is unlawful for any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) Fish for, possess, or land NE multispecies with or from a vessel that has had the length, GRT, or NT of such vessel, or its replacement, increased or upgraded in excess of limitations specified in § 648.4(a)(1)(i)(E) and (F).

(ii) Fish for, possess, or land NE multispecies with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(iii) Fail to comply with the pre-trip notification requirements of the NE multispecies observer program specified in § 648.11(k).

(iv) Possess or land fish while setting fixed gear on a set-only trip as declared through the pre-trip notification system pursuant to § 648.11(k).

(3) *Dealer requirements*. (i) It is unlawful to purchase, possess, import, export, or receive as a dealer, or in the capacity of a dealer, regulated species or ocean pout in excess of the possession limits specified in § 648.82, § 648.85, § 648.86, or § 648.87 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species or ocean pout are purchased or received from a vessel that caught them on a sector trip and

such species are exempt from such possession limits in accordance with an approved sector operations plan, as specified in § 648.87(c).

(ii) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any NE multispecies harvested from the EEZ by a vessel issued a Federal NE multispecies permit, unless the transferee has a valid NE multispecies dealer permit.

(4) *NAFO*. It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), to fail to comply with the exemption specifications in § 648.17.

(5) *Regulated Mesh Areas*. It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16), the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5), the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; (b)(11), the SNE Scallop Dredge Exemption Area; or (b)(12), the SNE Skate Bait Trawl Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

(ii) Enter or fish in the Gulf of Maine, Georges Bank, or Southern New England Regulated Mesh Areas, except as provided in § 648.80(a)(3)(vi) and (b)(2)(vi), and, for purposes of transiting, all gear (other than exempted gear) must be stowed in accordance with § 648.23(b).

(iii) *Gulf of Maine and Georges Bank Regulated Mesh Areas*. (A) Fish with, use, or have on board, within the areas described in § 648.80(a)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in § 648.80(a)(3) and (4); except as provided in § 648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (a)(16), (d), (e), and (i); unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(B) Fish within the areas described in § 648.80(a)(6) with net mesh smaller than the minimum size specified in § 648.80(a)(3) or (4).

(iv) *Southern New England Regulated Mesh Area*. Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), net mesh smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80(b)(3), (b)(9), (d), (e), and (i), or unless the vessel has not been issued a Federal NE multispecies permit and fishes for multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(v) *Mid-Atlantic Regulated Mesh Area*. Fish with, use, or have available for immediate use within the area described in § 648.80(c)(1), nets of mesh size smaller than the minimum mesh size specified in § 648.80(c)(2); except as provided in § 648.80(c)(3), (d), (e), and (i); or unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(vi) *Mid-water trawl exempted fishery*. (A) Fish for, land, or possess NE multispecies harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 648.80(d), or unless the vessels that engaged in pair trawling have not been issued multispecies permits and fish for NE multispecies exclusively in state waters.

(B) Possess, land, or fish for regulated species or ocean pout, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a LAGC permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.23(b), or unless the vessel has not been issued a Federal NE multispecies permit and fishes for, possesses, or lands NE multispecies exclusively in state waters.

(vii) *Scallop vessels.* (A) Violate any of the possession or landing restrictions on fishing with scallop dredge gear specified in §§ 648.80(h) and 648.94.

(B) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.23(b), or unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(viii) *Northern shrimp and small mesh multispecies exempted fisheries.* (A) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5).

(B) Fish for, harvest, possess, or land in or from the EEZ, when fishing with trawl gear, any of the exempted species specified in § 648.80(a)(9)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5)(ii) or (a)(9)(ii).

(ix) *Winter flounder state exemption program.* Violate any provision of the state waters winter flounder exemption program as provided in § 648.80(i).

(6) *Gear requirements*—(i) *For all persons.* It is unlawful for any person, including any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(A) Obstruct or constrict a net as described in § 648.80(g)(1) or (2).

(B) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(vii) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.5 cm).

(C) Fish for, land, or possess NE multispecies harvested with brush-sweep trawl gear unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(D) Possess brush-sweep trawl gear while in possession of NE multispecies, unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(E) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), in the areas and for the times specified in § 648.80(g)(6)(i) and (ii), except as provided in § 648.80(g)(6)(i) and (ii), and § 648.81(f)(2)(ii), or unless otherwise authorized in writing by the Regional Administrator.

(F) Fish for, land, or possess NE multispecies harvested with the use of de-hookers (''crucifiers'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(G) Possess or use de-hookers (''crucifiers'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers while in possession of NE multispecies, unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(ii) *For vessel and operator permit holders.* It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under

§ 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(A) *Gillnet gear*. (*1*) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS or on a sector trip with gillnet gear, fail to comply with gillnet tagging requirements specified in §§ 648.80(a)(3)(iv)(B)(*4*), (a)(3)(iv)(C), (a)(4)(iv)(B)(*3*), (b)(2)(iv)(B)(*3*), and (c)(2)(v)(B)(*3*), or fail to produce immediately, or cause to be produced immediately, gillnet tags when requested by an authorized officer.

(*2*) Produce, or cause to be produced, gillnet tags under § 648.80(a)(3)(iv)(C), without the written confirmation from the Regional Administrator described in § 648.80(a)(3)(iv)(C).

(*3*) Tag a gillnet or use a gillnet tag that has been reported lost, missing, destroyed, or that was issued to another vessel.

(*4*) Sell, transfer, or give away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

(*5*) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching NE multispecies from, or be in the areas, and for the times, described in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and 648.81(i).

(B) *Hook gear*. Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(7)(iv)(E).

(7) *Closed areas and EFH*—(i) *All persons*. It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(A) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81(d)(1) through (g)(1), except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

(B) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f) and (o), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), (f)(2)(vi), (i), (o)(2)(i), or as authorized under § 648.85.

(C) *Restricted gear areas*. (*1*) Fish, or be in the areas described in § 648.81(j)(1), (k)(1), (l)(1), and (m)(1) on a fishing vessel with mobile gear during the time periods specified in § 648.81(j)(2), (k)(2), (l)(2), and (m)(2), except as provided in § 648.81(j)(2), (k)(2), (l)(2), and (m)(2).

(*2*) Fish, or be in the areas described in § 648.81(j)(1), (k)(1), and (l)(1) on a fishing vessel with lobster pot gear during the time periods specified in § 648.81(j)(2), (k)(2), and (l)(2).

(*3*) Deploy in or fail to remove lobster pot gear from the areas described in § 648.81(j)(1), (k)(1), and (l)(1), during the time periods specified in § 648.81(j)(2), (k)(2), and (l)(2).

(D) *GB Seasonal Closure Area*. Enter, fail to remove gear from, or be in the areas described in § 648.81(g)(1) through (i)(1) during the time period specified, except as provided in § 648.81(d), (g)(2), (h)(2), and (i)(2).

(E) *Closed Area I*. Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (i).

(F) *Closed Area II*. Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2) and (i).

(G) *Nantucket Lightship Closure Area*. Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as allowed under § 648.81(c)(2) and (i).

(ii) *Vessel and permit holders*. It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(A) *EFH closure area restrictions*. If fishing with bottom tending mobile gear, fish in, enter, be on a fishing vessel in, the EFH closure areas described in § 648.81(h)(1)(i) through (vi).

(B) [Reserved]

(8) *DAS restrictions for all persons*. It is unlawful for any person, including any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) For vessels issued a limited access NE multispecies permit, or those issued a limited access NE multispecies permit and a limited access monkfish permit (Category C, D, F, G, or H), but not fishing under the limited access monkfish Category A or B provisions as allowed under § 648.92(b)(2), call into the DAS program prior to 1 hr before leaving port.

(ii) Call in DAS in excess of those allocated, leased, or permanently transferred, in accordance with the restrictions and conditions of § 648.82.

(9) *DAS restrictions for vessel and operator permit holders.* It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) If operating under the provisions of a limited access NE multispecies Handgear A permit south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), fail to declare the vessel operator's intent to fish in this area via VMS or fail to obtain or retain on board a letter of authorization from the Regional Administrator, as required by § 648.82(b)(6)(iv).

(ii) *DAS Leasing Program.* (A) Provide false information on an application, required by § 648.82(k)(4)(xi), to downgrade the DAS Leasing Program baseline.

(B) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(k).

(C) Provide false information on, or in connection with, an application, required under § 648.82(k)(3), to effectuate the leasing of NE multispecies DAS.

(D) Act as lessor or lessee of a NE multispecies Category B DAS, or Category C DAS.

(E) Act as lessor or lessee of NE multispecies DAS, if the lessor's or the lessee's vessels do not comply with the size restrictions specified in § 648.82(k)(4)(ix).

(F) Sub-lease NE multispecies DAS.

(G) [Reserved]

(H) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(I) [Reserved]

(J) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.

(K) Lease NE multispecies DAS in excess of the duration specified in § 648.82(k)(4)(viii).

(L) Combine, transfer, or consolidate DAS allocations, except as provided for under the DAS Leasing Program or the DAS Transfer Program, as specified under § 648.82(k) and (l), respectively.

(M) Lease NE multispecies DAS to or from a common pool vessel if either the Lessor or the Lessee vessel is a sector vessel.

(iii) *DAS Transfer Program.* (A) Transfer NE multispecies DAS, or use transferred DAS, that have not been approved for transfer by the Regional Administrator, as specified in § 648.82(l).

(B) Provide false information on, or in connection with, an application, required by § 648.82(l)(2), for a NE multispecies DAS transfer.

(C) Permanently transfer only a portion of a vessel's total allocation of DAS.

(D) Permanently transfer NE multispecies DAS between vessels, if such vessels do not comply with the size restrictions specified in § 648.82(l)(1)(ii).

(E) Transfer NE multispecies DAS to or from a common pool vessel if either the Transferor or the Transferee vessel is a sector vessel.

(F) Transfer NE multispecies DAS to or from a sector vessel if either the Transferor or the Transferee vessel is enrolled in a different sector for that particular fishing year.

(iv) *Gillnet fishery.* (A) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(j)(1)(ii), using the procedure specified in § 648.82(h).

(B) For any common pool or sector vessel, fail to comply with the gillnet requirements and restrictions specified in § 648.82(j), unless otherwise exempted pursuant to § 648.87.

(C) If a vessel has been issued a limited access Day gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(1).

(D) If a vessel has been issued a limited access Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(2).

(v) *Spawning blocks.* Fail to declare, and be, out of the NE multispecies DAS program as required by § 648.82(g), using the procedure described under § 648.82(h), as applicable.

(vi) *DAS notification.* (A) For purposes of DAS notification, if required, or electing, to have a VMS unit under § 648.10:

(*1*) Fail to have a certified, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times.

(*2*) Fail to comply with the notification, replacement, or any other requirements regarding VMS usage specified in § 648.10(b).

(B) Fail to comply with any provision of the DAS notification program specified in § 648.10.

(vii) *Charter/party vessels.* Participate in the DAS program pursuant to § 648.82 when carrying passengers for hire on board a vessel during any portion of a fishing trip.

(10) *Gear marking requirement for all persons.* It is unlawful for any person, including any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the gear-marking requirements of § 648.84.

(11) *U.S./Canada Resource Management Area*—(i) *Possession and landing restrictions of the U.S./Canada Area*—(A) *All Persons.* (*1*) Fish for, harvest, possess or land any regulated NE multispecies from the areas specified in § 648.85(a)(1), unless in compliance with the restrictions and conditions specified in § 648.85(a)(3).

(*2*) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless further restricted under § 648.85(b) or exempted under § 648.87.

(*3*) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply outside of the Eastern U.S./Canada Area, fish outside of the Eastern U.S./Canada Area on the same trip, as prohibited under § 648.85(a)(3)(ii)(A).

(*4*) If fishing both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (8), under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to abide by the DAS and possession restrictions under § 648.85(b)(8)(v)(A)(*2*) through (*4*).

(B) *Vessel and operator permit holders.* Fail to comply with the GB yellowtail flounder trip limit specified under § 648.85(a)(3)(iv)(C).

(ii) *Gear requirements for all persons.* If fishing with trawl gear under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl, flounder trawl net, or Ruhle trawl, as specified in § 648.85(a)(3)(iii) and (b)(6)(iv)(J)(*1*), unless using other gear authorized under § 648.85(b)(6) or (8).

(iii) *Notification and VMS requirements for all persons.* (A) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), unless declared into the area in accordance with § 648.85(a)(3)(ii).

(B) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the applicable restrictions specified under § 648.85(a)(3)(ii)(A) or (B).

(C) If the vessel has been issued a limited access NE multispecies DAS permit, and is in the area specified in § 648.85(a), fail to comply with the VMS requirements in § 648.85(a)(3)(i).

(D) If fishing under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), but not in a SAP specified in § 648.85(b) on the same trip, fail to comply with the requirements specified in § 648.85(a)(3).

(E) Fail to notify NMFS via VMS prior to departing the Eastern U.S./Canada Area, when fishing inside and outside of the area on the same trip, in accordance with § 648.85(a)(3)(ii)(A)(*1*).

(F) When fishing inside and outside of the Eastern U.S./Canada Area on the same trip, fail to abide by the most restrictive requirements that apply to

any area fished, including the DAS counting, trip limits, and reporting requirements that apply, as described in § 648.85(a)(3)(ii)(A).

(iv) *Reporting requirements for all persons.* (A) If fishing under a NE multispecies DAS or on a sector trip in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report landings in accordance with § 648.85(a)(3)(v).

(B) Fail to comply with the reporting requirements under § 648.85(a)(3)(ii)(A)(*2*) when fishing inside and outside of the Eastern U.S./Canada Area on one trip.

(v) *DAS*—(A) *All persons.* If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and in one of the SAPs specified in § 648.85(b)(3) or (8) on the same trip, fail to comply with the no discard and DAS flip provisions specified in § 648.85(b)(3)(xi) and (b)(8)(v)(I), or the minimum Category A DAS requirement specified in § 648.85(b)(3)(xii) and (b)(8)(v)(J).

(B) *Vessel and operator permit holders.* (*1*) [Reserved]

(*2*) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to comply with the most restrictive regulations that apply on the trip as required by § 648.85(a)(3)(ii)(A).

(vi) *Closure of the U.S./Canada Area for all persons.* If fishing under a NE multispecies DAS or on a sector trip, declare into, enter, or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1) if the area is closed under the authority of the Regional Administrator as described in § 648.85(a)(3)(iv)(D) or (E), unless fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3) or the Eastern U.S./Canada Haddock SAP Program specified in § 648.85(b)(8).

(12) *SAP restrictions*—(i) *General restrictions for all persons.* (A) If declared into the areas specified in § 648.85(b), enter or exit the declared areas more than once per trip.

(B) If a vessel is fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), the Regular B DAS Program specified in § 648.85(b)(6), or the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

(ii) *General restrictions for vessel and operator permit holders.* Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a SAP, as described in §§ 648.85(b)(3)(xi), 648.85(b)(7)(iv)(H), or 648.85(b)(8)(v)(I).

(iii) *Closed Area II Yellowtail Flounder/Haddock SAP restrictions for all persons.* (A) If fishing under the Closed Area II Yellowtail Flounder/Haddock SAP, fish for, harvest, possess, or land any regulated NE multispecies or ocean pout from the area specified in § 648.85(b)(3)(ii), unless in compliance with § 648.85(b)(3)(i) through (xiii).

(B) Enter or fish in Closed Area II as specified in § 648.81(b), unless declared into the area in accordance with § 648.85(b)(3)(v) or § 648.85(b)(8)(v)(D).

(C) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder/Haddock SAP outside of the season specified in § 648.85(b)(3)(iii).

(D) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), exceed the number of trips specified in § 648.85(b)(3)(vi) or (vii).

(E) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), exceed the trip limits specified in § 648.85(b)(3)(viii).

(F) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), fail to comply with the gear requirements specified in § 648.85(b)(3)(x).

(iv) [Reserved]

(v) *Regular B DAS Program restrictions for vessel and operator permit holders.* (A) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with §§ 648.85(b)(6)(iv)(A) through (J).

(B) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described in § 648.85(a)(3)(iii)(A), or other approved gear as described in § 648.85(b)(6)(iv)(J).

(C) If possessing a Ruhle Trawl, either at sea or elsewhere, as allowed under § 648.85(b)(6)(iv)(J)(*1*) or

(b)(8)(v)(E)(*1*), fail to comply with the net specifications under § 648.85(b)(6)(iv)(J)(*3*).

(D) Discard legal-sized NE regulated multispecies, ocean pout, Atlantic halibut, or monkfish while fishing under a Regular B DAS in the Regular B DAS Program, as described in § 648.85(b)(6)(iv)(E).

(E) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(D).

(F) If fishing under a Regular B DAS in the Regular B DAS Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D), other groundfish specified under § 648.86, or monkfish under § 648.94.

(G) *DAS usage restrictions.* (*1*) If fishing in the Regular B DAS Program, fail to comply with the restriction on DAS use specified in § 648.82(d)(2)(i)(A).

(*2*) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(6)(iv)(F).

(*3*) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(6), if the program has been closed as specified in § 648.85(b)(6)(iv)(G) or (H), or (b)(6)(vi).

(H) *VMS requirements.* (*1*) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS requirement specified in § 648.85(b)(6)(iv)(A).

(*2*) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS declaration requirement specified in § 648.85(b)(6)(iv)(C).

(I) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the observer notification requirement specified in § 648.85(b)(6)(iv)(B).

(J) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the reporting requirements specified in § 648.85(b)(6)(iv)(I).

(vi) *Closed Area I Hook Gear Haddock SAP restrictions for vessel and operator permit holders.* (A) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable requirements and conditions specified in § 648.85(b)(7)(iv), and (b)(7)(v) or (b)(7)(vi).

(B) Fish in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7) outside of the season specified in § 648.85(b)(7)(iii).

(C) Fish in the Closed Area I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), if that area is closed as specified in § 648.85(b)(7)(iv)(I) or (b)(7)(vi)(F).

(D) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable DAS use restrictions specified in § 648.85(b)(7)(iv)(A) and (b)(7)(vi)(A).

(E) *VMS requirements.* (*1*) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS requirements specified in § 648.85(b)(7)(iv)(B).

(*2*) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS declaration requirement specified in § 648.85(b)(7)(iv)(D).

(F) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the observer notification requirements specified in § 648.85(b)(7)(iv)(C).

(G) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable gear restrictions specified in § 648.85(b)(7)(iv)(E), and (b)(7)(v)(A) or (b)(7)(vi)(B).

(H) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable landing limits specified in § 648.85(b)(7)(iv)(H), and (b)(7)(v)(C) or (b)(7)(vi)(C).

(I) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable reporting requirement specified in § 648.85(b)(7)(v)(C) or (b)(7)(vi)(D).

(vii) *Eastern U.S./Canada Haddock SAP Restrictions*—(A) *All Persons.* (*1*) If fishing under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), in the area specified in § 648.85(b)(8)(ii), and during the season

specified in § 648.85(b)(8)(iv), fail to comply with § 648.85(b)(8)(v).

(*2*) *VMS and declaration requirements.* (*i*) If fishing under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Haddock SAP in the area specified in § 648.85(b)(8)(ii), fail to comply with the VMS requirements in § 648.85(b)(8)(v)(B).

(*ii*) If fishing under a NE multispecies DAS or on a sector trip, fish in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), unless declared into the program in accordance with § 648.85(b)(8)(v)(D).

(*3*) Enter or fish in the Eastern U.S./Canada Haddock SAP outside of the season specified in § 648.85(b)(8)(iv).

(*4*) If possessing a Ruhle Trawl, either at sea or elsewhere, as allowed under § 648.85(b)(6)(iv)(J)(*1*) or (b)(8)(v)(E)(*1*), fail to comply with the net specifications under § 648.85(b)(6)(iv)(J)(*3*).

(*5*) *Possession limits and restrictions.* (*i*) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP, exceed the possession limits specified in § 648.85(b)(8)(v)(F).

(*ii*) If fishing under the Eastern U.S./Canada Haddock SAP, fish for, harvest, possess, or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions of § 648.85(b)(8)(v)(A) through (I).

(*6*) If fishing in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the reporting requirements of § 648.85(b)(8)(v)(G).

(*7*) If fishing under the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the observer notification requirements of § 648.85(b)(8)(v)(C).

(B) *Vessel and operator permit holders.* (*1*) If fishing in the Eastern U.S./Canada Haddock SAP Area, and other portions of the Eastern U.S./Canada Haddock SAP Area on the same trip, fail to comply with the restrictions in § 648.85(b)(8)(v)(A).

(*2*) *DAS usage restrictions.* (*i*) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the applicable landing limit specified in §§ 648.85(b)(8)(v)(F) or 648.86.

(*ii*) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required by § 648.85(b)(8)(v)(J).

(*3*) Fish in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), if the SAP is closed as specified in § 648.85(b)(8)(v)(K) or (L).

(13) *Possession and landing restrictions*—(i) *All persons.* (A) Under § 648.85 or § 648.86, fail to offload a sufficient amount of regulated species or ocean pout subject to a daily possession limit at the end of a fishing trip, as required by § 648.86(i).

(B) *Scallop vessels.* Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 648.51, or with scallop dredge gear on a vessel not fishing under the scallop DAS program described in § 648.54, or fishing under a general scallop permit, unless said fish are caught, possessed, or landed in accordance with §§ 648.80 and 648.86, or unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(ii) *Vessel and operator permit holders.* (A) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b), (c), (d), (e), (g), (h), (j), (k), (l), (n), and (o); or violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(B) Possess or land per trip more than the possession or landing limits specified in § 648.86(a), (b), (c), (e), (g), (h), (j), (l), (m), (n), and (o); § 648.82(b)(5) and (6); § 648.85; or § 648.88, if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

(C) Fish for, possess at any time during a trip, or land regulated NE multispecies or ocean pout specified in § 648.86 after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted by § 648.82(b)(5), § 648.87, or § 648.89, or allowed pursuant to § 648.85(b)(6) or § 648.88.

(D) *Atlantic cod.* (*1*) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

(*2*) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2).

(*3*) [Reserved]

(*4*) Fail to declare through VMS an intent to be exempt from the GOM cod trip limit under § 648.86(b)(1), as required under § 648.86(b)(4), or fish north of the exemption line if in possession of more than the GOM cod trip limit specified under § 648.86(b)(1).

(E) *Atlantic halibut.* Possess or land per trip more than the possession or landing limit specified under § 648.86(c).

(F) *White hake.* Possess or land more white hake than allowed under § 648.86(e).

(G) *Yellowtail flounder.* While fishing in the areas specified in § 648.86(g)(1) with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1), unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(H) *GB winter flounder.* Possess or land more GB winter flounder than allowed under § 648.86(j).

(I) For common pool vessels, including vessels issued a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, land regulated species or ocean pout more than once within any 24-hr period.

(J) For common pool vessels, including vessels issued a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, fail to comply with the most restrictive trip limits applicable when fishing in multiple areas, as specified in § 648.85 or § 648.86.

(14) *Sector requirements.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit and fishing on a sector trip to do any of the following:

(i) Fail to abide by the restrictions specified in § 648.87(b)(1).

(ii) Catch regulated species or ocean pout in excess of ACE allocated or transferred to that sector pursuant to § 648.87(b)(1)(i) and (viii), respectively.

(iii) Fish in a particular stock area, the Eastern U.S./Canada Area, or a SAP if the sector has not been allocated, does not acquire, or otherwise has insufficient ACE remaining/available for all stocks caught in that area, or fail to operate in a manner that would not catch stocks for which the sector has not been allocated ACE, as described in an approved sector operations plan pursuant to § 648.87(b)(2)(xiv), as prohibited in § 648.87(b)(1)(ii).

(iv) Violate the provisions of an approved sector operations plan or letter of authorization issued by the Regional Administrator, as required by § 648.87(b)(1)(iv) and (b)(2).

(v) Fail to remain in the sector for the remainder of the fishing year, as required by § 648.87(b)(1).

(vi) Unless otherwise required to use a NE multispecies DAS to participate in another fishery, fish in the NE multispecies DAS program in a given fishing year or, for common pool vessels, fish in an approved sector in a given fishing year.

(vii) If a vessel is removed from a sector for violating the Sector rules, fish under the NE multispecies regulations for common pool vessels.

(viii) Discard legal-sized regulated species or ocean pout allocated to sectors pursuant to § 648.87(b)(1)(i), as prohibited by § 648.87(b)(1)(v).

(ix) Fail to comply with the reporting requirements specified in § 648.87(b)(1)(v) or (vi).

(x) Offload fish before a dockside/roving monitor arrives, if selected to have its offloading events observed by a dockside/roving monitor, as prohibited by § 648.87(b)(5)(i)(C).

(xi) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel or before electronic monitoring equipment has been properly installed if assigned to carry either an at-sea monitor or electronic

monitoring equipment for that trip, as prohibited by § 648.87(b)(6)(iii)(A).

(xii) Leave port to begin a trip if a vessel has failed a review of safety issues by an at-sea monitor and has not successfully resolved any identified safety deficiencies, as prohibited by § 648.87(b)(6)(iv)(A).

(15) *Open access permit restrictions*—(i) *All persons*. (A) Violate any provision of the open access permit restrictions of § 648.88.

(B) Possess on board gear other than that specified in § 648.88(a)(2)(i), or fish with hooks greater than the number specified in § 648.88(a)(2)(iii), if fishing under an open access Handgear permit.

(C) Fish for, possess, or land regulated multispecies from March 1 to March 20, if issued an open access Handgear permit.

(ii) *Vessel and operator permit holders*—(A) *Open access Handgear permit*. It is unlawful for any person owning or operating a vessel issued an open access NE multispecies Handgear permit to do any of the following, unless otherwise specified in § 648.17:

(*1*) Violate any provision of the open access Handgear permit restrictions of § 648.88(a).

(*2*) Possess, at any time during a trip, or land per trip, more than the possession limit of NE multispecies specified in § 648.88(a), unless the vessel is a charter or party vessel fishing under the charter/party restrictions specified in § 648.89.

(*3*) Use, or possess on board, gear capable of harvesting NE multispecies, other than rod and reel, or handline gear, or tub-trawls, while in possession of, or fishing for, NE multispecies.

(*4*) Possess or land NE multispecies during the time period specified in § 648.88(a)(2).

(*5*) If operating under the provisions of a limited access NE multispecies Handgear B permit south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), fail to obtain or retain on board a letter of authorization from the Regional Administrator, as required by § 648.88(a)(2)(iv).

(B) *Scallop multispecies possession limit permit*. It is unlawful for any person owning or operating a vessel issued a scallop multispecies possession limit permit to possess or land more than the possession limit of NE multispecies specified in § 648.88(c), or to possess or land regulated species when not fishing under a scallop DAS, unless otherwise specified in § 648.17.

(C) *Open access NE multispecies (non-regulated species permit)*. It is unlawful for any owner or operator of a vessel issued a valid open access NE multispecies permit to possess or land any regulated species, as defined in § 648.2, or to violate any applicable provisions of § 648.88, unless otherwise specified in §§ 648.14, 648.86, or 648.88.

(16) *Recreational and charter/party requirements*. It is unlawful for the owner or operator of a charter or party boat issued a valid Federal NE multispecies permit, or for a recreational vessel, as applicable, unless otherwise specified in § 648.17, to do any of the following:

(i) *Possession and landing*. Possess cod, haddock, or Atlantic halibut in excess of the possession limits specified in § 648.89(c).

(ii) *Gear requirements*. Fish with gear in violation of the restrictions of § 648.89(a).

(iii) *Seasonal and area restrictions*. (A) If fishing under the recreational or charter/party regulations, fish for or possess cod caught in the GOM Regulated Mesh Area during the seasonal GOM cod possession prohibition under § 648.89(c)(1)(v) or (c)(2)(v), or fail to abide by the appropriate restrictions if transiting with cod on board.

(B) If the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(f)(2)(iii) when fishing in the areas described in § 648.81(d)(1) through (f)(1) during the time periods specified.

(C) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal GOM cod possession prohibition described in § 648.89(c)(1)(v), or, if the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the prohibition on fishing under § 648.89(c)(2)(v).

(iv) *Restriction on sale and transfer*. Sell, trade, barter, or otherwise transfer; or attempt to sell, trade, barter or otherwise transfer; NE multispecies for a commercial purpose as specified in § 648.89(d).

(v) *Size limits.* If fishing under the recreational or charter/party regulations, possess regulated species or ocean pout that are smaller than the minimum fish sizes specified in § 648.89(b)(1) and (b)(3).

(vi) *Identification.* If fishing under the recreational or charter/party regulations, possess regulated species or ocean pout without at least 2 square inches (5.1 square cm) of contiguous skin that allows for the ready identification of the species of fish upon landing.

(vii) *Atlantic wolffish.* If fishing under the recreational or charter/party regulations, possess Atlantic wolffish.

(17) *Presumptions.* For purposes of this part, the following presumptions apply:

(i) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 are deemed to have been taken or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters, or by a vessel that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

(ii) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 are deemed taken from the EEZ or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters, or by a vessel that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

(18) *Trimester TAC AM*—(i) *Vessel and operator permit holders.* (A) Fish for, harvest, possess, or land regulated species or ocean pout in or from the closed areas specified in § 648.82(n)(2)(ii) once such areas are closed pursuant to § 648.82(n)(2)(i).

(B) Fail to comply with the reporting/recordkeeping requirements specified in § 648.87(b)(5).

(C) Employ a dockside/roving monitor service provider that is not approved/certified by NMFS, as specified in § 648.82(n)(2)(iv)(B).

(D) Offload fish before a dockside/roving monitor arrives, if selected to have its offloading events observed by a dockside/roving monitor, as specified by § 648.87(b)(1)(v)(B)(*1*) and (b)(5)(i)(C).

(19) *Dockside/roving and at-sea/electronic monitoring service providers.* It is unlawful for any dockside/roving and at-sea/electronic monitoring service provider, including individual dockside/roving or at-sea monitors, to do any of the following:

(i) Fail to comply with the operational requirements, including the recordkeeping and reporting requirements, specified in § 648.87(b)(5) or (6).

(ii) Provide false or inaccurate information regarding area fished; species identification; or amount of each species kept, discarded, or landed.

(20) *AMs for both stocks of windowpane flounder and ocean pout.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the restrictions on fishing and gear specified in § 648.90(a)(5)(i)(D).

(l) *Small-mesh multispecies.* (1) It is unlawful for any person owning or operating a vessel issued a valid Federal multispecies permit to land, offload, or otherwise transfer; or attempt to land, offload, or otherwise transfer; small-mesh multispecies from one vessel to another in excess of the limits specified in § 648.13.

(2) *Presumptions.* For purposes of this part, the following presumption applies: All small-mesh multispecies retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ.

(m) *Monkfish.* It is unlawful for any person owning or operating a vessel that engages in fishing for monkfish to do any of the following, unless otherwise fishing in accordance with, and exempted under, the provisions of § 648.17:

(1) *Permit requirement.* (i) Fish for, possess, retain, or land monkfish, unless:

(A) The monkfish are being fished for, or were harvested, in or from the

EEZ by a vessel issued a valid monkfish permit under § 648.4(a)(9).

(B) The vessel does not hold a valid Federal monkfish permit and fishes for or possesses monkfish exclusively in state waters.

(C) The vessel does not hold a valid Federal monkfish permit and engages in recreational fishing.

(D) The monkfish were harvested from the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

(ii) Fish for, possess, or land monkfish in or from the EEZ without having been issued and possessing a valid operator permit pursuant to § 648.5, and this permit is onboard the vessel.

(2) *Gear requirements*. (i) Fish with or use nets with mesh size smaller than the minimum mesh size specified in § 648.91(c) while fishing under a monkfish DAS.

(ii) Fail to immediately produce gillnet tags when requested by an authorized officer.

(iii) Tag a gillnet with, or otherwise use or possess, a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or use or possess a false gillnet tag.

(iv) Sell, transfer, or give away gillnet tags.

(v) If the vessel has been issued a valid limited access monkfish permit, and fishes under a monkfish DAS, fail to comply with gillnet requirements and restrictions specified in § 648.92(b)(8).

(3) *Area restrictions*. (i) Fail to comply with the restrictions applicable to limited access Category G and H vessels specified under § 648.92(b)(9).

(ii) Fail to comply with the NFMA requirements specified at § 648.94(f).

(4) *DAS requirements*. (i) Fail to comply with the monkfish DAS provisions specified at § 648.92 when issued a valid limited access monkfish permit.

(ii) Combine, transfer, or consolidate monkfish DAS allocations.

(5) *Size limits*. Fail to comply with the monkfish size limit restrictions of § 648.93 when issued a valid monkfish permit under § 648.4(a)(9) or when fishing in the EEZ.

(6) *Possession and landing*. (i) Fail to comply with the monkfish possession limits and landing restrictions, including liver landing restrictions, specified under § 648.94.

(ii) Violate any provision of the monkfish incidental catch permit restrictions as specified in §§ 648.4(a)(9)(ii) or 648.94(c).

(7) *Transfer and sale*. (i) Sell, barter, trade, or otherwise transfer for a commercial purpose; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose; any monkfish from a vessel without having been issued a valid monkfish vessel permit, unless the vessel fishes for monkfish exclusively in state waters, or exclusively in the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

(ii) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, monkfish in excess of the possession or trip limits specified in § 648.94.

(iii) Land, offload, or otherwise transfer; or attempt to land, offload, or otherwise transfer; monkfish from one vessel to another vessel, unless each vessel has not been issued a monkfish permit and fishes exclusively in state waters.

(8) *Presumption*. For purposes of this part, the following presumption applies: All monkfish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of evidence demonstrates that such fish were harvested by a vessel that fished exclusively in the NAFO Regulatory Area, as authorized under § 648.17.

(n) *Summer flounder*—(1) *All persons*. Unless participating in a research activity as described in § 648.22(g), it is unlawful for any person to do any of the following:

(i) *Permit requirement*. Possess summer flounder in or harvested from the EEZ, either in excess of the possession limit specified in § 648.106, or before or after the time period specified in § 648.105, unless the vessel was issued a summer flounder moratorium permit and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended.

(ii) *Transfer and purchase*. (A) Purchase or otherwise receive for a commercial purpose, other than solely for

transport on land, summer flounder from the owner or operator of a vessel issued a summer flounder moratorium permit, unless in possession of a valid summer flounder dealer permit.

(B) Purchase or otherwise receive for commercial purposes summer flounder caught by a vessel subject to the possession limit of § 648.106.

(C) Purchase or otherwise receive for a commercial purpose summer flounder landed in a state after the effective date published in the FEDERAL REGISTER notifying permit holders that commercial quota is no longer available in that state for the respective fishing year.

(iii) *Gear requirements.* Possess nets or netting with mesh not meeting the minimum mesh requirement of § 648.108 if the person possesses summer flounder harvested in or from the EEZ in excess of the threshold limit of § 648.106(a).

(2) *Vessel and operator permit holders.* Unless participating in a research activity as described in § 648.102(e), it is unlawful for any person owning or operating a vessel issued a summer flounder permit (including a moratorium permit) to do any of the following:

(i) *Possession and landing.* (A) Possess 100 lb (45.4 kg) or more of summer flounder between May 1 and October 31, or 200 lb (90.7 kg) or more of summer flounder between November 1 and April 30, unless the vessel meets the gear requirements or restrictions specified in § 648.108.

(B) Possess summer flounder in other than a container specified in § 648.106(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.108(a), unless the vessel is fishing pursuant to the exemptions specified in § 648.108(b).

(C) Land summer flounder for sale in a state after the effective date of a notification in the FEDERAL REGISTER notifying permit holders that commercial quota is no longer available in that state.

(D) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any summer flounder, possessed or landed by a vessel not issued a summer flounder moratorium permit.

(ii) *Transfer and purchase.* Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any summer flounder, unless the transferee has a valid summer flounder dealer permit.

(iii) *Gear requirements.* (A) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.108, unless the nets or netting are stowed in accordance with § 648.108(e).

(B) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 648.108, unless the nets or netting are stowed in accordance with § 648.108(f).

(C) Fish west or south, as appropriate, of the line specified in § 648.108(b)(1) if exempted from the minimum mesh requirement specified in § 648.108 by a summer flounder exemption permit.

(3) *Charter/party restrictions.* Unless participating in a research activity as described in § 648.102(e), it is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(i) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a summer flounder moratorium permit.

(ii) Possess summer flounder in excess of the possession limit established pursuant to § 648.106.

(iii) Fish for summer flounder other than during a season specified pursuant to § 648.105.

(iv) Sell or transfer summer flounder to another person for a commercial purpose.

(4) *Presumption.* For purposes of this part, the following presumption applies: All summer flounder retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

(o) *Scup*—(1) *All persons*. Unless participating in a research activity as described in § 648.122(e), it is unlawful for any person to do any of the following:

(i) *Permit requirement*. Fish for, catch, or retain for sale, barter, or trade scup in or from the EEZ north of 35°15.3′ N. lat. on board a party or charter boat without the vessel having been issued an applicable valid party or charter boat permit pursuant to § 648.4(a)(6), unless the vessel other than a party or charter vessel observes the possession limit restrictions and prohibition against sales specified in § 648.125.

(ii) *Possession and landing*. (A) Possess scup in or harvested from the EEZ north of 35°15.3′ N. lat. in an area closed, or before or after a season established pursuant to §§ 648.124 and 648.127.

(B) Possess scup in excess of the possession limit established pursuant to § 648.125.

(C) Fish for, possess, or land scup harvested in or from the EEZ north of 35°15.3′ N. lat. for a commercial purpose after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(D) Fish for, catch, possess, or retain scup in or from the EEZ north of 35°15.3′ N. lat. in excess of the amount specified in § 648.125, unless the vessel complies with all of the gear restrictions in § 648.125.

(E) Fish for, catch, retain, or land scup in or from the EEZ north of 35°15.3′ N. lat. in excess of the limit established through the annual specification process and published in the FEDERAL REGISTER pursuant to § 648.122(a).

(iii) *Minimum fish size*. Possess, other than solely for transport on land, scup harvested in or from the EEZ north of 35°15.3′ N. lat. that do not meet the minimum fish size specified in § 648.126.

(iv) *Transfer and purchase*. Purchase or otherwise receive for a commercial purpose scup harvested from the EEZ north of 35°15.3′ N. lat., or from a vessel issued a scup moratorium permit after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(v) *Gear requirements*. Fail to comply with any of the gear restrictions specified in § 648.125.

(vi) *Gear restricted areas*. Fish for, catch, possess, retain, or land longfin squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.124(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in §§ 648.124 and 648.125(a), unless the nets or netting are stowed in accordance with § 648.125(a)(5).

(2) *Vessel and operator permit holders*. Unless participating in a research activity as described in § 648.122(e), it is unlawful for any person owning or operating a vessel issued a scup permit (including a moratorium permit) to do any of the following:

(i) *Possession and landing*. (A) Possess scup in excess of the threshold amount specified in § 648.125, unless the vessel meets the minimum mesh-size restrictions specified in § 648.125.

(B) Land scup for sale after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(C) Possess scup in, or harvested from, the EEZ in an area closed by, or before or after a season established pursuant to § 648.124.

(ii) *Transfer and purchase*. (A) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any scup, unless the transferee has a dealer permit issued under § 648.6.

(B) Transfer scup at sea, or attempt to transfer at sea to any vessel, any scup taken from the EEZ, unless in compliance with the provisions of § 648.13(i).

(3) *Charter/party requirements*. Unless participating in a research activity as described in § 648.122(e), it is unlawful for the owner or operator of a party or charter boat issued a scup permit (including a moratorium permit), when the boat is carrying passengers for hire, or when carrying more than three crew members, if a charter boat, or more than five members, if a party boat to:

(i) Carry passengers for hire, or carry more than three crew members for a

charter boat, or five crew members for a party boat, while fishing for scup under the terms of a moratorium permit issued pursuant to § 648.4(a)(6).

(ii) Possess scup in excess of the possession limit established pursuant to § 648.128.

(iii) Fish for scup other than during a season established pursuant to § 648.124.

(iv) Sell scup or transfer scup to another person for a commercial purpose other than solely for transport on land.

(v) Possess scup that do not meet the minimum fish size specified in § 648.126(b).

(4) *Presumption*. For purposes of this part, the following presumption applies: All scup retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ, north of 35°15.3′ N. lat., unless a preponderance of the evidence shows the fish were harvested by a vessel that fished exclusively in state waters.

(p) *Black sea bass*—(1) *All persons*. Unless participating in a research activity as described in § 648.142(d), it is unlawful for any person to do any of the following:

(i) *Permit requirement*. Possess black sea bass in or harvested from the EEZ north of 35°15.3′ N. lat., either in excess of the possession limit established pursuant to § 648.145, or before or after the time period established pursuant to § 648.146, unless the person is operating a vessel issued a moratorium permit under § 648.4 and the moratorium permit is on board the vessel.

(ii) *Possession and landing*. Fish for, catch, possess, land, or retain black sea bass in or from the EEZ north of 35°15.3′ N. lat. (the latitude of Cape Hatteras Light, NC, to the U.S.-Canadian border) in excess of the amount specified in § 648.144(a)(1)(i), unless the vessel complies with all of the gear restrictions at § 648.144(a).

(iii) *Transfer and purchase*. Purchase or otherwise receive for commercial purposes, other than solely for transport on land, black sea bass landed for sale by a moratorium vessel in any state, or part thereof, north of 35°15.3′ N. lat., after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(iv) *Gear restriction*. Fail to comply with any of the gear restrictions specified in § 648.144.

(v) *Minimum fish size*. Fish for, possess, land, or retain black sea bass in or from the EEZ that does not comply with the minimum fish size specified in § 648.147.

(2) *Vessel and operator permit holders*. Unless participating in a research activity as described in § 648.142(d), it is unlawful for any person owning or operating a vessel issued a black sea bass permit (including a moratorium permit) to do any of the following:

(i) *Permit requirement*. Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any black sea bass from a vessel, unless the transferee has a valid black sea bass dealer permit.

(ii) *Possession and landing*. (A) Land black sea bass for sale in any state, or part thereof, north of 35°15.3′ N. lat. after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(B) Possess, retain, or land black sea bass harvested in or from the EEZ in excess of the commercial possession limit established at § 648.140.

(C) Land black sea bass for sale in any state south of North Carolina.

(D) Possess black sea bass after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass, unless the vessel has been issued a Southeast Region Snapper/Grouper Permit and fishes for and possess black sea bass south of 35°15.3′ N. lat.

(3) *Charter/party restrictions*. Unless participating in a research activity as described in § 648.142(e), it is unlawful for the owner or operator of a party or charter boat issued a black sea bass permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five members, if a party boat, to:

(i) Fish for black sea bass under the terms of a moratorium permit issued pursuant to § 648.4(a)(7).

(ii) Possess, retain, or land black sea bass in excess of the possession limit established pursuant to § 648.145.

(iii) Fish for black sea bass other than during a time allowed pursuant to § 648.146.

(iv) Sell black sea bass or transfer black sea bass from a vessel to another person for a commercial purpose other than solely for transport on land.

(4) *Presumption*. For purposes of this part, the following presumption applies: All black sea bass retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ, unless the vessel also has been issued a Southeast Region Snapper/Grouper permit and fishes for, retains, or possesses black sea bass south of 35°15.3′ N. lat.

(q) *Bluefish*. Unless participating in a research activity as described in § 648.162(g), it is unlawful for any person to do any of the following:

(1) *Permit requirement*. Possess in or harvest from the EEZ, Atlantic bluefish, in excess of the daily possession limit found at § 648.164, unless the vessel is issued a valid Atlantic bluefish vessel permit under § 648.4(a)(8)(i) and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) *Possession and landing*. (i) Land bluefish for sale in a state after the effective date of a notification in the FEDERAL REGISTER pursuant to § 648.163(b), that the commercial quota is no longer available in that state.

(ii) Land bluefish for sale after the effective date of a notification in the FEDERAL REGISTER pursuant to § 648.163(a), that the bluefish fishery is closed.

(3) *Transfer and purchase*. (i) Sell, barter, trade or transfer; or attempt to sell, barter, trade or otherwise transfer; other than for transport, bluefish that were harvested in or from the EEZ, unless the vessel has been issued a valid bluefish permit under § 648.4(a)(8)(i).

(ii) Purchase or otherwise receive for a commercial purpose bluefish harvested from the EEZ after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(iii) Purchase or otherwise receive for a commercial purpose bluefish harvested by a Federally permitted vessel after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(4) *Charter/party restrictions*. Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a bluefish permit issued under § 648.4(a)(8).

(5) *Presumption*. For purposes of this part, the following presumption applies: All bluefish possessed on board a party or charter vessel issued a permit under § 648.4(a)(8)(ii) are deemed to have been harvested from the EEZ.

(r) *Atlantic herring*—(1) *All persons*. It is unlawful for any person to do any of the following:

(i) *Permit requirement*. Operate, or act as an operator of, a vessel with an Atlantic herring permit, or a vessel fishing for or possessing herring in or from the EEZ, unless the operator has been issued, and is in possession of, a valid operator permit.

(ii) *Possession and landing*. (A) Fish for, possess, retain or land herring, unless:

(*1*) The herring are being fished for, or were harvested in or from, the EEZ by a vessel holding a valid herring permit under this part and the operator on board such vessel possesses a valid operator permit that is on board the vessel.

(*2*) The herring were harvested by a vessel not issued a herring permit that fished exclusively in state waters.

(*3*) The herring were harvested in or from the EEZ by a vessel engaged in recreational fishing.

(*4*) The herring were possessed for personal use as bait.

(*5*) Unless otherwise specified in § 648.17.

(B) Possess, transfer, receive, or sell; or attempt to transfer, receive, or sell; more than 2,000 lb (907.2 kg) of herring per trip; or land, or attempt to land more than 2,000 lb (907.2 kg) of herring per day in or from a management area closed pursuant to § 648.201(a), if the

vessel has been issued and holds a valid herring permit.

(C) Possess or land more herring than is allowed by the vessel's Atlantic herring permit.

(iii) *Processing requirements.* (A) Process herring that was caught in or from the EEZ by a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii), in excess of the specification of USAP.

(B) Discard herring carcasses at sea after removing the roe, if a Federally permitted vessel; or in the EEZ, if not a Federally permitted vessel.

(C) Catch, take, or harvest herring for roe, at sea, if a Federally permitted vessel; or if not Federally permitted, in or from the EEZ in excess of any limit established by § 648.206(b)(24).

(iv) *Transfer and purchase.* (A) Purchase, possess, receive; or attempt to purchase, possess, or receive; as a dealer, or in the capacity of a dealer, herring harvested in or from the EEZ, without having been issued, and in possession of, a valid herring dealer permit.

(B) Purchase, possess, receive; or attempt to purchase, possess, or receive; as a processor, or in the capacity of a processor, herring from a fishing vessel with a herring permit or from a dealer with a herring dealer permit, without having been issued, and in possession of, a valid herring processor permit.

(C) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer; for a commercial purpose, any herring, unless the harvesting vessel has been issued a herring permit, or unless the herring were harvested by a vessel without a Federal herring permit that fished exclusively in state waters.

(D) Purchase, possess, or receive, for a commercial purpose; or attempt to purchase, possess, or receive, for a commercial purpose; herring caught by a vessel without a herring permit, unless the herring was harvested by a vessel without a Federal herring permit that fished exclusively in state waters.

(E) Transfer, or attempt to transfer, herring to a Canadian transshipment vessel that is permitted in accordance with Public Law 104–297, if the amount of herring transshipped exceeds the amount of the border transfer specified in § 648.200.

(v) *Gear and vessel requirements.* (A) If fishing with midwater trawl or purse seine gear, fail to comply with the requirements of § 648.80(d) and (e).

(B) Catch, take, or harvest Atlantic herring in or from the EEZ with a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii).

(vi) *Area requirements.* (A) For the purposes of observer deployment, fail to notify NMFS at least 72 hr prior to departing on a declared herring trip with a vessel issued an All Areas Limited Access Herring Permit and/or an Area 2 and 3 Limited Access Herring Permit and fishing with midwater trawl or purse seine gear, or on a trip with a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that is fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), pursuant to the requirements in § 648.80(d) and (e).

(B) Possess, land, transfer, receive, sell, purchase, trade, or barter; or attempt to transfer, receive, sell, purchase, trade, or barter, or sell more than 2,000 lb (907 kg) of Atlantic herring per trip taken from the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(*1*), by a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, after the haddock cap for the area(s) has been reached pursuant to § 648.86(a)(3), unless all herring possessed or landed by the vessel was caught outside the applicable Accountability Measure Area(s).

(C) Transit the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(*1*), with a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, when the 2,000-lb (907.2 kg) limit specified in § 648.86(a)(3)(ii)(A)(*1*) is in place for the area being transited, in possession of more than 2,000 lb (907.2 kg) of herring, unless all herring on board was caught outside of the applicable Herring GOM Haddock Accountability

Measure Area and/or the Herring GB Haddock Accountability Measure Area, and all fishing gear is stowed and not available for immediate use, as required by § 648.23(b).

(D) Fish for herring in Area 1A from June 1 through September 30 with midwater trawl gear.

(E) Possess or land haddock taken from the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(*1*), by a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, after the haddock cap for the area(s) has been reached pursuant to § 648.86(a)(3), unless all haddock possessed or landed by the vessel was caught outside the applicable Accountability Measure Area(s).

(F) Transit the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(*1*), with a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, when the 0-lb (0-kg) haddock possession limit in § 648.86(a)(3)(ii)(A)(*1*) is in place for the area being transited, in possession of haddock, unless all haddock on board was caught outside of the applicable Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, and all fishing gear is stowed and not available for immediate use, as required by § 648.23(b).

(vii) *Transit and transport*. (A) Transit or be in an area closed to fishing for Atlantic herring pursuant to § 648.201(a) with more than 2,000 lb (907.2 kg) of herring, unless all fishing gear is stowed as specified by § 648.23(b).

(B) Receive Atlantic herring at sea in or from the EEZ, solely for transport, without a letter of authorization from the Regional Administrator.

(C) Fail to comply with a letter of authorization from the Regional Administrator.

(D) Transit Area 1A from June 1 through September 30 with more than 2,000 lb (907.2 kg) of herring without mid-water trawl gear properly stowed as required by § 648.23(b).

(E) Discard haddock at sea that has been brought on deck, or pumped into the hold, of a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or on a trip with a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear, pursuant to the requirements in § 648.80(d) and (e).

(viii) *VMS requirements*. (A) Catch, take, or harvest Atlantic herring in or from the EEZ, if a limited access herring vessel, unless equipped with an operable VMS unit.

(B) Fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS at least 6 hr prior to landing herring at the end of a declared herring trip, if a vessel has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit and is fishing with either midwater trawl or purse seine gear, or a Limited Access Incidental Catch Herring Permit and is fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3).

(2) *Vessel and operator permit holders*. It is unlawful for any person owning or operating a vessel holding a valid Federal Atlantic herring permit, or issued an operator's permit, to do any of the following:

(i) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated NE. multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, white hake, and Atlantic wolffish); or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated NE. multispecies for human consumption; if the regulated NE. multispecies are landed by a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear pursuant to § 648.80(d).

(ii) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out, and retain, for at least 12 hr, all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(iii) Sell, purchase, receive, trade, barter, or transfer; or attempt to sell, purchase, receive, trade, barter, or transfer; to another person, any haddock or other regulated NE. multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, white hake, and Atlantic wolffish) separated out from a herring catch offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(iv) While operating as an at-sea herring processor, fail to comply with requirements to separate out and retain all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(v) Fish with midwater trawl gear in Closed Area I, as specified at § 648.81(a), without a NMFS approved observer onboard, if the vessel has been issued an Atlantic herring permit.

(vi) Release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exemptions as defined at § 648.80(d)(7)(ii), if fishing any part of a tow inside Closed Area I, as defined at § 648.81(a).

(vii) Fail to complete, sign, and submit an affidavit if fish are released pursuant to the exemptions detailed at § 648.80(d)(7)(ii).

(3) *Presumption*. For purposes of this part, the following presumption applies: All Atlantic herring retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such Atlantic herring were harvested by a vessel fishing exclusively in state waters.

(s) *Spiny dogfish*—(1) *All persons*. It is unlawful for any person to do any of the following:

(i) *Permit requirement*. Purchase or otherwise receive, other than solely for transport on land, spiny dogfish from any person on board a vessel issued a Federal spiny dogfish permit, unless the purchaser/receiver is in possession of a valid spiny dogfish dealer permit.

(ii) *Transfer and purchase*. Purchase or otherwise receive for a commercial purpose spiny dogfish landed by a Federally permitted vessel in any state, from Maine to Florida, after the EEZ is closed to the harvest of spiny dogfish.

(2) *Vessel and operator permit holders*. It is unlawful for any person owning or operating a vessel issued a valid Federal spiny dogfish permit or issued a valid Federal operator's permit to do any of the following:

(i) *Permit requirement*. Sell, barter, trade or transfer; or attempt to sell, barter, trade or otherwise transfer; other than solely for transport on land, spiny dogfish, unless the dealer, transferor, or transferee has a valid dealer permit issued under § 648.6(a).

(ii) *Possession and landing*. (A) Fish for or possess spiny dogfish harvested in or from the EEZ after the EEZ is closed to the harvest of spiny dogfish.

(B) Land spiny dogfish for a commercial purpose after the EEZ is closed to the harvest of spiny dogfish.

(C) Possess more than the daily possession limit of spiny dogfish specified in § 648.235.

(iii) *Prohibition on finning*. Violate any of the provisions in §§ 600.1203 and 600.1204 applicable to the dogfish fishery that prohibit finning.

(t) *Red crab*. It is unlawful for any person to do any of the following:

(1) *Permit requirement*. Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; any red crab or red crab parts in or from the EEZ portion of the Red Crab Management Unit, unless in possession of a valid Federal limited access red crab vessel permit or Federal red crab incidental catch permit.

(2) *Possession and landing*. (i) Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; red crab in excess of the limits specified in § 648.263.

(ii) *Restriction on female red crabs*. Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; female red crabs in excess of one standard U.S. fish tote.

(iii) Fish for, possess, or land red crab, in excess of the incidental limit specified at § 648.263(b)(1), after determination that the TAL has been reached and notice of the closure date has been made.

(3) *Transfer and purchase*. (i) Transfer at sea, or attempt to transfer at sea, either directly or indirectly, any red crab or red crab parts taken in or from the EEZ portion of the red crab management unit to any vessel.

(ii) Purchase, possess, or receive; or attempt to purchase, possess, or receive; more than 500 lb (226.8 kg) of whole red crab, or its equivalent in weight in accordance with the conversion provisions in § 648.263(a)(2), caught or possessed in the EEZ portion of the red crab management unit by a vessel without a valid Federal limited access red crab permit.

(iii) Purchase, possess, or receive; or attempt to purchase, possess, or receive; up to 500 lb (226.8 kg) of whole red crab, or its equivalent in weight in accordance with the conversion provisions in § 648.263(a)(2), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access red crab permit or red crab incidental catch permit under this subpart.

(iv) Purchase or otherwise receive for a commercial purpose in excess of the incidental limit specified at § 648.263(b)(1), after determination that the TAL has been reached and notice of the closure date has been made.

(4) *Prohibitions on processing and mutilation*. (i) Retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote, if fishing on a red crab trip with a valid Federal limited access red crab permit.

(ii) Retain, possess, or land any red crab claws and legs separate from crab bodies if the vessel has not been issued a valid Federal limited access red crab permit or has been issued a valid Federal limited access red crab permit, but is not fishing on a dedicated red crab trip.

(iii) Retain, possess, or land more than two claws and eight legs per crab if the vessel has been issued a valid Federal red crab incidental catch permit, or has been issued a valid Federal limited access red crab permit and is not fishing on a dedicated red crab trip.

(iv) Possess or land red crabs that have been fully processed at sea, i.e., engage in any activity that removes meat from any part of a red crab, unless a preponderance of available evidence shows that the vessel fished exclusively in state waters and was not issued a valid Federal permit.

(5) *Gear requirements*. Fail to comply with any gear requirements or restrictions specified at § 648.264.

(6) *Presumption*. For purposes of this part, the following presumption applies: All red crab retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Red Crab Management Unit, unless the preponderance of all submitted evidence demonstrates that such red crab were harvested by a vessel fishing exclusively outside of the Red Crab Management Unit or in state waters.

(u) *Golden tilefish*. It is unlawful for any person owning or operating a vessel to do any of the following:

(1) *Permit requirements*—(i) *Operator permit*. Operate, or act as an operator

of, a vessel with a tilefish permit, or a vessel fishing for or possessing tilefish in or from the Tilefish Management Unit, unless the operator has been issued, and is in possession of, a valid operator permit.

(ii) *Dealer permit.* Purchase, possess, receive for a commercial purpose; or attempt to purchase, possess, or receive for a commercial purpose; as a dealer, or in the capacity of a dealer, tilefish that were harvested in or from the Tilefish Management Unit, without having been issued, and in possession of, a valid tilefish dealer permit.

(iii) *Vessel permit.* Sell, barter, trade, or otherwise transfer from a vessel; or attempt to sell, barter, trade, or otherwise transfer from a vessel; for a commercial purpose, other than solely for transport on land, any tilefish, unless the vessel has been issued a tilefish permit, or unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(2) *Possession and landing.* (i) Fish for, possess, retain, or land tilefish, unless:

(A) The tilefish are being fished for or were harvested in or from the Tilefish Management Unit by a vessel holding a valid tilefish permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel.

(B) The tilefish were harvested by a vessel that has not been issued a tilefish permit and that was fishing exclusively in State waters.

(C) The tilefish were harvested in or from the Tilefish Management Unit by a vessel, other than a Party/Charter vessel, that is engaged in recreational fishing.

(ii) Land or possess tilefish harvested in or from the Tilefish Management Unit, in excess of the trip limit pursuant to § 648.295, without a valid tilefish IFQ Allocation permit, as specified in § 648.294(a).

(iii) Land tilefish harvested in or from the Tilefish Management Unit in excess of that authorized under a tilefish IFQ Allocation permit as described at § 648.294(a).

(iv) Operate a vessel that takes recreational fishermen for hire to fish for tilefish in the Tilefish Management Unit without a valid tilefish Charter/Party permit, as required in § 648.4(a)(12)(i).

(v) Fish for tilefish inside and outside of the Tilefish Management Unit on the same trip.

(vi) Discard tilefish harvested in or from the Tilefish Management Unit, as defined in § 648.2, unless participating in recreational fishing, as defined in § 648.2, or while fishing subject to a trip limit pursuant to § 648.294(d)(3) or § 648.295.

(vii) Land or possess tilefish in or from the Tilefish Management Unit, on a vessel issued a valid tilefish permit under this part, after the incidental fishery is closed pursuant to § 648.245(b), unless fishing under a valid tilefish IFQ allocation permit as specified in § 648.249(a), or engaged in recreational fishing.

(3) *Transfer and purchase.* (i) Purchase, possess, or receive for a commercial purpose, other than solely for transport on land; or attempt to purchase, possess, or receive for a commercial purpose, other than solely for transport on land; tilefish caught by a vessel without a tilefish permit, unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(ii) Purchase or otherwise receive for commercial purposes tilefish caught in the EEZ from outside the Tilefish Management Unit unless otherwise permitted under 50 CFR part 622.

(4) *Presumption.* For purposes of this part, the following presumption applies: All tilefish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Tilefish Management Unit, unless the preponderance of all submitted evidence demonstrates that such tilefish were harvested by a vessel fishing exclusively in State waters.

(v) *Skates*—(1) *All persons.* It is unlawful for any person to fish for, possess, transport, sell or land skates in or from the EEZ portion of the skate management unit, unless:

(i) Onboard a vessel that possesses a valid skate vessel permit.

(ii) Onboard a federally permitted lobster vessel (i.e., transfer at sea recipient) while in possession of only whole skates as bait that are less than

the maximum size specified at § 648.322(c).

(2) *All Federal permit holders*. It is unlawful for any owner or operator of a vessel holding a valid Federal permit to do any of the following:

(i) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the skate management unit specified at § 648.2.

(ii) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

(3) *Skate permitted vessel requirements*. It is unlawful for any owner or operator of a vessel holding a valid Federal skate permit to do any of the following:

(i) *Skate wings*. Fail to comply with the conditions of the skate wing possession and landing limits specified at § 648.322(b), unless holding a valid letter of authorization to fish for and land skates as bait at § 648.322(c).

(ii) *Possession and transfer*. (A) Transfer at sea, or attempt to transfer at sea, to any vessel, any skates unless in compliance with the provisions of §§ 648.13(h) and 648.322(c).

(B) Purchase, possess, trade, barter, or receive; or attempt to purchase, possess, trade, barter, or receive; skates caught in the EEZ portion of the skate management unit by a vessel that has not been issued a valid Federal skate permit under this part.

(C) Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; whole skates and skate wings in excess of the possession limits specified at § 648.322.

(iii) *DAS notification and skate wing possession*. Fail to comply with the provisions of the DAS notification program specified in §§ 648.53, 648.82, and 648.92; for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, respectively; when issued a valid skate permit and fishing under the skate wing possession limits at § 648.322.

(iv) *SNE Trawl and Gillnet Exemption areas restrictions*. Fail to comply with the restrictions under the SNE Trawl and Gillnet Exemption areas for the NE skate fisheries at §§ 648.80(b)(5)(i)(B) and 648.80(b)(6)(i)(B).

(4) *Presumption*. For purposes of this part, the following presumption applies: All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion of the skate management unit or only in state waters.

[74 FR 20535, May 4, 2009]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.14, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 76 FR 72126, Nov. 22, 2011, § 648.14 was amended by adding paragraphs (a)(10)(iii) and (iv), effective Jan. 1, 2012, through Dec. 31, 2012.

§ 648.15 Facilitation of enforcement.

(a) *General*. See § 600.504 of this chapter.

(b) *Special notification requirements applicable to surfclam and ocean quahog vessel owners and operators*. (1) *Surfclam and ocean quahog open access permitted vessels*. Vessel owners or operators issued an open access surfclam or ocean quahog open access permit for fishing in the ITQ Program, as specified at § 648.74, are required to declare their intended fishing activity via VMS prior to leaving port.

(2) *Maine mahogany quahog limited access permitted vessels*. Beginning January 1, 2009, vessel owners or operators issued a limited access Maine mahogany quahog permit for fishing for Maine mahogany quahogs in the Maine mahogany quahog zone, as specified at § 648.78, are required to declare via VMS, prior to leaving port, and entering the Maine mahogany quahog zone, their intended fishing activity, unless otherwise exempted under paragraph § 648.4(a)(4)(ii)(B)(*1*).

(3) *Declaration out of surfclam and ocean quahog fisheries*. Owners or operators that are transiting between ports or fishing in a fishery other than surfclams and ocean quahogs must either declare out of fisheries or declare the appropriate fishery, if required, via the VMS unit, before leaving port. The owner or operator discontinuing a fishing trip in the EEZ or Maine mahogany

quahog zone must return to port and offload any surfclams or ocean quahogs prior to commencing fishing operations in the waters under the jurisdiction of any state.

(4) *Inspection by authorized officer.* The vessel permits, the vessel, its gear, and catch shall be subject to inspection upon request by an authorized officer.

(5) *Authorization for use of fishing trip notification via telephone.* The Regional Administrator may authorize or require the notification of surfclam or ocean quahog fishing trip information via a telephone call to the NMFS Office of Law Enforcement nearest to the point of offloading, instead of the use of VMS. If authorized, the vessel owner or operator must accurately provide the following information prior to departure of his/her vessel from the dock to fish for surfclams or ocean quahogs in the EEZ: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port; whether the trip will be directed on surfclams or ocean quahogs; expected date, time, and location of landing; and name of individual providing notice. If use of a telephone call-in notification is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the FEDERAL REGISTER, e-mail, or other appropriate means.

(c) *Radio hails.* Permit holders, while underway, must be alert for communication conveying enforcement instructions and immediately answer via VHF-FM radio, channel 16 when hailed by an authorized officer. Vessels not required to have VHF-FM radios by the Coast Guard are exempt from this requirement.

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d). Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hr for dealers and processors on land, and for 12 hr after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Authorized officers must be given access to inspect the haddock.

(2) All haddock separated out and retained is subject to reporting requirements specified at § 648.7.

(e) *Retention of haddock by herring vessels using midwater trawl gear.* A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may not discard any haddock that has been brought on the deck or pumped into the hold.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14648, Mar. 27, 1997; 63 FR 27485, May 19, 1998; 71 FR 46875, Aug. 15, 2006; 72 FR 11276, Mar. 12, 2007; 72 FR 51703, Sept. 11, 2007; 76 FR 56997, Sept. 15, 2011; 76 FR 60649, Sept. 29, 2011]

§ 648.16 Penalties.

See § 600.735.

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.

(a) *Fisheries included under exemption*—(1) *NE multispecies.* A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section, is exempt from NE multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the EEZ with NE multispecies on board the vessel, or landing NE multispecies in U.S.

ports that were caught while fishing in the NAFO Regulatory Area.

(2) *Monkfish.* A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section is exempt from monkfish permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.91, 648.92 and 648.94, respectively, while transiting the EEZ with monkfish on board the vessel, or landing monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(b) *General requirements.* (1) The vessel operator has a valid letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the EEZ;

(3) When transiting the EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

(4) The vessel operator complies with the High Seas Fishing Compliance Permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

[70 FR 21942, Apr. 28, 2005]

§ 648.18 [Reserved]

Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

§ 648.20 Mid-Atlantic Fishery Management Council ABC control rules.

The SSC shall review the following criteria, and any additional relevant information, to assign managed stocks to a specific control rule level when developing ABC recommendations. The SSC shall review the ABC control rule level assignment for stocks each time an ABC is recommended. The ABC may be recommended for up to 3 years for all stocks, with the exception of 5 years for spiny dogfish. The SSC may deviate from the control rule methods or level criteria and recommend an ABC that differs from the result of the ABC control rule calculation; however, any such deviation must include the following: A description of why the deviation is warranted, description of the methods used to derive the alternative ABC, and an explanation of how the deviation is consistent with National Standard 2.

(a) *Level 1 criteria.* (1) Assignment of a stock to Level 1 requires the SSC to determine the following:

(i) All important sources of scientific uncertainty are captured in the stock assessment model;

(ii) The probability distribution of the OFL is calculated within the stock assessment and provides an adequate description of the OFL uncertainty;

(iii) The stock assessment model structure and treatment of the data prior to use in the model includes relevant details of the biology of the stock, fisheries that exploit the stock, and data collection methods;

(iv) The stock assessment provides the following estimates: Fishing mortality rate (F) at MSY or an alternate maximum fishing mortality threshold (MFMT) to define OFL, biomass, biological reference points, stock status, OFL, and the respective uncertainties associated with each value; and

(v) No substantial retrospective patterns exist in the stock assessment estimates of fishing mortality, biomass, and recruitment.

(2) *Level 1 ABC determination.* Stocks assigned to Level 1 by the SSC will have the ABC derived by applying acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to the probability distribution of the OFL.

(b) *Level 2 criteria.* (1) Assignment of a stock to Level 2 requires the SSC to determine the following:

(i) Key features of the stock biology, the fisheries that exploit it, and/or the data collection methods for stock information are missing from the stock assessment;

(ii) The stock assessment provides reference points (which may be proxies), stock status, and uncertainties associated with each; however, the uncertainty is not fully promulgated through the stock assessment model and/or some important sources of uncertainty may be lacking;

(iii) The stock assessment provides estimates of the precision of biomass, fishing mortality, and reference points; and

(iv) The accuracy of the minimum fishing mortality threshold and projected future biomass is estimated in the stock assessment using ad hoc methods.

(2) *Level 2 ABC determination.* Stocks assigned to Level 2 by the SSC will have the ABC derived by applying acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to the probability distribution of the OFL.

(c) *Level 3 criteria.* (1) Assignment of a stock to Level 3 requires the SSC to determine that the stock assessment attributes are the same as those for a Level 2 assessment listed in § 648.20(d)(1) through (4), except that the stock assessment does not contain an estimated probability distribution of OFL or the stock assessment provided OFL probability distribution is judged by the SSC to not adequately reflect uncertainty in the OFL estimate.

(2) *Level 3 ABC determination.* Stocks assigned to Level 3 will have ABC derived by one of the following two methods:

(i) The SSC will derive the ABC by applying the acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to an SSC-adjusted OFL probability distribution. The SSC will use default levels of uncertainty in the adjusted OFL probability distribution based on literature review and evaluation of control rule performance; or,

(ii) If the SSC cannot develop an OFL distribution, a default control rule of 75 percent of the F_{MSY} value will be applied to derive ABC.

(d) *Level 4 criteria.* (1) Assignment of a stock to Level 4 requires the SSC to determine that none of the criteria for Levels 1–3 found in § 648.20(a) through (c) were met.

(2) *Level 4 ABC determination.* Stocks assigned to Level 4 will have ABC derived using control rules developed on a case-by-case basis by the SSC based on biomass and catch history and application of the MAFMC's risk policy found in § 648.21(a) through (d).

[76 FR 60615, Sept. 29, 2011]

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

The risk policy shall be used by the SSC in conjunction with the ABC control rules in § 648.20(a) through (d) to ensure the MAFMC's preferred tolerance for the risk of overfishing is addressed in the ABC development and recommendation process.

(a) *Stocks under a rebuilding plan.* The probability of not exceeding the F necessary to rebuild the stock within the specified time frame (rebuilding F or $F_{REBUILD}$) must be at least 50 percent, unless the default level is modified to a higher probability for not exceeding the rebuilding F through the formal stock rebuilding plan. A higher probability of not exceeding the rebuilding F would be expressed as a value greater than 50 percent (e.g., 75-percent probability of not exceeding rebuilding F, which corresponds to a 25-percent probability of exceeding rebuilding F).

(b) *Stocks not subject to a rebuilding plan.* (1) For stocks determined by the SSC to have an atypical life history, the maximum probability of overfishing as informed by the OFL distribution will be 35 percent for stocks with a ratio of biomass (B) to biomass at MSY (B_{MSY}) of 1.0 or higher (*i.e.*, the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum value of 35 percent as the B/B_{MSY} ratio becomes less than 1.0 (*i.e.*, the stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. An atypical life history is generally defined as one that has greater vulnerability to exploitation and whose characteristics have not been fully addressed through the stock assessment and biological reference point development process.

(2) For stocks determined by the SSC to have a typical life history, the maximum probability of overfishing as informed by the OFL distribution will be 40 percent for stocks with a ratio of B to B_{MSY} of 1.0 or higher (*i.e.*, the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum

value of 40 percent as the B/B_{MSY} ratio becomes less 1.0 (stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. Stocks with typical life history are those not meeting the criteria in paragraph (b)(1) of this section.

(c) For instances in which the application of the risk policy approaches in either paragraph (b)(1) or (2) of this section using OFL distribution, as applicable given life history determination, results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the SSC shall recommend to the MAFMC the lower of the ABC values.

(d) *Stock without an OFL or OFL proxy*. (1) If an OFL cannot be determined from the stock assessment, or if a proxy is not provided by the SSC during the ABC recommendation process, ABC levels may not be increased until such time that an OFL has been identified.

(2) The SSC may deviate from paragraph (d)(1) of this section, provided that the following two criteria are met: Biomass-based reference points indicate that the stock is greater than B_{MSY} and stock biomass is stable or increasing, or if biomass based reference points are not available, best available science indicates that stock biomass is stable or increasing; and the SSC provides a determination that, based on best available science, the recommended increase to the ABC is not expected to result in overfishing. Any such deviation must include a description of why the increase is warranted, description of the methods used to derive the alternative ABC, and a certification that the ABC is not likely to result in overfishing on the stock.

[76 FR 60616, Sept. 29, 2011, as amended at 77 FR 51857, Aug. 27, 2012]

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

(a) *Initial recommended annual specifications*. The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Squid, Mackerel, and Butterfish Committee of the MAFMC:

(1) Initial OY (IOY), including Research Set-Aside (RSA), DAH, and DAP for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) ACL; ACT including RSA, DAH, DAP; bycatch level of the TALFF, if any; and butterfish mortality cap for the longfin squid fishery for butterfish; which, subject to annual review, may be specified for a period of up to 3 years;

(3) ACL; commercial ACT, including RSA, DAH, Tier 3 allocation (up to 7 percent of the DAH), DAP; JVP if any; TALFF, if any; and recreational ACT, including RSA for mackerel; which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(4) IOY, including RSA, DAH, and DAP for longfin squid, which, subject to annual review, may be specified for a period of up to 3 years; and

(5) Inseason adjustment, upward or downward, to the specifications for longfin squid, as specified in paragraph (e) of this section.

(b) *Guidelines*. As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review the best available data to recommend specifications consistent with the following:

(1) Longfin and/or *Illex squid*. (i) The ABC for any fishing year must be either the maximum OY, or a lower amount, if stock assessments indicate that the potential yield is less than the maximum OY. The OYs specified during a fishing year may not exceed the following amounts:

(A) Longfin squid—The catch associated with a fishing mortality rate of $F_{Threshold}$.

(B) *Illex*—Catch associated with a fishing mortality rate of F_{MSY}.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of RSA and DAH.

RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH will be set after deduction for RSA, if applicable.

(2) *Mackerel*—(i) *ABC*. The MAFMC's SSC shall recommend an ABC to the MAFMC, as described in § 648.20. The mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the ABC must be less than or equal to the OFL.

(ii) *ACL*. The ACL or Domestic ABC is calculated using the formula ACL = ABC − C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year.

(iii) *OY*. OY may not exceed the ACL, and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors.

(iv) *ACT*. The Monitoring Committee shall identify and review relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the specifications process.

(A) *Commercial sector ACT*. Commercial ACT is composed of RSA, DAH, Tier 3 allocation (up to 7 percent of DAH), dead discards, and TALFF, if any. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH, Tier 3 allocation (up to 7 of the DAH), DAP, and JVP will be set after deduction for RSA, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. Economic considerations for the establishment of JVP and TALFF include:

(*1*) Total world export potential of mackerel producing countries.

(*2*) Total world import demand of mackerel consuming countries.

(*3*) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(*4*) Increased/decreased revenues to the U.S. from foreign fees.

(*5*) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(*6*) Increased/decreased revenues to U.S. processors and exporters.

(*7*) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(*8*) Increases/decreases in U.S. processing productivity.

(*9*) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(B) *Recreational sector ACT*. Recreational ACT is composed of RSA, dead discards, and the Recreational Harvest Limit (RHL).

(v) *Performance review*. The Squid, Mackerel, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the mackerel ACL at least every 5 years.

(A) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any two consecutive years), the Squid, Mackerel, and Butterfish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(B) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that a stock has become overfished.

(C) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

(3) *Butterfish*—(i) *ABC*. The MAFMC's SSC shall recommend an ABC to the MAFMC, as described in § 648.20. The butterfish ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the ABC must be less than or equal to the OFL.

(ii) *ACL*. The butterfish ACL will be set equal to the butterfish ABC.

(iii) *OY*. OY may not exceed the ACL, and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors.

(iv) *ACT*. The Monitoring Committee shall identify and review relevant sources of management uncertainty to recommend the butterfish ACT as part of the specifications process. The ACT is composed of RSA, DAH, dead discards, and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH and bycatch TALFF will be set after deduction for RSA, if applicable.

(v) The butterfish mortality cap will be based on the ACT and allocated to the longfin squid fishery as follows: Trimester I—65 percent; Trimester II—3.3 percent; and Trimester III—31.7 percent.

(vi) Any underages of the butterfish mortality cap for Trimesters I or II will be applied to Trimester III of the same year, and any overages of the butterfish mortality cap for Trimesters I and II will be applied to Trimester III of the same year.

(vii) *Performance review*. The Squid, Mackerel, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the butterfish ACL in conjunction with review for the mackerel fishery, as outlined in this section.

(c) *Recommended measures*. Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

(1) RSA set from a range of 0 to 3 percent of:

(i) The IOY for longfin squid and/or *Illex*.

(ii) The commercial and/or recreational ACT for mackerel.

(iii) The ACT for butterfish.

(2) Commercial quotas, set after reductions for research quotas.

(3) The amount of longfin squid, *Illex*, and butterfish that may be retained and landed by vessels issued the incidental catch permit specified in § 648.4(1)(5)(ii), and the amount of mackerel that may be retained, possessed and landed by any of the limited access mackerel permits described at § 648.4(1)(5)(iii) and the incidental mackerel permit at § 648.4(1)(5)(iv).

(4) Commercial minimum fish sizes.

(5) Commercial trip limits.

(6) Commercial seasonal quotas/closures for longfin squid and *Illex*, and allocation for the Limited Access Mackerel Tier 3.

(7) Minimum mesh sizes.

(8) Commercial gear restrictions.

(9) Recreational allocation for mackerel.

(10) Recreational minimum fish size.

(11) Recreational possession limits.

(12) Recreational season.

(13) [Reserved]

(14) Modification of existing accountability measures (AMs) utilized by the Monitoring Committee.

(d) *Annual fishing measures*. (1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the ACL will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish a proposed rule in the FEDERAL REGISTER

proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the FEDERAL REGISTER prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Regional Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications will not be exceeded. After the Regional Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments*. The specifications established pursuant to this section may be adjusted by the Regional Administrator, in consultation with the MAFMC, during the fishing year by publishing notification in the FEDERAL REGISTER.

(f) *Distribution of annual longfin squid commercial quota*. (1) A commercial quota for longfin squid will be allocated annually into trimester periods, based on the following percentages: Trimester I (January–April)—43.0 percent; Trimester II (May–August)—17.0 percent; and Trimester III (September–December)—40.0 percent.

(2) Any underages of commercial period quota for Trimester I that are greater than 25 percent of the Trimester I quota will be reallocated to Trimesters II and III of the same year. The reallocation of quota from Trimester I to Trimester II is limited, such that the Trimester II quota may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of commercial period quota for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

(g) *Research set-aside (RSA) quota*. Prior to the MAFMC's quota-setting meetings:

(1) NMFS will publish a Request for Proposals (RFP) in the FEDERAL REGISTER, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the MAFMC.

(2) NMFS will convene a review panel, including the MAFMC's Comprehensive Management Committee and technical experts, to review proposals submitted in response to the RFP.

(i) Each panel member will recommend which research proposals should be authorized to utilize research quota, based on the selection criteria described in the RFP.

(ii) The NEFSC Director and the NOAA Grants Office will consider each panel member's recommendation, and provide final approval of the projects. The Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(3) The grant awards approved under the RFPs will be for the upcoming fishing year. Proposals to fund research that would start prior to, or that would end after the fishing year, will not be eligible for consideration. All research

and/or compensation trips must be completed within the fishing year for which the research grant was awarded.

(4) Research projects will be conducted in accordance with provisions approved and provided in an Exempted Fishing Permit (EFP) issued by the Regional Administrator.

(5) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the FEDERAL REGISTER in compliance with the Administrative Procedure Act, provided:

(i) The reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified; and

(ii) Any reallocation of unallocated or unused research quota shall be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP and allocated to the remaining quota periods for the fishing year proportionally.

(6) Vessels participating in approved research projects may be exempted from certain management measures by the Regional Administrator, provided that one of the following analyses of the impacts associated with the exemptions is provided:

(i) The analysis of the impacts of the requested exemptions is included as part of the annual quota specification packages submitted by the MAFMC; or

(ii) For proposals that require exemptions that extend beyond the scope of the analysis provided by the MAFMC, applicants may be required to provide additional analysis of impacts of the exemptions before issuance of an EFP will be considered, as specified in the EFP regulations at § 648.12(b).

[76 FR 60616, Sept. 29, 2011, as amended at 76 FR 68656, Nov. 7, 2011; 76 FR 81848, Dec. 29, 2011; 77 FR 16480, Mar. 21, 2012]

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

(a) *Mesh restrictions and exemptions.* Vessels subject to the mesh restrictions in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that specified in paragraphs (a)(1) and (a)(2) of this section.

(1) *Butterfish fishery.* Owners or operators of otter trawl vessels possessing 2,000 lb (0.9 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(2) *Longfin squid fishery.* Owners or operators of otter trawl vessels possessing longfin squid harvested in or from the EEZ may only fish with nets having a minimum mesh size of 2⅛ inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or, for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing longfin squid shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 2⅛ inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside stretch measure. ''Top of the regulated

portion of the net'' means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing longfin squid may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 5 inches (12.7 cm) diamond mesh, inside stretch measure. For the purposes of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) *Jigging exemption*. During closures of the longfin squid fishery resulting from the butterfish mortality cap, described in § 648.26(c)(3), vessels fishing for longfin squid using jigging gear are exempt from the closure possession limit specified in § 648.26(b), provided that all otter trawl gear is stowed as specified in paragraph (b) of this section.

(3) *Illex fishery*. Seaward of the following coordinates, otter trawl vessels possessing longfin squid harvested in or from the EEZ and fishing for *Illex* during the months of June, July, August, in Trimester II, and September in Trimester III are exempt from the longfin squid gear requirements specified in paragraph (a)(2) of this section, provided that landward of the specified coordinates they do not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1⅞ inches (48 mm) diamond mesh in Trimester II, and 2⅛ inches (54 mm) diamond mesh in Trimester III, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(2) of this section.

Point	N. lat.	W. long.
M1	43°58.0′	67°22.0′
M2	43°50.0′	68°35.0′
M3	43°30.0′	69°40.0′
M4	43°20.0′	70°00.0′
M5	42°45.0′	70°10.0′
M6	42°13.0′	69°55.0′
M7	41°00.0′	69°00.0′
M8	41°45.0′	68°15.0′
M9	42°10.0′	67°10.0′
M10	41°18.6′	66°24.8′
M11	40°55.5′	66°38.0′
M12	40°45.5′	68°00.0′
M13	40°37.0′	68°00.0′
M14	40°30.0′	69°00.0′
M15	40°22.7′	69°00.0′
M16	40°18.7′	69°40.0′
M17	40°21.0′	71°03.0′
M18	39°41.0′	72°32.0′
M19	38°47.0′	73°11.0′
M20	38°04.0′	74°06.0′
M21	37°08.0′	74°46.0′
M22	36°00.0′	74°52.0′
M23	35°45.0′	74°53.0′
M24	35°28.0′	74°52.0′

(b) *Definition of ''not available for immediate use.''* Gear that is shown not to have been in recent use and that is stowed in conformance with one of the following methods is considered to be not available for immediate use:

(1) *Nets*—(i) *Below-deck stowage*. (A) The net is stored below the main working deck from which it is deployed and retrieved;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) It is fan-folded (flaked) and bound around its circumference.

(ii) *On-deck stowage*. (A) The net is fan-folded (flaked) and bound around its circumference;

(B) It is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net.

(iii) *On-reel stowage*. (A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the net; and

(C) The codend is removed and stored below deck.

(iv) *On-reel stowage for vessels transiting the Gulf of Maine Rolling Closure Areas, the Georges Bank Seasonal Area Closure, and the Conditional Gulf of Maine Rolling Closure Area*.

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the doors; and

(C) No containment rope, codend tripping device, or other mechanism to close off the codend is attached to the codend.

(2) *Scallop dredges*. (i) The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured, and the dredge or the winch is covered so that it is rendered unusable for fishing; or

(ii) The towing wire is detached from the dredge and attached to a bright-colored poly ball no less than 24 inches (60.9 cm) in diameter, with the towing wire left in its normal operating position (through the various blocks) and either is wound back to the first block (in the gallows) or is suspended at the end of the lifting block where its retrieval does not present a hazard to the crew and where it is readily visible from above.

(3) *Hook gear (other than pelagic)*. All anchors and buoys are secured and all hook gear, including jigging machines, is covered.

(4) *Sink gillnet gear*. All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected.

(5) *Other methods of stowage*. Any other method of stowage authorized in writing by the Regional Administrator and subsequently published in the FEDERAL REGISTER.

(c) *Mesh obstruction or constriction*. The owner or operator of a fishing vessel shall not use any mesh construction, mesh configuration, or other means that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the aftermost portion of the net, provided the liner extends no more than 10 meshes forward of the aftermost portion of the net. The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthener). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing.

[76 FR 60618, Sept. 29, 2011, as amended at 77 FR 16479, Mar. 21, 2012; 77 FR 51865, Aug. 27, 2012]

§ 648.24 Fishery closures and accountability measures.

(a) *Fishery closure procedures*—(1) *Longfin squid*. NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 90 percent of the longfin squid quota is harvested in Trimesters I and II, and when 95 percent of the longfin squid DAH has been harvested in Trimester III. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

(i) If the Regional Administrator determines that the Trimester I closure threshold has been under-harvested by 25 percent or more, then the amount of the underharvest shall be reallocated to Trimester II and Trimester III, as specified at § 648.22(f)(2), through notice in the FEDERAL REGISTER.

(ii) [Reserved]

(2) *Illex*. NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 95 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

(b) *Mackerel AMs*—(1) *Mackerel commercial sector EEZ closure*. NMFS shall close the commercial mackerel fishery in the EEZ when the Regional Administrator projects that 95 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified in § 648.26. When the Regional Administrator projects that the DAH for mackerel will be landed, NMFS shall close the commercial mackerel fishery in the EEZ, and the incidental catches specified for mackerel in § 648.26 will be prohibited.

(2) *Mackerel commercial landings overage repayment*. If the mackerel ACL is exceeded, and commercial fishery landings are responsible for the overage, then landings in excess of the DAH will be deducted from the DAH the following year, as a single-year adjustment to the DAH.

(3) *Mackerel recreational sector EEZ closure.* NMFS shall close the recreational mackerel fishery in the EEZ when the Regional Administrator determines that recreational landings have exceeded the RHL. This determination shall be based on observed landings and will not utilize projections of future data.

(4) *Mackerel recreational landings overage repayment.* If the mackerel ACL is exceeded, and the recreational fishery landings are responsible for the overage, then landings in excess of the RHL will be deducted from the RHL for the following year, as a single-year adjustment.

(5) *Non-landing AMs, by sector.* In the event that the ACL is exceeded, and that the overage has not been accommodated through other landing-based AMs, but is attributable to either the commercial or recreational sector (such as research quota overages, dead discards in excess of those otherwise accounted for in management uncertainty, or other non-landing overages), then the exact amount, in pounds, by which the sector ACT was exceeded will be deducted from the following year, as a single-year adjustment.

(6) *Mackerel ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the FEDERAL REGISTER, by March 31 of the fishing year in which the deductions will be made.

(c) *Butterfish AMs*—(1) *Butterfish EEZ closure.* NMFS shall close the directed butterfish fishery in the EEZ when the Regional Administrator projects that 80 percent of the butterfish DAH has been harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified at § 648.26.

(2) *Butterfish ACL overage repayment.* If the butterfish ACL is exceeded, then catch in excess of the ACL will be deducted from the ACL the following year, as a single-year adjustment.

(3) *Butterfish mortality cap on the longfin squid fishery.* NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 80 percent of the butterfish mortality cap has been harvested in Trimester I, and/or when 90 percent of the butterfish mortality cap has been harvested in Trimester III.

(4) *Butterfish ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the FEDERAL REGISTER, by March 31 of the fishing year in which the deductions will be made.

(d) *Notification.* Upon determining that a closure is necessary, the Regional Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure to all holders of mackerel, squid, and butterfish fishery permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of closure in the FEDERAL REGISTER.

[76 FR 60619, Sept. 29, 2011, as amended at 76 FR 68656, Nov. 7, 2011; 77 FR 16480, Mar. 21, 2012]

§ 648.25 Atlantic Mackerel, squid, and butterfish framework adjustments to management measures.

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Atlantic Mackerel, Squid, and Butterfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP.

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with

advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions, recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch; recreational harvest limit; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification. Measures contained within this list that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation*. After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, the MAFMC must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures following their implementation as a final rule.

(3) *NMFS action*. If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the MAFMC recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

[76 FR 60620, Sept. 29, 2011, as amended at 76 FR 68656, Nov. 7, 2011; 76 FR 81848, Dec. 29, 2011]

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) *Atlantic mackerel*. (1) A vessel must be issued a valid limited access mackerel permit to fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel from or in the EEZ per trip, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i).

(i) A vessel issued a Tier 1 Limited Access Mackerel Permit is authorized to fish for, possess, or land Atlantic mackerel with no possession restriction in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 95 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i).

(ii) A vessel issued a Tier 2 Limited Access Mackerel Permit is authorized to fish for, possess, or land up to 135,000 lb (61.23 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 95 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i).

(iii) A vessel issued a Tier 3 Limited Access Mackerel Permit is authorized to fish for, possess, or land up to 100,000 lb (45.36 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the Tier 3 allocation has been harvested, or 95 percent of the DAH has been harvested, as specified in § 648.22(b)(1)(i) and (ii).

(iv) A vessel issued an open access mackerel permit may fish for, possess, or land up to 20,000 lb (9.08 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(v) Both vessels involved in a pair trawl operation must be issued a valid mackerel permits to fish for, possess, or land Atlantic mackerel in the EEZ. Both vessels must be issued the mackerel permit appropriate for the amount of mackerel jointly possessed by both of the vessels participating in the pair trawl operation.

(2) *Mackerel closure possession restrictions*. (i) *Commercial mackerel fishery*. During a closure of the commercial Atlantic mackerel fishery, including closure of the Tier 3 fishery, vessels issued a Limited Access Mackerel Permit may not fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(ii) [Reserved]

(b) *Longfin squid*. During a closure of the directed fishery for longfin squid vessels may not fish for, possess, or land more than 2,500 lb (1.13 mt) of longfin squid per trip at any time, and may only land longfin squid once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a longfin squid incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 2,500 lb (1.13 mt) of longfin squid per trip at any time and may only land longfin squid once on any calendar day.

(c) *Illex*. During a closure of the directed fishery for *Illex*, vessels may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued an *Illex* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 10,000 lb (4.54 mt) of

Illex per trip at any time, and may only land *Illex* once on any calendar day.

(d) *Butterfish.* (1) During a closure of the directed fishery for butterfish that occurs prior to October 1, vessels may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for butterfish that occurs on or after October 1, vessels may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day. If a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, unless the directed fishery for butterfish closes prior to October 1, then a vessel that has been issued a butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day.

(2) A vessel issued a butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

[76 FR 60621, Sept. 29, 2011, as amended at 76 FR 68656, Nov. 7, 2011; 77 FR 16480, Mar. 21, 2012; 77 FR 23636, Apr. 20, 2012]

§ 648.27 Observer requirements for the longfin squid fishery.

(a) A vessel issued a longfin squid and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or e-mail address for contact; and the date, time, port of departure, and approximate trip duration, at least 72 hr, but no more than 10 days, prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (c) of this section.

(b) A vessel that has a representative provide notification to NMFS as described in paragraph (a) of this section may only embark on a longfin squid trip without an observer if a vessel representative has been notified by NMFS that the vessel has received a waiver of the observer requirement for that trip. NMFS shall notify a vessel representative whether the vessel must carry an observer, or if a waiver has been granted, for the specified longfin squid trip, within 24 hr of the vessel representative's notification of the prospective longfin squid trip, as specified in paragraph (a) of this section. Any request to carry an observer may be waived by NMFS. A vessel that fishes with an observer waiver confirmation number that does not match the longfin squid trip plan that was called in to NMFS is prohibited from fishing for, possessing, harvesting, or landing longfin squid except as specified in paragraph (c) of this section. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(c) A vessel issued a longfin squid and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing 2,500 lb (1.13 mt) or more of longfin squid per trip at any time, and may only land longfin squid once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(d) If a vessel issued a longfin squid and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), intends to possess, harvest, or land 2,500 lb (1.13 mt) or more of longfin squid per trip or per calendar day, has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or e-mail address for contact, and the intended date, time,

and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is cancelled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

[76 FR 60621, Sept. 29, 2011, as amended at 77 FR 16480, Mar. 21, 2012]

Subpart C—Management Measures for Atlantic Salmon

§ 648.40 Prohibition on possession.

(a) *Incidental catch*. All Atlantic salmon caught incidental to a directed fishery for other species in the EEZ must be released in such a manner as to insure maximum probability of survival.

(b) *Presumption*. The possession of Atlantic salmon is prima facie evidence that such Atlantic salmon were taken in violation of this regulation. Evidence that such fish were harvested in state waters, or from foreign waters, or from aquaculture enterprises, will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

§ 648.41 Framework specifications.

(a) *Within season management action*. The New England Fishery Management Council (NEFMC) may, at any time, initiate action to implement, add to or adjust Atlantic salmon management measures to allow for Atlantic salmon aquaculture projects in the EEZ, provided such an action is consistent with the goals and objectives of the Atlantic Salmon FMP.

(b) *Framework process*. After initiation of an action to implement, add to or adjust an Atlantic salmon management measure to allow for an Atlantic salmon aquaculture project in the EEZ, the NEFMC shall develop and analyze Atlantic salmon management measures to allow for Atlantic salmon aquaculture projects in the EEZ over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on aquaculture management measures must come from one or more of the following categories: minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones and any other management measures currently included in the FMP.

(c) *NEFMC recommendation*. After developing Atlantic salmon management measures and receiving public testimony, the NEFMC shall make a recommendation to NMFS. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If NMFS concurs with the NEFMC's recommendation to issue the management measures as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(3) Whether there is an immediate need to protect the resource.

(4) Whether there will be a continuing evaluation of measures adopted following their implementation as a final rule.

(d) *NMFS action*. If the NEFMC's recommendation includes implementation of management measures and, after reviewing the NEFMC's recommendation and supporting information:

(1) NMFS concurs with the NEFMC's recommended management measures and determines that the recommended measures should be issued as a final rule based on the factors specified in

paragraph (c)(1) through (4) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(2) NMFS concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the NEFMC recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(3) NMFS does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(e) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[64 FR 40520, July 27, 1999]

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

SOURCE: 69 FR 35215, June 23, 2004, unless otherwise noted.

§ 648.50 Shell-height standard.

(a) *Minimum shell height*. The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (8.9 cm). Shell height is a straight line measurement from the hinge to the part of the shell that is farthest away from the hinge.

(b) *Compliance and sampling*. Any time at landing or after, including when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer, compliance with the minimum shell-height standard shall be determined as follows: Samples of 40 scallops each shall be taken at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 sample groups (400 scallops) be examined. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are shorter than the shell height specified. The total amount of scallops in possession shall be deemed in violation of this subpart and subject to forfeiture, if the sample group fails to comply with the minimum standard.

§ 648.51 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions*. Trawl vessels issued a limited access scallop permit under § 648.4(a)(2) while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), any trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops in or from the EEZ, and any trawl vessels fishing for scallops in the EEZ, must comply with the following:

(1) *Maximum sweep*. The trawl sweep of nets shall not exceed 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing, unless the net is stowed and not available for immediate use, as specified in § 648.23, or unless the vessel is fishing under the Northeast multispecies or monkfish DAS programs.

(2) *Net requirements*—(i) *Minimum mesh size*. Subject to applicable minimum mesh size restrictions for other fisheries as specified under this part, the mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Measurement of mesh size*. Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions*—(i) *Net obstruction or constriction*. A fishing vessel may not use any device or material, including, but not limited

to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All vessels issued limited access and General Category scallop permits and fishing with scallop dredges, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section and in § 648.60(g)(2). However, component parts may be on board the vessel such that they do not conform with the definition of ''dredge or dredge gear'' in § 648.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

(2) *Minimum mesh size.* The mesh size of a net, net material, or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear shall not be smaller than 10-inch (25.4-cm) square or diamond mesh.

(3) *Minimum ring size.* (i) Unless otherwise required under the Sea Scallop Area Access program specified in § 648.60(a)(6), the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (10.2 cm).

(ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(iii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions*—(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, *i.e.*, ''hangers,'' are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. A copy of a diagram showing a schematic of a legal dredge ring pattern is available from the Regional Administrator upon request.

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if

it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions.* In addition to the minimum twine top mesh size specified in paragraph (b)(2) of this section, vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions:

(A) If a vessel is rigged with more than one dredge, or if a vessel is rigged with only one dredge and such dredge is greater than 8 ft (2.4 m) in width, there must be at least seven rows of non-overlapping steel rings unobstructed by netting or any other material between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top).

(B) If a vessel is rigged with only one dredge, and such dredge is less than 8 ft (2.4 m) in width, there must be at least four rows of non-overlapping steel rings unobstructed by netting or any other material between the club stick and the twine top of the dredge. (A copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Administrator upon request).

(v) *Measurement of twine top mesh size.* Twine top mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 8 kg (17.64 lb). The mesh size is the average of the measurements of any series of 20 consecutive meshes for twine tops having 75 or more meshes, and 10 consecutive meshes for twine tops having fewer than 75 meshes. The mesh in the twine top must be measured at least five meshes away from where the twine top mesh meets the rings, running parallel to the long axis of the twine top.

(5) *Restrictions applicable to sea scallop dredges in the mid-Atlantic*—(i) *Requirement to use chain mats.* See § 223.206(d)(11) of this chapter for chain mat requirements for scallop dredges.

(ii) *Requirement to use a turtle deflector dredge (TDD) frame*—(A) Beginning May 1, 2013, and from May 1 through October 31 every year, any limited access scallop vessel using a dredge, regardless of dredge size or vessel permit category, or any LAGC IFQ scallop vessel fishing with a dredge with a width of 10.5 ft (3.2 m) or greater, that is fishing for scallops in waters west of 71° W long., from the shoreline to the outer boundary of the Exclusive Economic Zone, must use a TDD. The TDD requires five modifications to the rigid dredge frame, as specified in paragraphs (b)(5)(ii)(A)(*1*) through (b)(5)(ii)(A)(*5*) of this section. See paragraph (b)(5)(ii)(E) of this section for more specific descriptions of the dredge elements mentioned below.

(*1*) The cutting bar must be located in front of the depressor plate.

(*2*) The angle between the front edge of the cutting bar and the top of the dredge frame must be less than or equal to 45 degrees.

(*3*) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 in (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 in (30.5 cm) in length may be attached to the outer bale bar;

(*4*) Struts must be spaced 12 in (30.5 cm) apart or less from each other.

(*5*) Unless exempted, as specified in paragraph (b)(5)(ii)(B) of this section, the TDD must include a straight extension (''bump out'') connecting the outer bale bars to the dredge frame. This ''bump out'' must exceed 12 in (30.5 cm) in length.

(B) A limited access scallop vessel that uses a dredge with a width less than 10.5 ft (3.2 m) is required to use a TDD except that such a vessel is exempt from the ''bump out'' requirement specified in paragraph (b)(5)(ii)(A)(5) of this section. This exemption does not apply to LAGC vessels that use dredges with a width of less than 10.5 ft (3.2 m) because such vessels are exempted from the requirement to use a TDD, as specified in paragraph (b)(5)(ii) of this section.

(C) Vessels subject to the requirements in paragraph (b)(5)(ii) of this section transiting waters west of 71° W long., from the shoreline to the outer boundary of the Exclusive Economic Zone, are exempted from the requirement to only possess and use TDDs, provided the dredge gear is stowed in accordance with § 648.23(b) and not available for immediate use.

(D) *TDD-related definitions.* (*1*) The cutting bar refers to the lowermost horizontal bar connecting the outer bails at the dredge frame.

(*2*) The depressor plate, also known as the pressure plate, is the angled piece of steel welded along the length of the top of the dredge frame.

(*3*) The top of the dredge frame refers to the posterior point of the depressor plate.

(*4*) The struts are the metal bars connecting the cutting bar and the depressor plate.

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, except as follows:

(1) There is no restriction on the number of people on board for vessels participating in the Sea Scallop Area Access Program as specified in § 648.60;

(2) Vessels participating in the small dredge program are restricted as specified in paragraph (e) of this section;

(3) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

(4) A certified at-sea observer is on board, as required by § 648.11(g).

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program, or any vessel in possession of more than 600 lb (272.2 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or Occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request may be placed in the appropriate higher category for the entire year, if they agree to comply with the following restrictions, in addition to, and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not use or have more than one dredge on board.

(3) The vessel may have no more than five people, including the operator, on board, except as follows:

(i) There is no restriction on the number of people on board for vessels participating in the Sea Scallop Area Access Program as specified in § 648.60;

(ii) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

(iii) A certified at-sea observer is on board, as required by § 648.11(g).

(f) *Restrictions on the use of trawl nets.* (1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of a trawl net, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with a trawl net. A limited access scallop vessel issued a trawl vessel permit that endorses the vessel to fish for scallops with a trawl net and general category scallop vessels enrolled in the Area Access Program as specified in § 648.60, may not fish with a trawl net in the Access Areas specified in § 648.59(b) through (d).

(2) *Replacement vessels.* A vessel that is replacing a vessel authorized to use trawl nets to fish for scallops under scallop DAS may also be authorized to use trawl nets to fish for scallops under scallop DAS if it meets the following criteria:

(i) Has not fished for scallops with a scallop dredge after December 31, 1987; or

(ii) Has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, has an engine horsepower no greater than 450.

[69 FR 35215, June 23, 2004, as amended at 69 FR 63473, Nov. 2, 2004; 71 FR 33226, June 8, 2006; 72 FR 8288, Feb. 26, 2007; 72 FR 32558, June 13, 2007; 73 FR 20122, Apr. 14, 2008; 74 FR 20554, May 4, 2009; 76 FR 43762, July 21, 2011; 77 FR 20738, Apr. 6, 2012]

§ 648.52 Possession and landing limits.

(a) A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery as specified in § 648.10(b), or on a properly declared NE multispecies, surfclam, or ocean quahog trip and not fishing in a scallop access area, unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 600 lb (272.2 kg) of shucked scallops, or possess more than 75 bu (26.4 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared IFQ scallop trip, or on a properly declared NE multispecies, surfclam, or ocean quahog trip and not fishing in a scallop access area.

(b) A vessel issued an NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked, or 25 bu (8.81 hL) of in-shell scallops. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) A vessel issued an Incidental scallop permit, or an IFQ or NGOM scallop permit that is not declared into the IFQ or NGOM scallop fishery as required under § 648.10(f), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(d) Owners or operators of vessels with a limited access scallop permit that have properly declared into the Sea Scallop Area Access Program as described in § 648.60 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.60(a)(5).

(e) Owners or operators of vessels issued limited access permits fishing in or transiting the area south of 42°20′N. lat. at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.6 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(f) A vessel that is declared into the Sea Scallop Area Access Program as described in § 648.60, may not possess more than 50 bu (17.6 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

(g) *Possession limit to defray the cost of observers in Access Areas for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, up to 1 day's allowance of the possession limit allocated to limited access vessels, as established by the Regional Administrator in accordance with § 648.60(d), provided the observer set-aside specified in § 648.60(d)(1) has not been fully utilized. For example, if the limited access vessel daily possession limit to defray the cost of an observer is 180 lb (82 kg), the LAGC IFQ possession limit to defray the cost of an observer would be 180 lb (82 kg) per trip, regardless of trip length.

[73 FR 20122, Apr. 14, 2008, as amended at 74 FR 20555, May 4, 2009; 75 FR 36569, June 28, 2010; 76 FR 43763, July 21, 2011]

§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

(a) *Scallop fishery ABC.* The ABC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55 and is equal to the overall scallop fishery ACL. The ABC/ACL shall be divided as sub-ACLs between limited access vessels, limited access vessels that are fishing under a limited access general category permit, and limited access general category vessels as specified in paragraphs (a)(3) and (a)(4) of this section, after deducting the scallop incidental catch target TAC specified in paragraph (a)(2) of this section, observer set-aside specified in paragraph (g)(1) of this section, and research set-aside specified in Section 648.56(d). The ABC/ACL for the 2013 fishing year is subject to change through a future framework adjustment.

(1) ABC/ACL for fishing years 2011 through 2013 shall be:

(i) *2011:* 27,269 mt.

(ii) *2012:* 28,961 mt.

(iii) *2013:* 28,700 mt.

(2) *Scallop incidental catch target TAC.* The incidental catch target TAC for vessels with incidental catch scallop permits is 50,000 lb (22.7 mt) for fishing years 2011, 2012, and 2013.

(3) *Limited access fleet sub-ACL and ACT.* The limited access scallop fishery shall be allocated 94.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). ACT for the limited access scallop fishery shall be established through the framework adjustment process described in § 648.55. DAS specified in paragraph (b) of this section shall be based on the ACTs specified in paragraph (a)(3)(ii) of this section. The limited access fleet sub-ACL and ACT for the 2013 fishing year are subject to change through a future framework adjustment.

(i) The limited access fishery sub-ACLs for fishing years 2011 through 2013 are:

(A) *2011:* 24,954 mt.

(B) *2012:* 26,537 mt.

(C) *2013:* 26,293 mt.

(ii) The limited access fishery ACTs for fishing years 2011 through 2013 are:

(A) *2011:* 21,431 mt.

(B) *2012:* 23,546 mt.

(C) *2013:* 19,688 mt.

(4) *LAGC fleet sub-ACL.* The sub-ACL for the LAGC IFQ fishery shall be equal to 5.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC IFQ fishery ACT shall be equal to the LAGC IFQ fishery's ACL. The ACL for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The ACL for the LAGC IFQ fishery for vessels issued only both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC ACLs for the 2013 fishing year are default allocations and are subject to change through a future framework adjustment.

(i) The ACLs for fishing years 2011 through 2013 for LAGC IFQ vessels without a limited access scallop permit are:

(A) *2011:* 1,320 mt.

(B) *2012:* 1,404 mt.

(C) *2013:* 1,391 mt.

(ii) The ACLs for fishing years 2011 through 2013 for vessels issued both a LAGC and a limited access scallop permits are:

(A) *2011:* 132 mt.

(B) *2012:* 140 mt.

(C) *2013:* 139 mt.

(b) *DAS allocations.* DAS allocations for limited access scallop trips in all areas other than those specified in § 648.59 shall be specified through the framework adjustment process, as specified in § 648.55, using the ACT specified in paragraph (a)(3)(ii) of this section. A vessel's DAS shall be determined and specified in paragraph (b)(4) of this section by dividing the total

DAS specified in the framework adjustment by the landings per unit effort (LPUE) specified in paragraph (b)(1) of this section, then dividing by the total number of vessels in the fleet.

(1) *Landings per unit effort (LPUE).* LPUE is an estimate of the average amount of scallops, in pounds, that the limited access scallop fleet lands per DAS fished. The estimated LPUE is the average LPUE for all limited access scallop vessels fishing under DAS, and shall be used to calculate DAS specified in paragraph (b)(4) of this section, the DAS reduction for the AM specified in paragraph (b)(4)(ii) of this section, and the observer set-aside DAS allocation specified in paragraph (g)(1) of this section. LPUE shall be:

(i) 2011 fishing year: 2,441 lb/DAS.

(ii) 2012 fishing year: 2,662 lb/DAS.

(iii) 2013 fishing year: 2,676 lb/DAS.

(2) [Reserved]

(3) *Assignment to DAS categories.* Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (full-time, part-time, or occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category, excluding carryover DAS in accordance with paragraph (d) of this section. DAS allocations shall be determined by distributing the portion of ACT specified in paragraph (a)(3)(ii), as reduced by access area allocations specified in § 648.59, and dividing that amount among vessels in the form of DAS calculated by applying estimates of open area LPUE specified in paragraph (b)(1) of this section. Allocation for part-time and occasional scallop vessels shall be equal to 40 percent and 8.33 percent of the full-time DAS allocations, respectively. DAS allocations for the 2013 fishing year are default allocations and are subject to change through a future framework adjustment. The annual open area DAS allocations for each category of vessel for the fishing years indicated are as follows:

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2011	2012	2013
Full-Time	32	34	26
Part-Time	13	14	11
Occasional	3	3	3

(i) If, prior to the implementation of Framework 22, a limited access vessel uses more open area DAS in the 2011 fishing year than specified in this section, such vessel shall have the DAS used in excess of the 2012 fishing year allocation specified in this paragraph (b)(4) deducted from its fishing year 2012 open area DAS allocation.

(ii) *Accountability measures (AM).* Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (b)(4)(iii) of this section, if the ACL specified in paragraph (a)(3)(i) of this section is exceeded for the applicable fishing year, the DAS specified in paragraph (b)(4) of this section for each limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the ACL divided by the applicable LPUE for the fishing year in which the AM will apply as specified in paragraph (b)(1) of this section, then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the ACL in 2011, an open area LPUE of 2,500 lb (1.13 mt) per DAS in 2012, and 313 full-time vessels, each full-time vessel's DAS would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions in DAS for part-time and occasional scallop vessels shall be equal to 40 percent and 8.33 percent of the full-time DAS deduction, respectively, as calculated pursuant to this paragraph (b)(4)(ii). The AM shall take effect in the fishing year following the fishing year in which the overage occurred. For example, landings in excess of the ACL in fishing year 2011 would result in the DAS reduction AM in fishing year 2012. If the

AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in 2011 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in 2012 would be reduced by 1 DAS.

(iii) *Limited access AM exception*—If NMFS determines, in accordance with paragraph (b)(4)(ii) of this section, that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.28, the AM specified in paragraph (b)(4)(ii) of this section shall not take effect. The fishing mortality rate of 0.28 is the fishing mortality that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.32.

(iv) *Limited access fleet AM and exception provision timing*. The Regional Administrator shall determine whether the limited access fleet exceeded its ACL specified in paragraph (a)(3)(i) of this section by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council (Council) of the determination of whether or not the ACL for the limited access fleet was exceeded, and the amount of landings in excess of the ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.28. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

(v) The Elephant Trunk Access Area shall change to an open area starting in fishing year 2011. For reference, the Elephant Trunk Access Area was defined by straight lines connecting the following points in the order stated (copies of a chart depicting the area previously known as the Elephant Trunk Access Area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ETAA1	38°50′ N	74°20′ W
ETAA2	38°10′ N	74°20′ W
ETAA3	38°10′ N	73°30′ W
ETAA4	38°50′ N	73°30′ W
ETAA1	38°50′ N	74°20′ W

(vi) If, prior to the implementation of Framework 22, a vessel lands all or part of an Elephant Trunk Access Area trip that was allocated at the start of the 2011 fishing year, any pounds landed from that declared Elephant Trunk Access Area trip would be converted to DAS and deducted from the vessel's open area DAS allocations in fishing year 2012. This DAS deduction would be equal to the scallop fishing mortality resulting from the open area DAS allocation. For example, if a full-time vessel lands the full 18,000-lb (8,165-kg) possession limit from an Elephant Trunk Access Area trip allocated at the start of the 2011 fishing year, the pounds landed would be converted to DAS and deducted from the vessel's 2012 fishing year DAS allocation as follows: The 18,000 lb (8,165-kg) would first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimated open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 7.4 DAS ((18,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 7.4 DAS). This amount would be deducted from that vessel's 2012 fishing year (*i.e.*, 34 DAS minus 7.4 DAS), resulting in a total 2012 fishing year DAS allocation of 26.6 DAS. Similarly, Part-time and occasional vessels

shall receive deductions of 5.9 DAS and 2.5 DAS, respectively, based on their respective possession limits, for landing their full trip possession limits from the area formerly known as the Elephant Trunk Access Area. If a vessel only lands a portion of its full possession limit, the applicable DAS reduction shall be proportional to those landings. For example, if a full-time vessel lands 9,000 lb (4,082 kg) during a declared Elephant Trunk Access Area trip, that vessel's fishing year 2012 DAS allocation would be reduced by 3.7 DAS (*i.e.*, half of the DAS that would be deducted for a full trip).

(vii) If, prior to the implementation of Framework 22, a vessel owner exchanges an Elephant Trunk Access Area trip for another access area trip as specified in § 648.60(a)(3)(ii) in fishing year 2011, the vessel that receives an additional Elephant Trunk Access Area trip will receive a DAS credit of 7.4 DAS in FY 2011, resulting in a total fishing year 2011 DAS allocation of 39.4 DAS (32 DAS plus 7.4 DAS). This DAS credit from unused Elephant Trunk Access Area trip gained through a trip exchange is based on a full-time vessel's 18,000-lb (8,165-kg) possession limit and is calculated by using the formula specified in paragraph (b)(4)(vi) of this section, but the DAS conversion is applied as a DAS credit in the 2011 fishing year, rather than as a DAS deduction in fishing year 2012. Similarly, using the same calculation with a 14,400-lb (6,532-kg) possession limit, part-time vessels will receive a credit of 5.9 DAS if the vessel owner received an additional Elephant Trunk Access Area trip through a trip exchange in the interim between the start of the 2011 fishing year and the implementation of Framework 22 and did not use it. If a vessel fishes any part of an Elephant Trunk Access Area trip gained through a trip exchange, those landings would be deducted from any DAS credit applied to the 2011 fishing year. For example, if a full-time vessel lands 10,000 lb (4,536 kg) from an Elephant Trunk Access Area trip gained through a trip exchange, the pounds landed would be converted to DAS and deducted from the trip-exchange credit as follows: The 10,000 lb (4,536 kg) is first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimated open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 4.1 DAS ((10,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 4.1 DAS). Thus, this vessel would receive a reduced DAS credit in FY 2011 to account for the Elephant Trunk Access Area trip exchange of 3.3 DAS (7.4 DAS − 4.1 DAS = 3.7 DAS).

(5) *Additional open area DAS.* (i) When Closed Area I, Closed Area II, and/or the Nantucket Lightship Access Areas close due to the yellowtail flounder TAC, for each remaining complete trip in each of these Access Areas, a full-time, part-time, or occasional vessel may fish an additional DAS in open areas during the same fishing year. Part-time and occasional vessel shall only receive additional DAS if there are no other access areas available in which to take an access area trip. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). The Access Area DAS trip conversion for fishing years 2011 and 2013 are specified in paragraph (b)(5)(ii) of this section.

(ii) *Access Area Trip Conversion to Open Area DAS.*

ACCESS AREA TRIP CONVERSION TO OPEN AREA DAS

Permit category	FY	CAI	CAII	NLAA
Full-Time	2011	4.3	5.7	N/A
	2012	4.4	5.4	4.3
	2013	N/A	5.4	4.9
Part-Time	2011	3.4	4.5	N/A
	2012	3.6	4.3	3.4
	2013	N/A	4.3	3.9
Occasional	2011	1.4	1.9	N/A
	2012	1.5	1.8	1.4
	2013	N/A	1.8	1.6

(iii) If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when Closed Area I, Closed Area II, and/or Nantucket Lightship Access Areas close due to the yellowtail flounder TAC, it will be issued additional open area DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder TAC closure in FY 2012, the vessel will be allocated 2.15 DAS (half of 4.3 DAS).

(6) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted.

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 3 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS before the beginning of the third year of each biennial adjustment, the third-year measures specified in the biennial framework adjustment shall remain in effect for the next fishing year. If a new biennial or other framework adjustment is not implemented by NMFS by the conclusion of the third year, the management measures from that third year would remain in place until a new action is implemented. The Council may also recommend adjustments to DAS allocations or other measures through a framework adjustment at any time.

(d) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused open area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total open area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in open areas. Carry-over DAS are accounted for in setting the ACT for the limited access fleet, as specified in paragraph (a)(3)(ii) of this section. Therefore, if carry-over DAS result or contribute to an overage of the ACL, the limited access fleet AM specified in paragraph (b)(4)(ii) of this section would still apply, provided the AM exception specified in paragraph (b)(4)(iii) of this section is not invoked.

(e) *Accrual of DAS.* All DAS fished shall be charged to the nearest minute. A vessel carrying an observer and authorized to be charged fewer DAS in Open Areas based on the total available DAS set aside under paragraph (g)(1) of this section shall be charged at a reduced rate as specified in paragraph (g)(1) of this section.

(f) *DAS credits*—(1) *Good Samaritan credit.* A limited access vessel operating under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(2) *Canceled trip DAS credit.* A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements:

(i) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(ii) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancelation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement by the operator that no fish were onboard and no fishing activity occurred; and

(iii) The owner or operator of the vessel operating under the DAS program

required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancelation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(iv) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (f)(2)(ii) and (iii) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (f)(2)(ii) and (iii) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(v) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(vi) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or that are not credited until the following fishing year may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (d) of this section.

(g) *Set-asides for observer coverage.* (1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL specified in paragraph (a)(1) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. The total TAC for observer set aside is 273 mt in fishing year 2011, 290 mt in fishing year 2012, and 287 mt in fishing year 2013. This 1 percent is divided proportionally into access areas and open areas, as specified in § 648.60(d)(1) and paragraph (g)(2) of this section, respectively. The total observer set-aside TAC specified for fishing year 2013 is a default allocation and is subject to change through a future framework adjustment

(2) *DAS set-aside for observer coverage.* For vessels assigned to take an at-sea observer on a trip other than an Access Area Program trip, the open-area observer set-aside TACs are 139 mt, 161 mt, and 136 mt for fishing years 2011, 2012, and 2013, respectively. The DAS set-aside shall be determined by dividing these amounts by the LPUE specified in paragraph (b)(1)(i) of this section for each specific fishing year. The DAS set-aside for observer coverage is 137 DAS for the 2011 fishing year, 133 DAS for the 2012 fishing year, and 112 DAS for the 2013 fishing year. A vessel carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate, based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The

obligation to carry and pay for an observer shall not be waived if set-aside is not available.

(h) *Annual Individual fishing quotas*—(1) *IFQ restriction*. For each fishing year of the IFQ program, a vessel issued an IFQ scallop permit may only harvest and land the total amount of scallop meats allocated in accordance with this subpart. Unless otherwise specified in this part, a vessel allocated scallop IFQ may not exceed the possession limits specified in § 648.52 on any trip.

(2) *Calculation of IFQ*. The ACL allocated to IFQ scallop vessels, and the ACL allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(4)(i) and (ii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

(i) *Individual fishing quota*. The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in paragraph (h)(2)(iii) of this section and determined using the steps specified in paragraphs (h)(2)(ii) of this section, multiplied by the ACL allocated to the IFQ scallop fishery, or limited access vessels issued an IFQ scallop permit, as specified in paragraphs (a)(4)(i) and (ii) of this section.

(ii) *Contribution factor*. An IFQ scallop vessel's contribution factor is calculated using the best year, years active, and index factor as specified in paragraphs (h)(2)(ii)(A) through (C) of this section. A vessel's contribution factor shall be provided to the owner of a qualified limited access general category vessel following initial application for an IFQ scallop permit as specified in § 648.4(a)(2)(ii)(E), consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a.

(A) *Best year determination*. An eligible IFQ scallop vessel's highest scallop landings in any scallop fishing year that the vessel was issued a general category scallop permit between March 1, 2000, and November 1, 2004, shall be determined using NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. If a dealer reported more than 400 lb (181.4 kg) of scallops landed on a trip, only 400 lb (181.4 kg) will be credited for that trip toward the best year calculation. For dealer reports that indicate clearly that the landings were bushels of in-shell scallops, a conversion of 8.33 lb (3.78 kg) of scallop meats per bushel shall be used to calculate meat-weight, up to a maximum of 400 lb (181.4 kg) per trip.

(B) *Years active*. For each eligible IFQ scallop vessel, the total number of scallop fishing years during the period March 1, 2000, through November 1, 2004, in which the vessel had a general category scallop permit and landed at least 1 lb (0.45 kg) of scallop meats, or in-shell scallops, shall be counted as active years based on NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004.

(C) *Index to determine contribution factor*. For each eligible IFQ scallop vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)(*1*) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)(*2*) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in paragraph (a)(4) of this section and the method of calculating the IFQ provided in paragraph (h) of this section.

Years active	Index factor
1	0.75
2	0.875
3	1.0
4	1.125
5	1.25

(D) *Contribution factor example*. If a vessel landed 48,550 lb (22,022 kg) of scallops in its best year, and was active in the general category scallop fishery for 5 years, the vessel's contribution factor is equal to 60,687 lb (27,527 kg) (48,550 lb (22,022 kg * 1.25).

(iii) *Contribution percentage*. A vessel's contribution percentage shall be determined by dividing its contribution factor by the sum of the contribution

factors of all vessels issued an IFQ scallop permit. Continuing the example in paragraph (h)(1)(ii)(D) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated for the purpose of this example to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg)/ 4.18 million lb (1,896 mt) = 1.45 percent). The contribution percentage for a vessel that is issued an IFQ scallop permit and whose owner has permanently transferred all of its IFQ to another IFQ vessel, as specified in paragraph (h)(5)(ii) of this section, shall be equal to 0 percent.

(iv) *Vessel IFQ Example*. Continuing the example in paragraphs (h)(1)(ii)(D) and (h)(1)(iii) of this section, with an ACL allocated to IFQ scallop vessels estimated for this example to be equal to 2.5 million lb (1,134 mt), the vessel's IFQ would be 36,250 lb (16,443 kg) (1.45 percent * 2.5 million lb (1,134 mt)).

(v) *End-of-year carry-over for IFQ*. (A) With the exception of vessels that held a confirmation of permit history as described in § 648.4(a)(2)(ii)(L) for the entire fishing year preceding the carry-over year, LAGC IFQ vessels that have unused IFQ on the last day of February of any year may carry over up to 15 percent of the vessel's original IFQ and transferred (either temporary or permanent) IFQ into the next fishing year. For example, a vessel with a 10,000-lb (4,536-kg) IFQ and 5,000-lb (2,268-kg) of leased IFQ may carry over 2,250 lb (1,020 kg) of IFQ (*i.e.*, 15 percent of 15,000 lb (6,804 kg)) into the next fishing year if it landed 12,750 lb (5,783 kg) (*i.e.*, 85 percent of 15,000 lb (6,804 kg)) of scallops or less in the preceding fishing year. Using the same IFQ values from the example, if the vessel landed 14,000 lb (6,350 kg) of scallops, it could carry over 1,000 lb (454 kg) of scallops into the next fishing year.

(B) For accounting purposes, the combined total of all vessels' IFQ carry-over shall be added to the LAGC IFQ fleet's applicable ACL for the carry-over year. Any IFQ carried over that is landed in the carry-over fishing year shall be counted against the ACL specified in paragraph (a)(4)(i) of this section, as increased by the total carry-over for all LAGC IFQ vessels, as specified in this paragraph (h)(2)(v)(B). IFQ carry-over shall not be applicable to the calculation of the IFQ cap specified in paragraph (h)(3)(i) of this section and the ownership cap specified in paragraph (h)(3)(ii) of this section.

(vi) *AM for the IFQ fleet*. If a vessel exceeds its IFQ, including all temporarily and permanently transferred IFQ, in a fishing year, the amount of landings in excess of the vessel's IFQ, including all temporarily and permanently transferred IFQ, shall be deducted from the vessel's IFQ as soon as possible in the fishing year following the fishing year in which the vessel exceeded its IFQ. If the AM takes effect, and an IFQ vessel lands more scallops than allocated after the AM is applied, the vessel shall have the IFQ landed in excess of its IFQ after applying the AM deducted from its IFQ in the subsequent fishing year. For example, a vessel with an initial IFQ of 1,000 lb (453.6 kg) in 2010 that lands 1,200 lb (544.3 kg) of scallops in 2010, and is initially allocated 1,300 lb (589.7 kg) of scallops in 2011 would be subject to an IFQ reduction equal to 200 lb (90.7 kg) to account for the 200 lb (90.7 kg) overage in 2010. If that vessel lands 1,300 lb (589.7 kg) of scallops in 2011 prior to application of the 200 lb (90.7 kg) deduction, the vessel would be subject to a deduction of 200 lb (90.7 kg) in 2012. For vessels involved in a temporary IFQ transfer, the entire deduction shall apply to the vessel that acquired IFQ, not the transferring vessel. A vessel that has an overage that exceeds its IFQ in the subsequent fishing year shall be subject to an IFQ reduction in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each year over a 3-year period that harvests 2,500 lb (1,134 kg) of scallops the first year would have a 1,500-lb (680-kg) IFQ deduction, so that it would have zero pounds to harvest in year 2, and 500 lb (227 kg) to harvest in year 3. A vessel that has a ''negative'' IFQ balance, as described in the example, could lease or transfer IFQ to balance the IFQ, provided there are no sanctions or other enforcement penalties that would prohibit the vessel from acquiring IFQ.

(3) *IFQ ownership restrictions*—(i) *IFQ scallop vessel IFQ cap.* (A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(ii) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or that was issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, is eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permit or confirmations of permit history will result in the 2.5-percent IFQ cap restriction being exceeded.

(ii) *IFQ ownership cap.* (A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section.

(B) Vessel owners who were initially issued a 2008 IFQ scallop permit or confirmation of permit history, or who were issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(ii)(A) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

(C) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(iii) *Limited access scallop vessels that have been issued an IFQ scallop permit.* The IFQ scallop vessel IFQ cap and IFQ ownership cap specified in this paragraph (h)(3) do not apply to limited access scallop vessels that are also issued a limited access general category scallop permit because such vessels are already subject to an ownership limitation, as specified in § 648.4(a)(2)(i)(M).

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ scallops harvested, shall be collected to recover the costs associated with management, data collection, and enforcement of the IFQ program. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in this paragraph (h)(4), shall be responsible for paying the fee as specified by NMFS in this paragraph (h)(4). An IFQ scallop vessel shall incur a cost recovery fee liability for every landing of IFQ scallops. The IFQ scallop permit holder shall be responsible for collecting the fee for all of its vessels' IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year. The cost recovery fee for all landings, regardless of ownership changes throughout the fishing year, shall be the responsibility of the official owner of the vessel, as

recorded in the vessel permit or confirmation of permit history file, at the time the bill is sent.

(i) *Cost recovery fee determination*. The ex-vessel value of scallops shall be determined as an average of the ex-vessel value, as determined by Northeast Federal dealer reports, of all IFQ scallops landed between March 1 and September 30 of the initial year of the IFQ scallop program, and from October 1 through September 30 of each year thereafter.

(ii) *Fee payment procedure*. On or about October 31 of each year, NMFS shall mail a cost recovery bill to each IFQ scallop permit holder for the previous cost recovery period. An IFQ scallop permit holder who has incurred a fee must pay the fee to NMFS by January 1 of each year. Cost recovery payments shall be made electronically via the Federal web portal, *www.pay.gov*, or other Internet sites as designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the paper bill. Payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Payment by check may be authorized by NMFS if it has determined that electronic payment is not possible (for example, if the geographical area of an individual(s) is affected by catastrophic conditions).

(iii) *Payment compliance*. An IFQ scallop permit holder that has incurred an IFQ cost recovery fee must pay the fee to NMFS by January 1 of each year. If the cost recovery payment, as determined by NMFS, is not made by January 1, NMFS may deny the renewal of the IFQ scallop permit until full payment is received. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ scallop permit holder has not paid the full amount due, NMFS shall notify the IFQ scallop permit holder by letter. NMFS shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate IFQ fee, and prepare a Final Administrative Determination (FAD). The FAD shall set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A FAD shall be the final agency action, and, if the FAD determines that the IFQ scallop permit holder is out of compliance, the FAD shall require payment within 30 days. If a FAD is not issued until after the start of the fishing year, the IFQ scallop permit holder may be authorized to fish temporarily by the Regional Administrator until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the IFQ scallop permit shall not be issued until such terms are met. If NMFS determines that the IFQ scallop permit holder owes additional fees for the previous cost recovery period, and the IFQ scallop permit has already been renewed, NMFS shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or NMFS may withdraw the issuance of the IFQ scallop permit until such terms are met. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and no IFQ permit held by the permit holder may be renewed until the terms of the FAD are met. If NMFS determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If NMFS does not receive full payment prior to the end of the fishing year, the IFQ scallop permit shall be considered voluntarily abandoned, pursuant to § 648.4(a)(2)(ii)(K), unless otherwise determined by the Regional Administrator.

(5) *Transferring IFQ*—(i) *Temporary IFQ transfers*. Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may temporarily transfer its entire IFQ allocation, or a portion of its

IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be transferred only once during a given fishing year. Temporary IFQ transfers must be in the amount of at least 100 lb (45 kg), or the entire allocation may be transferred to another vessel. If a vessel has previously transferred a portion of its IFQ and the remaining allocation is less than 100 lb (45 kg), the remaining IFQ may be transferred in full to another vessel. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(ii) *Permanent IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel. Any such transfer cannot be limited in duration and is permanent, unless the IFQ is subsequently transferred to another IFQ scallop vessel, other than the originating IFQ scallop vessel, in a subsequent fishing year. If a vessel owner permanently transfers the vessel's entire IFQ to another IFQ vessel, the LAGC IFQ scallop permit shall remain valid on the transferring vessel, unless the owner of the transferring vessel cancels the IFQ scallop permit. Such cancellation shall be considered voluntary relinquishment of the IFQ permit, and the vessel shall be ineligible for an IFQ scallop permit unless it replaces another vessel that was issued an IFQ scallop permit. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. A vessel's total IFQ allocation can be transferred only once during a given fishing year. For example, a vessel owner can complete several transfers of portions of his/her vessel's IFQ during the fishing year, but cannot complete a temporary transfer of a portion of its IFQ then request to either temporarily or permanently transfer the entire IFQ in the same fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the ACL allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

(iv) *Application for an IFQ transfer.* The owners of vessels applying for a transfer of IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, provided the vessel transferring the IFQ to another vessel has not utilized any of its own IFQ in that fishing year. Applications for temporary transfers received less than 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ, if approved, prior to the expiration of the fishing year.

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number, and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form

was completed. In addition, applications to transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be less than 100 lb (45 kg) unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery.

(B) *Approval of IFQ transfer applications*. Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) *Denial of transfer application*. The Regional Administrator may reject an application to transfer IFQ for any of the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's vessel has fished under its IFQ prior to the completion of the transfer request; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2.5 percent of the ACL allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of, or interest in, a general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels; or any other failure to meet the requirements of the regulations in 50 CFR part 648. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision by the Regional Administrator is the final agency decision, and there is no opportunity to appeal the Regional Administrator's decision. An application that was denied can be resubmitted if the discrepancy(ies) that resulted in denial are resolved.

[73 FR 20123, Apr. 14, 2008, as amended at 73 FR 30804, May 29, 2008; 74 FR 20555, May 4, 2008; 75 FR 36570, June 28, 2010; 76 FR 43763, 43786, July 21, 2011; 77 FR 16946, Mar. 23, 2012; 77 FR 20739, Apr. 6, 2012]

§ 648.54 State waters exemption.

(a) *State eligibility for exemption*. (1) A state may be eligible for a state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a rule in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, to provide the exemption for such states.

(3) A state that has been issued a state waters exemption under paragraph (a)(4) of this section must immediately notify the Regional Administrator of any changes in its scallop conservation program. The Regional Administrator shall review these changes and, if a determination is made that the state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, to eliminate the exemption for that state.

(4) The Regional Administrator has determined that the State of Maine has a scallop fishery conservation program for its scallop fishery that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. A vessel fishing in State of Maine waters may fish under the State of Maine state waters exemption, subject to the exemptions specified in paragraphs (b) and (c) of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(b) *Limited access scallop vessel exemption*. Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption under paragraph (a)(4) of this section, provided the vessel complies with paragraphs (d) through (g) of this section.

(c) *Gear and possession limit restrictions*. Any vessel issued a limited access scallop permit, an LAGC NGOM, or an LAGC IFQ scallop permit is exempt from the minimum twine top mesh size for scallop dredge gear specified in § 648.51(b)(4)(iv) while fishing exclusively landward of the outer boundary of the waters of the State of Maine under the state waters exemption specified in paragraph (a)(4) of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(d) *Notification requirements*. Vessels fishing under the exemptions specified in paragraph (b) and/or (c) of this section must notify the Regional Administrator in accordance with the provisions of § 648.10(e).

(e) *Restriction on fishing in the EEZ*. A vessel fishing under a state waters exemption may not fish in the EEZ during the time in which it is fishing under the state waters exemption, as declared under the notification requirements of this section.

(f) *Duration of exemption*. An exemption expires upon a change in the vessel's name or ownership, or upon notification through VMS by the participating vessel's owner.

(g) *Applicability of other provisions of this part*. A vessel fishing under the exemptions provided by paragraphs (b) and/or (c) of this section remains subject to all other requirements of this part.

[69 FR 35215, June 23, 2004, as amended at 71 FR 33227, June 8, 2006; 73 FR 20128, Apr. 14, 2008; 74 FR 20555, May 4, 2009; 74 FR 37593, July 30, 2009]

§ 648.55 Framework adjustments to management measures.

(a) At least biennially, the Council shall assess the status of the scallop resource, determine the adequacy of the management measures to achieve scallop resource conservation objectives, and initiate a framework adjustment to establish scallop fishery management measures for the 2-year period beginning with the scallop fishing year immediately following the year in which the action is initiated. The PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report that provides the information and analysis needed to evaluate potential management adjustments. The framework adjustment shall establish OFL, ABC, ACL, ACT, DAS allocations, rotational area management programs, percentage allocations for limited access general category vessels in Sea Scallop Access Areas, scallop possession limits, AMs, and other measures to achieve FMP objectives and limit fishing mortality. The Council's development of rotational area management adjustments shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria. Rotational closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Access Areas where the projected annual change in scallop biomass is less than 15 percent.

(b) The preparation of the SAFE Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted.

(c) *OFL, ABC, ACL, ACT, and AMs*. The Council shall specify OFL, ABC, ACL, ACT, and AMs, as applicable, for each year covered under the biennial or other framework adjustment.

(1) *OFL*. OFL shall be based on an updated scallop resource and fishery assessment provided by either the Scallop PDT or a formal stock assessment. OFL shall include all sources of scallop mortality and shall include an upward adjustment to account for catch of scallops in state waters by vessels not issued Federal scallop permits. The fishing mortality rate (F) associated with OFL shall be the threshold F,

above which overfishing is occurring in the scallop fishery. The F associated with OFL shall be used to derive specifications for ABC, ACL, and ACT, as specified in paragraphs (c)(2) through (c)(5) of this section.

(2) The specification of ABC, ACL, and ACT shall be based upon the following overfishing definition: The F shall be set so that in access areas, averaged for all years combined over the period of time that the area is closed and open to scallop fishing as an access area, it does not exceed the established F threshold for the scallop fishery; in open areas it shall not exceed the F threshold for the scallop fishery; and for access and open areas combined, it is set at a level that has a 75-percent probability of remaining below the F associated with ABC, as specified in paragraph (c)(2) of this section, taking into account all sources of fishing mortality in the limited access and LAGC fleets of the scallop fishery.

(3) *ABC*. The Council shall specify ABC for each year covered under the biennial or other framework adjustment. ABC shall be the catch that has an associated F that has a 75-percent probability of remaining below the F associated with OFL. ABC shall be equal to ACL for the scallop fishery.

(4) *Deductions from ABC*. Incidental catch, equal to the value established in § 648.53(a)(2), shall be removed from ABC/ACL. One percent of ABC/ACL shall be removed from ABC/ACL for observer set-aside. Scallop catch equal to the value specified in § 648.56(d) shall be removed from ABC/ACL for research set-aside. These deductions for incidental catch, observer set-aside, and research set-aside, shall be made prior to establishing ACLs for the limited access and LAGC fleets, as specified in paragraph (c)(4) of this section.

(5) *Sub-ACLs for the limited access and LAGC fleets*. The Council shall specify sub-ACLs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL equal to 94.5 percent of the ABC/ACL shall be allocated to the limited access fleet. After applying the deductions as specified in paragraph (a)(4) of this section, a sub-ACL of 5.5 percent of ABC/ACL shall be allocated to the LAGC fleet, so that 5 percent of ABC/ACL is allocated to the LAGC fleet of vessels that do not also have a limited access scallop permit, and 0.5 percent of the ABC/ACL is allocated to the LAGC fleet of vessels that have limited access scallop permits. This specification of sub-ACLs shall not account for catch reductions associated with the application of AMs or adjustment of the sub-ACL as a result of the limited access AM exception as specified in § 648.53(b)(4)(iii).

(6) *ACT for the limited access and LAGC fleets*. The Council shall specify ACTs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. The ACT for the limited access fishery shall be set at a level that has an associated F with a 75-percent probability of remaining below the F associated with ABC/ACL. The LAGC ACT shall be set equal to the LAGC sub-ACL as specified in paragraph (a)(5) of this section.

(7) *AMs*. The Council shall specify AMs for the limited access and LAGC fleets for each year covered under the biennial or other framework adjustment. For the limited access scallop fleet, AMs result in a DAS reduction for each limited access scallop vessel as specified in § 648.53(b)(4)(ii). For the LAGC scallop fleet, AMs result in an IFQ deduction for each vessel issued a LAGC scallop permit as specified in § 648.53(h)(2)(vi).

(d) *Yellowtail flounder sub-ACL*. The Council shall specify the yellowtail flounder sub-ACL allocated to the scallop fishery through the framework adjustment process specified in § 648.90.

(e) *Third-year default management measures*. The biennial framework action shall include default management measures that shall be effective in the third year unless replaced by the measures included in the next biennial framework action. If the biennial framework action is not published in the FEDERAL REGISTER with an effective date on or before March 1, in accordance with the Administrative Procedure Act, the third-year measures shall be effective beginning March 1 of each fishing year until the framework adjustment is implemented, or for the

entire fishing year if the framework adjustment is completed or is not implemented by NMFS for the third year. The framework action shall specify the measures necessary to address inconsistencies between specifications and allocations for the period after March 1 but before the framework adjustment is implemented for that year. In the case of third-year measures of a biennial adjustment being implemented, if no framework adjustment has been implemented by March 1 of the following year, the measures from the preceding year shall continue to be in effect until replaced by subsequent action.

(f) After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must include measures to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis, and must come from one or more of the following categories:

(1) Total allowable catch and DAS changes;

(2) Shell height;

(3) Offloading window reinstatement;

(4) Effort monitoring;

(5) Data reporting;

(6) Trip limits;

(7) Gear restrictions;

(8) Permitting restrictions;

(9) Crew limits;

(10) Small mesh line;

(11) Onboard observers;

(12) Modifications to the overfishing definition;

(13) VMS Demarcation Line for DAS monitoring;

(14) DAS allocations by gear type;

(15) Temporary leasing of scallop DAS requiring full public hearings;

(16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch;

(17) Aquaculture enhancement measures and closures;

(18) Closed areas to increase the size of scallops caught;

(19) Modifications to the opening dates of closed areas;

(20) Size and configuration of rotational management areas;

(21) Controlled access seasons to minimize bycatch and maximize yield;

(22) Area-specific trip allocations;

(23) TAC specifications and seasons following re-opening;

(24) Limits on number of area closures;

(25) Set-asides for funding research;

(26) Priorities for scallop-related research that is funded by research TAC set-aside;

(27) Finfish TACs for controlled access areas;

(28) Finfish possession limits;

(29) Sea sampling frequency;

(30) Area-specific gear limits and specifications;

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;

(32) Specifications for IFQs for limited access general category vessels;

(33) Revisions to the cost recovery program for IFQs;

(34) Development of general category fishing industry sectors and fishing cooperatives;

(35) Adjustments to the Northern Gulf of Maine scallop fishery measures;

(36) VMS requirements;

(37) Increases or decreases in the LAGC possession limit;

(38) Adjustments to aspects of ACL management;

(39) Adjusting EFH closed area management boundaries or other associated measures; and

(40) Any other management measures currently included in the FMP.

(g) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this section to address gear conflict as defined under § 600.10 of this chapter. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2,700 mi^2 (6,993 km^2), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

(1) Monitoring of a radio channel by fishing vessels;

(2) Fixed-gear location reporting and plotting requirements;

(3) Standards of operation when gear conflict occurs;

(4) Fixed-gear marking and setting practices;

(5) Gear restrictions for specific areas (including time and area closures);

(6) VMS;

(7) Restrictions on the maximum number of fishing vessels or amount of gear; and

(8) Special permitting conditions.

(h) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(i) Unless otherwise specified, after developing a framework adjustment and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the framework adjustment as a final rule. If the Council recommends that the framework adjustment should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry, consistent with the Administrative Procedure Act, in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(j) If the Council's recommendation includes adjustments or additions to management measures, and if, after reviewing the Council's recommendation and supporting information:

(1) The Regional Administrator approves the Council's recommended management measures, the Secretary may, for good cause found pursuant to the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in doing so, shall publish only the final rule. Submission of a recommendation by the Council for a final rule does not affect the Secretary's responsibility to comply with the Administrative Procedure Act; or

(2) The Regional Administrator approves the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action shall be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the Council recommendation, the action shall be published as a final rule in the FEDERAL REGISTER; or

(3) The Regional Administrator does not concur, the Council shall be notified, in writing, of the reasons for the non-concurrence.

(k) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[76 FR 43766, July 21, 2011, as amended at 77 FR 20740, Apr. 6, 2012]

§ 648.56 Scallop research.

(a) At least biennially, in association with the biennial framework process, the Council and NMFS shall prepare and issue an announcement of Federal Funding Opportunity (FFO) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in paragraph (d) of this section and § 648.60(e), provides requirements and instructions for applying for funding of a proposed RSA project, and specifies the date by which applications must be received. The FFO shall be published as soon as possible by NMFS and shall provide the opportunity for applicants to apply for projects to be awarded for 1 or 2 years by allowing applicants to apply for RSA funding for the first year, second year, or both.

(b) Proposals submitted in response to the FFO must include the following information, as well as any other specific information required within the FFO: A project summary that includes the project goals and objectives, the relationship of the proposed research to scallop research priorities and/or management needs, project design, participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NOAA shall make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, or take additional trips into Open or Access Areas. NMFS shall provide authorization of such activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(d) Available RSA allocation shall be 1.25 million lb (567 mt) annually, which shall be deducted from the ABC/ACL specified in § 648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3) and (a)(4), respectively. Approved RSA projects shall be allocated an amount of scallop pounds that can be harvested in open areas and available access areas. The specific access areas that are open to RSA harvest shall be specified through the framework process as identified in § 648.60(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop pounds needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas.

(e) If all RSA TAC is not allocated in a fishing year, and proceeds from compensation fishing for approved projects fall short of funds needed to cover a project's budget due to a lower-than-expected scallop price, unused RSA allocation can be provided to that year's awarded projects to compensate for the

funding shortfall, or to expand a project, rather than having that RSA go unused. NMFS shall identify the process for the reallocation of available RSA pounds as part of the FFO for the RSA program. The FFO shall specify the conditions under which a project that has been awarded RSA could be provided additional RSA pounds as supplemental compensation to account for lower-than-expected scallop price or for expansion of the project, timing of reallocation, and information submission requirements.

(f) If all RSA pounds awarded to a project cannot be harvested during the applicable fishing year, RSA TAC awarded to that project may be harvested through May 31 of the fishing year subsequent to the fishing year in which the set-aside is awarded.

(g) Vessels conducting research under an approved RSA project may be exempt from crew restrictions specified in § 648.51, seasonal closures of access areas specified in § 648.59, and the restriction on fishing in only one access area during a trip specified in § 648.60(a)(4). The RSA project proposal must list which of these measures for which an exemption is required. An exemption shall be provided by Letter of Authorization issued by the Regional Administrator. RSA compensation fishing trips and combined compensation and research trips are not eligible for these exemptions.

(h) Upon completion of scallop research projects approved pursuant to this section and the applicable NOAA grants review process, researchers must provide the Council and NMFS with a report of research findings, which must include at least the following: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the sea scallop research.

[76 FR 43769, July 21, 2011, as amended at 77 FR 20740, Apr. 6, 2012]

§ 648.57 Sea scallop area rotation program.

An area rotation program is established for the scallop fishery, which may include areas closed to scallop fishing defined in § 648.58, and/or Sea Scallop Access Areas defined in § 648.59, subject to the Sea Scallop Area Access program requirements specified in § 648.60. Areas not defined as Rotational Closed Areas, Sea Scallop Access Areas, EFH Closed Areas, or areas closed to scallop fishing under other FMPs, are open to scallop fishing as governed by the other management measures and restrictions in this part. The Council's development of area rotation programs is subject to the framework adjustment process specified in § 648.55, including the Area Rotation Program factors included in § 648.55(a). The percentage of the total allowable catch for each Sea Scallop Access Area that is allocated to limited access scallop vessels and limited access general category scallop vessels shall be specified in § 648.59 through the framework adjustment process specified in § 648.55.

[73 FR 20129, Apr. 14, 2008]

§ 648.58 Rotational Closed Areas.

(a)–(b) [Reserved]

(c) *Transiting.* No vessel possessing scallops may enter or be in the area(s) specified in paragraphs (a) and (b) of this section unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas.

(d) *Vessels fishing for species other than scallops.* A vessel may fish for species other than scallops within the closed areas specified in paragraphs (a) and (b) of this section as allowed in this part, provided the vessel does not fish for, catch, or retain scallops or intend to fish for, catch, or retain scallops. Declaration through VMS that the vessel is fishing in the general category scallop fishery is deemed to be an intent to fish for, catch, or retain scallops.

(e) [Reserved]

(f) *Delmarva Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Delmarva Closed Area. No vessel may possess scallops in the Delmarva Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Delmarva

Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
DMV1	38°10′ N	74°50′ W
DMV2	38°10′ N	74°00′ W
DMV3	37°15′ N	74°00′ W
DMV4	37°15′ N	74°50′ W
DMV1	38°10′ N	74°50′ W

[71 FR 33228, June 8, 2006, as amended by 72 FR 72629, Dec. 21, 2007; 73 FR 30807, May 29, 2008; 75 FR 36571, June 28, 2010; 76 FR 31494, June 1, 2011; 76 FR 43791, Aug. 2, 2011; 77 FR 28314, May 14, 2012]

EFFECTIVE DATE NOTE: At 77 FR 28314, May 14, 2012, § 648.58 was amended by adding paragraph (f), effective June 13, 2012, through Nov. 10, 2012.

§ 648.59 Sea Scallop Access Areas.

(a) *Delmarva Sea Scallop Access Area.* (1) From March 1, 2011, through February 28, 2014 (*i.e.*, fishing years 2011 through 2013), a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Delmarva Scallop Access Area schedule and TACs specified in paragraph (a)(3) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(2) The Delmarva Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
DMV1	38°10′ N.	74°50′ W.
DMV2	38°10′ N.	74°00′ W.
DMV3	37°15′ N.	74°00′ W.
DMV4	37°15′ N.	74°50′ W.
DMV1	38°10′ N.	74°50′ W.

(3) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Delmarva Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Delmarva Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Delmarva Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, limited access full-time and part-time scallop vessels are restricted in the number of trips that may be taken from June 15 through October 31, as specified in § 648.60(a)(3)(i)(B)(*4*) and (a)(3)(i)(C)(*4*). The number of trips allocated to limited access vessels in the Delmarva Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in paragraph (a)(5)(i) of this section. The Delmarva Access Area scallop TACs for limited access scallop vessels are 5,886,000 lb (2,670 mt) in fishing year 2011, and 2,943,000 lb (1,335 mt) in fishing years 2012 and 2013.

(ii) *LAGC IFQ scallop vessels.*—(A) The percentage of the Delmarva Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified in paragraph (a)(4)(ii)(A) of this section through the framework adjustment process, and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (a)(4)(ii)(B) of this section. LAGC IFQ vessels will be allocated 355,900 lb (161 mt) in fishing year 2011, 177,490 lb (81 mt) in fishing year 2012, and 178,600 lb (81 mt) in fishing year 2013, which represent 5.5 percent of the Delmarva Access Area TACs for each fishing year. This TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (a)(4)(ii)(A) of this section, LAGC scallop vessels are allocated 593 trips in fishing year 2011, 296 trips in fishing year 2012, and 298 trips in fishing year 2013 to the Delmarva Access Area. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ

permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the total number of trips have been, or are projected to be, taken by providing notification in the FEDERAL REGISTER, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared LAGC IFQ scallop trip after the effective date published in the FEDERAL REGISTER, unless transiting pursuant to paragraph (f) of this section.

(*1*) If the fleet-wide Delmarva Access Area trip allocation implemented by Framework 22 is exceeded in the 2011 fishing year, the fleet-wide Delmarva Access Area trip allocation in fishing year 2012 shall be reduced by the number of trips taken in excess of the amount specified in paragraph (a)(3)(ii)(B) of this section.

(*2*) [Reserved]

(C) Scallops landed by each LAGC IFQ vessel on a Delmarva Access Area trip shall be counted against that vessel's IFQ.

(4) [Reserved]

(b) *Closed Area I Access Area*—(1) From March 1, 2013, through February 28, 2014 (i.e., fishing year 2013), vessels issued scallop permits may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (b)(5)(ii)(C) of this section. The Closed Area I Sea Scallop Access Area schedule and TACs specified in paragraph (b)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(2) From March 1, 2011, through February 28, 2013 (i.e., fishing years 2011 and 2012), subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a scallop permit may fish for, possess, and land scallops in or from the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in 648.60.

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request), and so that the line connecting points CAIA3 and CAIA4 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between points CAIA3 and CAIA4:

Point	Latitude	Longitude
CAIA1	41°26′ N	68°30′ W
CAIA2	40°58′ N	68°30′ W
CAIA3	40°54.95′ N	68°53.40′ W
CAIA4	41°04.30′ N	69°01.29′ W
CAIA1	41°26′ N	68°30′ W

(4) *Season*. A vessel issued a scallop permit may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Sea Scallop Access Area, described in paragraph (b)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area I Sea Scallop Access Area is open to scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(5) *Number of trips*—(i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which will be determined through the

annual framework process and specified in paragraph (c)(5)(i) of this section. The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in this paragraph (b)(5)(i). The Closed Area I Access Area scallop TAC for limited access scallop vessels is 8,829,000 (4,005 mt) in fishing year 2011, and 2,943,000 lb (1,335 mt) in fishing year 2012. Closed Area I Access Area is closed to limited access vessels for the 2013 fishing year.

(ii) *LAGC scallop vessels.* (A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (b)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. LAGC IFQ vessels will be allocated 533,850 lb (242 mt) in fishing year 2011, and 177,490 lb (81 mt) in fishing year 2012, which represent 5.5 percent of the Closed Area I Access Area TACs for each fishing year. This TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Closed Area I Access Area will be closed to LAGC IFQ vessels in fishing year 2013.

(B) Based on the TACs specified in paragraph (b)(5)(ii)(A) of this section, LAGC IFQ vessels are allocated a total of 890 trips in fishing year 2011, and 296 trips in fishing year 2012 in the Closed Area I Access Area. No LAGC IFQ trips will be allocated in Closed Area I Access Area in fishing year 2013. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips for the applicable fishing year have been, or are projected to be, taken by providing notification in the FEDERAL REGISTER, in accordance with § 648.60(g)(4). Except as provided in paragraph (b)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared LAGC scallop trip after the effective date published in the FEDERAL REGISTER, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and a LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(D) Scallops landed by each LAGC IFQ vessel on a Closed Area I Access Area trip shall count against that vessel's IFQ.

(iii) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c).

(c) *Closed Area II Access Area.* This area shall be managed on a 3-year cycle, based on fishing years, with a 1-year closure, followed by a 2-year Area Access Program as follows:

(1) [Reserved]

(2) From March 1, 2011, through February 28, 2014 (i.e., fishing years 2011 through 2013), subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Closed Area II Sea Scallop Access Area

schedule and TACs specified in paragraph (c)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(3) The Closed Area II Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIIA1	41°00′ N.	67°20′ W.
CAIIA2	41°00′ N.	66°35.8′ W.
CAIIA3	41°18.6′ N.	66°24.8′ W.
CAIIA4	41°30′ N.	66°34.8′ W.
CAIIA5	41°30′ N.	67°20′ W.
CAIIA1	41°00′ N.	67°20′ W.

(4) *Season*. A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(5) *Number of trips*—(i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). The Closed Area II Access Area scallop TACs for limited access scallop vessels are 2,943,000 lb (1,335 mt) in fishing year 2011 and 5,886,000 lb (2,670 mt) in fishing years 2012 and 2013.

(ii) *LAGC scallop vessels*. (A) The percentage of the total Closed Area II Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to IFQ LAGC scallop vessels as specified in paragraph (c)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits. The Closed Area II Access Area is closed to LAGC IFQ vessels in the 2011 through 2013 fishing years.

(B) The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips for the applicable fishing year have been, or are projected to be, taken by providing notification in the FEDERAL REGISTER, in accordance with § 648.60(g)(4). Except as provided in paragraph (c)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area II Access Area, or enter the Closed Area II Access Area on a declared LAGC scallop trip after the effective date published in the FEDERAL REGISTER, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(D) Scallops landed by each LAGC IFQ vessel on a Closed Area II Access Area trip shall count against that vessel's IFQ.

(d) *Nantucket Lightship Access Area*. (1) From March 1, 2011, through February 28, 2012 (i.e., fishing year 2011), vessels issued scallop permits may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved

SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (d)(5)(ii)(C) of this section.

(2) From March 1, 2012, through February 28, 2014 (*i.e.*, fishing years 2012 and 2013), subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Nantucket Lightship Sea Scallop Access Area schedule and TACs specified in paragraph (d)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(3) The Nantucket Lightship Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLAA1	40°50′ N	69°30′ W
NLAA2	40°50′ N	69°00′ W
NLAA3	40°20′ N	69°00′ W
NLAA4	40°20′ N	69°30′ W
NLAA1	40°50′ N	69°30′ W

(4) *Season*. A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, except during the period June 15 through January 31 of each year the Nantucket Lightship Access Area is open to scallop fishing, unless transiting pursuant to paragraph (f) of this section.

(5) *Number of trips*—(i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area. The Nantucket Lightship Access Area scallop TACs for limited access scallop vessels are 2,943,000 lb (1,335 mt) in fishing year 2012, and 5,886,000 lb (2,670 mt) in fishing year 2013. The Nantucket Lightship Access Area will be closed to limited access vessels in fishing year 2011.

(ii) *LAGC scallop vessels*. (A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. The Nantucket Lightship Access Area will be closed to LAGC IFQ vessels in fishing year 2011. LAGC IFQ vessels are allocated 177,490 lb (81 mt) in fishing year 2012 and 357,200 lb (162 mt) in fishing year 2013, which represent 5.5 percent of the Nantucket Lightship Access Area TAC for each fishing year. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (d)(5)(ii)(A) of this section, LAGC scallop vessels are allocated 296 trips in fishing year 2012, and 595 trips in fishing year 2013 to the Nantucket Lightship Access Area. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the total number of trips have been, or are projected to be, taken by providing notification in the FEDERAL REGISTER, in accordance with § 648.60(g)(4). Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Nantucket

Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared LAGC IFQ scallop trip after the effective date published in the FEDERAL REGISTER, unless transiting pursuant to paragraph (f) of this section.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(D) Scallops landed by each LAGC IFQ vessel on a Nantucket Lightship Access Area trip shall count against that vessel's IFQ.

(e) *Hudson Canyon Sea Scallop Access Area*. (1) From March 1, 2011, through February 28, 2014 (i.e., fishing years 2011 through 2013), a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (e)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Hudson Canyon Sea Scallop Access Area schedule and TACs specified in paragraph (e)(4) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(2) The Hudson Canyon Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1	39°30′ N	73°10′ W
H2	39°30′ N	72°30′ W
H3	38°30′ N	73°30′ W
H4	38°50′ N	73°30′ W
H5	38°50′ N	73°42′ W
H1	39°30′ N	73°10′ W

(3) [Reserved]

(4) *Number of trips*—(i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Hudson Canyon Sea Scallop Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Hudson Canyon Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Hudson Canyon Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, limited access full-time and part-time scallop vessels are restricted in the number of trips that may be taken from June 15 through October 31, as specified in § 648.60(a)(3)(i)(B)(*4*) or § 648.60(a)(3)(i)(C)(*4*). The Hudson Canyon Access Area scallop TACs for limited access scallop vessels are 5,886,000 lb (2,670 mt) in fishing year 2011, and 8,829,000 lb (4,005 mt) in fishing years 2012 and 2013.

(ii) *LAGC IFQ scallop vessels*.—(A) The percentage of the Hudson Canyon Access Area TAC to be allocated to LAGC scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC IFQ vessels shall be allocated 355,900 lb (161 mt) in fishing year 2011, 532,460 lb (242 mt) in fishing year 2012, and 535,800 lb (243 mt) in fishing year 2013, which is 5.5 percent of the Hudson Canyon Access Area TAC for each fishing year. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TACs specified in paragraph (e)(4)(ii)(A) of this section, LAGC IFQ vessels are allocated a total of 593, 887, and 893 trips in the Hudson Canyon Access Area in fishing years 2011, 2012, and 2013, respectively. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be taken

by providing notification in the FEDERAL REGISTER, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Hudson Canyon Access Area, or enter the Hudson Canyon Access Area on a declared LAGC IFQ scallop trip after the effective date published in the FEDERAL REGISTER, unless transiting pursuant to paragraph (f) of this section.

(C) Scallops landed by each LAGC IFQ vessel on a Hudson Canyon Access Area trip shall count against that vessel's IFQ.

[71 FR 33228, June 8, 2006, as amended at 73 FR 30807, May 29, 2008; 73 FR 30808, May 29, 2008; 73 FR 54736, Sept. 23, 2008; 76 FR 43769, 43791, July 21, 2011; 77 FR 20740, Apr. 6, 2012; 77 FR 28314, May 14, 2012]

EFFECTIVE DATE NOTE: At 77 FR 28314, May 14, 2012, § 648.59 was amended by suspending paragraphs (a) and (b)(5)(i) and adding paragraph (b)(5)(iii), effective June 13, 2012, through Nov. 10, 2012.

§ 648.60 Sea scallop access area program requirements.

(a) A limited access scallop vessel may only fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9), and (b) through (f) of this section. An LAGC scallop vessel may fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, provided the vessel complies with the requirements specified in paragraph (g) of this section.

(1) *VMS*. Each vessel participating in the Sea Scallop Access Area Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraph (e) of this section.

(2) Vessels participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(f) and vessel notification requirements specified in § 648.11(g) for observer deployment.

(3) *Number of Sea Scallop Access Area trips*—(i) *Limited access vessel trips*. (A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, or has been allocated a compensation trip pursuant to paragraph (c) of this section.

(*1*) In fishing year 2011, if a full-time vessel engages in trip exchanges, as specified in § 648.60(a)(3)(ii), prior to the implementation of Framework 22, resulting in such vessel receiving a total of five access area trips due to the mid-year implementation of Framework 22, the vessel must relinquish one trip of the vessel owner's choice in fishing year 2011 from its available access area trip allocation in order not to exceed the allocation of four trips as specified in paragraph (a)(3)(i)(B) of this section. As soon as possible after the implementation of Framework 22, NMFS shall send a notification letter to the owner of such a vessel regarding the requirement that one of the vessel's unused access area trips must be relinquished in fishing year 2011 to account for the previous trip exchange. The vessel owner will be given the opportunity to select the area from which the trip will be deducted, with NMFS determining the area if the vessel owner fails to respond within 30 days according to instructions provided in such letter.

(*2*) [Reserved]

(B) *Full-time scallop vessels*.—(*1*) In fishing year 2011, each full-time vessel shall have a total of four access area trips and is subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(*4*) of this section. All full-time scallop vessels shall be allocated one trip in the Delmarva Access Area, one trip into the Hudson Canyon Access Area, and one trip into the Closed Area I Access Area. In addition, each vessel shall receive either an

additional trip into the Closed Area I Access Area or a trip into the Closed Area II Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and shall be made publically available on the Northeast Regional website prior to the start of the 2011 fishing year.

(*2*) In fishing year 2012, each full-time vessel shall have a total of four access area trips and is subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(*4*) of this section. All full-time vessels shall receive one trip into the Closed Area II Access Area and one trip into the Hudson Canyon Access Area. Each vessel shall also receive an additional two access area trips that must be allocated in one of the following combinations: One trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one additional trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and an additional trip in the Hudson Canyon Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area; or an additional trip in the Hudson Canyon Access Area and one in the Delmarva Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and shall be made publically available prior to the start of the 2012 fishing year. A full description of the random assignment process for FY 2012 is outlined in Section 2.4.2 of Framework 22 to the Scallop Fishery Management Plan.

(*3*) At the start of fishing year 2013, each full-time vessel shall have a total of four access area trips and are subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(*4*) of this section. The access area trip allocations for the 2013 fishing year are default allocations that are subject to change in a future framework adjustment. All full-time scallop vessels shall be allocated one trip in the Closed Area II Access Area, one trip in the Nantucket Lightship Access Area, and one trip in the Hudson Canyon Access Area. In addition, each vessel shall receive either an additional trip in the Hudson Canyon Access Area or in the Delmarva Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and will be made publically available prior to the start of the 2013 fishing year. A full description of the random assignment process for FY 2013 is outlined in Section 2.4.2 of Framework 22 to the Scallop Fishery Management Plan.

(*4*) A full-time scallop vessel may not fish for, possess, or retain more than a combined total of 18,000 lb (8,165 kg) of scallops during the period June 15 through October 31, the equivalent of one full trip possession limit specified in § 648.60(a)(5)(i), during this time period from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e). For example, a full-time vessel may possesses or land up to 18,000 lb (8,165 kg) from the Hudson Canyon Access Area, up to 18,000 lb (8,165 kg) from the Delmarva Access Area, or up to 18,000 lb (8,165 kg) combined from separate trips into each access area during June 15 through October 31. The remaining access area trips may be taken during the remainder of the fishing year. These possession and landing restrictions do not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through October 31. In addition, if the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has an allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in § 648.60(a)(5)(i), during this time period from the Delmarva and/or Hudson Canyon Access Areas combined.

(*i*) If, prior to the implementation of Framework 22, a full-time vessel with less than four total Mid-Atlantic access trips possesses or lands more than 18,000 lb (8,165 kg) from declared access

area trips into the Delmarva and Hudson Canyon Access Areas during June 15 through October 31 in fishing year 2011, that vessel shall not declare an access area trip in fishing year 2012 in the Mid-Atlantic during June 15 through October 31. Alternatively, a full-time vessel could account for the overage by exchanging trips with another vessel(s) so that it has an allocation of a total of four Mid-Atlantic trips and continue to fish up to a maximum of 36,000 lb (16,329 kg) (i.e., the equivalent of two full-time limited access trips) through October 31, 2011.

(*ii*) [Reserved]

(*5*) In fishing year 2012, each full-time vessel shall have a total of four access area trips and is subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(*4*) of this section. All full-time vessels shall receive one trip into the Closed Area II Access Area and one trip into the Hudson Canyon Access Area. Each vessel shall also receive an additional two access area trips that must be allocated in one of the following combinations: Two trips in the Closed Area I Access Area; one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one additional trip in the Hudson Canyon Access Area; or one trip in the Nantucket Lightship Access Area and an additional trip in the Hudson Canyon Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and shall be made publically available prior to the start of the 2012 fishing year. A full description of the random assignment process for FY 2012 is outlined in Section 2.4.2 of Framework 22 to the Scallop Fishery Management Plan.

(*i*) If a full-time vessel was allocated, declared, and fully harvested a 2012 fishing year Delmarva Access Area trip, as originally allocated under Framework Adjustment 22 management measures, prior to the Delmarva Access Area closure implemented under emergency action authority, it will not receive a 2012 fishing year Closed Area I Access Area trip once the Delmarva Access Area closes under emergency action. If the vessel terminated a 2012 fishing year Delmarva Access Area trip early and received a Delmarva Access Area compensation trip fish the remainder of its allowed possession limit, as specified in § 648.60(c), the compensation trip will reallocated to Closed Area I Access Area trip once the Delmarva Access Area closes under emergency action.

(*ii*) [Reserved]

(C) *Part-time scallop vessels*. (*1*) For the 2011 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Closed Area I Access Area; one trip in the Closed Area I Access Area and one trip in the Closed Area II Access Area; one trip in the Closed Area I Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Closed Area II Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Delmarva Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(*4*) of this section.

(*2*) For the 2012 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Hudson Canyon Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(*4*) of this section.

(*3*) For the 2013 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between

access areas as follows: Two trips in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area II Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Hudson Canyon Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(*4*) of this section. The access area trip allocations for the 2013 fishing year are default allocations and are subject to change in a future framework adjustment.

(*4*) A part-time scallop vessel may not fish for, possess, or retain more than a combined total of 14,400 lb (6,532 kg) of scallops, the equivalent of one full trip possession limit specified in § 648.60(a)(5)(i), during the period June 15 through October 31 from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e). For example, a part-time vessel may possess or land up to 14,400 lb (6,532 kg) from the Hudson Canyon Access Area, up to 14,400 lb (6,532 kg) from the Delmarva Access Area, or up to 14,400 lb (6,532 kg) combined from separate trips into each access area during June 15 through October 31. The remaining access area trips allocated to part-time vessels may be taken in the Hudson Canyon Access Area or Delmarva Access Area during the remainder of the fishing year, or taken in a different access area during the period of June 15 through October 31. These possession and landing restrictions do not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through October 31.

(*i*) If, prior to the implementation of Framework 22, a part-time vessel possesses or lands more than 14,400 lb (6,532 kg) from declared access area trips into the Delmarva and Hudson Canyon Access Areas combined during June 15 through October 31 in fishing year 2011, that vessel shall not declare an access area trip in fishing year 2012 in the Mid-Atlantic during June 15 through October 31.

(*ii*) [Reserved]

(*5*) For the 2012 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Hudson Canyon Access Area; two trips in the Closed Area I Access Area; one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one trip in the Hudson Canyon Access Area; or one trip in the Nantucket Lightship Access Area and one trip in the Hudson Canyon Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(*4*) of this section.

(D) *Occasional scallop vessels.* (*1*) For the 2011 fishing year, an occasional scallop vessel may take one trip in the Closed Area I Access Area, or one trip in the Closed Area II Access Area, or one trip in the Hudson Canyon Access Area, or one trip in the Delmarva Access Area.

(*2*) For the 2012 fishing year, an occasional scallop vessel may take one trip in the Hudson Canyon Access Area, or one trip in the Closed Area I Access Area, or one trip in the Closed Area II Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Delmarva Access Area.

(*3*) For the 2013 fishing year, an occasional scallop vessel may take one trip in the Hudson Canyon Access Area, or one trip in the Closed Area II Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Delmarva Access Area. The access area trip allocations for the 2013 fishing year are default allocations and are subject to change in a future framework adjustment.

(*4*) For the 2012 fishing year, an occasional scallop vessel may take one trip in the Hudson Canyon Access Area, or one trip in the Closed Area I Access Area, or one trip in the Closed Area II Access Area, or one trip in the Nantucket Lightship Access Area.

(E) [Reserved]

(ii) *One-for-one area access trip exchanges*. If the total number of trips allocated to a vessel into all Sea Scallop Access Areas combined is more than one, the owner of a vessel issued a limited access scallop permit may exchange, on a one-for-one basis, unutilized trips into one access area for another vessel's unutilized trips into another Sea Scallop Access Area. One-for-one exchanges may be made only between vessels with the same permit category. For example, a full-time vessel may not exchange trips with a part-time vessel, and vice versa. Vessel owners must request the exchange of trips by submitting a completed Trip Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Trip exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Trip Exchange Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has unutilized trips remaining to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the trip exchange has been made effective. A vessel owner may exchange trips between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange trips between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(A) *Trip exchanges involving Elephant Trunk Access Area trips that occur in the 2011 fishing year prior to the implementation of Framework 22*. See § 648.53(b)(4)(vii).

(B) [Reserved]

(iii) [Reserved]

(4) *Area fished*. While on a Sea Scallop Access Area trip, a vessel may not fish for, possess, or land scallops in or from areas outside the Sea Scallop Access Area in which the vessel operator has declared the vessel will fish during that trip, and may not enter or exit the specific declared Sea Scallop Access Area more than once per trip. A vessel on a Sea Scallop Access Area trip may not enter or be in another Sea Scallop Access Area on the same trip except such vessel may transit another Sea Scallop Access Area provided its gear is stowed in accordance with § 648.23(b).

(i) *Reallocation of trips into open areas*. If the yellowtail flounder TAC allocated for a Scallop Access Area specified in § 648.59(b) through (d) has been harvested and such area has been closed, a vessel with trips remaining to be taken in such Access Areas may fish the remaining DAS associated with the unused trip(s) in Open Areas, up to the maximum DAS specified in § 648.53(b)(4)(i) through (iii).

(ii) [Reserved]

(5) *Possession and landing limits*—(i) *Scallop possession limits*. Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph (a)(5). Full-time and part-time vessels shall not fish for, possess, or retain more than 18,000 lb (8,165 kg) and 14,400 lb (6,532 kg), respectively, of scallops from the Hudson Canyon and Delmarva Access Areas, combined, from trips taken between June 15 and October 31 (i.e., the equivalent of one full trip based on permit category). In addition, if the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has a total allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in paragraph (a)(5)(i) of this section, during this time period from the Delmarva and/or Hudson Canyon Access Areas. These possession and landing restrictions do not include the additional possession allowance to defray the cost of carrying an observer as specified in paragraph (d) of this section that occur during observed trips between June 15 and October 31. No vessel declared into the Access Areas as described in § 648.59(a) through (e) may possess more than 50 bu (17.62 hL)

of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2010	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)
2012	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)
2013	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)

(ii) *NE multispecies possession limits and yellowtail flounder TACs*. A limited access scallop vessel that is declared into a trip and fishing within the Sea Scallop Access Areas described in § 648.59(b) through (d), and issued a valid NE multispecies permit as specified in § 648.4(a)(1), may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, excluding yellowtail flounder, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(1), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section. Such vessel is subject to the seasonal restriction established under the Sea Scallop Area Access Program and specified in § 648.59(b)(4), (c)(4), and (d)(4).

(A) *Atlantic cod*. Such vessel may bring onboard and possess only up to 100 lb (45.4 kg) of Atlantic cod per trip, provided such fish is intended for personal use only and cannot be not sold, traded, or bartered.

(B) *Haddock*. Such vessels may possess and land haddock up to the overall possession limit of all NE multispecies combined, as specified in paragraph (a)(5)(ii) of this section, except that such vessels are prohibited from possessing or landing haddock from January 1 through June 30.

(C) *Yellowtail flounder*. Such vessel must retain all yellowtail flounder that meet the minimum size restrictions specified under § 648.83(a)(1).

(*1*) [Reserved]

(*2*) *U.S./Canada Area TAC availability*. After declaring a trip into and fishing in the Closed Area I or Closed Area II Access Area described in § 648.59(b) and (c), a scallop vessel that has a valid NE multispecies permit, as specified in § 648.4(a)(1), may possess and land yellowtail flounder, provided that the Regional Administrator has not issued a notice that the U.S./Canada yellowtail flounder TAC specified in § 648.85(a)(2) has been harvested. If the yellowtail flounder TAC established for the U.S./Canada Management Area pursuant to § 648.85(a)(2) has been or is projected to be harvested, as described in § 648.85(a)(3)(iv)(C)(*3*), scallop vessels are prohibited from possessing or landing yellowtail flounder in or from the Closed Area I and Closed Area II Access Areas.

(*3*) [Reserved]

(iii)–(iv) [Reserved]

(6) *Gear restrictions*. (*i*) The minimum ring size for dredge gear used by a vessel fishing on a Sea Scallop Access Area trip is 4 inches (10.2 cm) in diameter. Dredge or trawl gear used by a vessel fishing on a Sea Scallop Access Area trip must be in accordance with the restrictions specified in § 648.51(a) and (b).

(*ii*) Vessels fishing in the Closed Area I, Closed Area II, and Nantucket Lightship Closed Area Sea Scallop Access Areas described in § 648.59(b) through (d) are prohibited from fishing with trawl gear as specified in § 648.51(f)(1).

(7) *Transiting*. While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed in accordance with § 648.23(b), unless there is a compelling safety reason to be transiting the area without gear stowed.

(8) *Off-loading restrictions*. The vessel may not offload its catch from a Sea Scallop Access Area trip at more than one location per trip.

(9) *Reporting*. The owner or operator must submit reports through the VMS, as specified in § 648.10(f)(4)(i).

(b) [Reserved]

(c) *Compensation for Sea Scallop Access Area trips terminated early.* If a Sea Scallop Access Area trip is terminated before catching the allowed possession limit, the vessel may be authorized to fish an additional trip in the same Sea Scallop Access Area based on the following conditions and requirements.

(1) The vessel owner/operator has determined that the Sea Scallop Access Area trip should be terminated early for reasons deemed appropriate by the operator of the vessel;

(2) The amount of scallops landed by the vessel for the trip must be less than the maximum possession limit specified in paragraph (a)(5) of this section;

(3) The vessel owner/operator must report the termination of the trip prior to entering the access area if the trip is terminated while transiting to the area, or prior to leaving the Sea Scallop Access Area if the trip is terminated after entering the access area, by VMS e-mail messaging, with the following information: Vessel name, vessel owner, vessel operator, time of trip termination, reason for terminating the trip (for NMFS recordkeeping purposes), expected date and time of return to port, and amount of scallops on board in pounds;

(4) The vessel owners/operator must request that the Regional Administrator authorize an additional trip as compensation for the terminated trip by submitting a written request to the Regional Administrator within 30 days of the vessel's return to port from the terminated trip; and

(5) The Regional Administrator shall authorize the vessel to take an additional trip and shall specify the amount of scallops that the vessel may land on such trip pursuant to the calculation specified in paragraph (c)(5)(i) of this section. Such authorization shall be made within 10 days of receipt of the formal written request for compensation.

(i) The amount of scallops that can be landed on an authorized additional compensation Sea Scallop Access Area trip shall equal the possession limit specified in paragraph (a)(5) of this section minus the amount of scallops landed on the terminated trip. For example, if the possession limit for a full-time vessel is 18,000 lb (8,165 kg) per trip, and the vessel lands 6,500 lb (2,948.4 kg) of scallops and requests compensation for the terminated trip, the possession limit for the additional trip is 11,500 lb (5,216.3 kg) or 18,000 lb (8,165 kg) minus 6,500 lb (2,948.4 kg)).

(ii) If a vessel is authorized more than one additional compensation trip into any Sea Scallop Access Area as the result of more than one terminated trip in the same Access Area, the possession limits for the authorized trips may be combined, provided the total possession limit on a combined additional compensation trip does not exceed the possession limit for a trip as specified in paragraph (a)(5) of this section. For example, a vessel that has two broken trips with corresponding additional compensation trip authorizations of 10,000 lb (4,536 kg) and 8,000 lb (3,629 kg) may combine the authorizations to allow one compensation trip with a possession limit of 18,000 lb (8,165 kg).

(A) Pursuant to paragraphs (a)(3)(i)(B)(*4*) or (a)(3)(i)(C)(*4*) of this section, a full-time or part-time vessel may not take a compensation trip based on a single or multiple terminated trip(s) during the period June 15 through October 31 if the compensation trip would allow a vessel to land more than 18,000 lb (8,165 kg) or 14,400 lb (6,532 kg) (i.e., the equivalent of one full access area trip), respectively, during the period June 15 through October 31, in the Hudson Canyon Access Area and Delmarva Access Area combined. For example, a vessel that terminated a trip in the Delmarva Access Area on June 1, 2011, and intends to declare two full trips in the Hudson Canyon Access Area access area from June 15 through October 31, must wait to fish its compensation trip in the Delmarva Access Area until on or after November 1, 2011. If the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has an allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip

possession limits specified in paragraph 648.60(a)(5)(i) of this section, during this time period from the Delmarva and/or Hudson Canyon Access Areas.

(B) [Reserved]

(iii) A vessel operator must comply with all notification requirements prior to taking an additional compensation trip, and for each such trip, must enter a trip identification number by entering the number in the VMS for each such trip. The trip identification number will be included in the Regional Administrator's authorization for each additional compensation trip. If a vessel operator is combining additional compensation trips, the trip identification numbers from each authorization must be entered into VMS.

(iv) [Reserved]

(v) *Additional compensation trip carryover*. If an Access Area trip conducted during the last 60 days of the open period or season for the Access Area is terminated before catching the allowed possession limit, and the requirements of paragraph (c) of this section are met, the vessel operator shall be authorized to fish an additional trip as compensation for the terminated trip in the following fishing year. The vessel owner/operator must take such additional compensation trips, complying with the trip notification procedures specified in paragraph (a)(2)(iii) of this section, within the first 60 days of that fishing year the Access Area first opens in the subsequent fishing year. For example, a vessel that terminates an Delmarva Access Area trip on December 29, 2011, must declare that it is beginning its additional compensation trip during the first 60 days that the Delmarva Access Area is open (March 1, 2012, through April 29, 2012). If an Access Area is not open in the subsequent fishing year, then the additional compensation trip authorization would expire at the end of the Access Area Season in which the trip was broken. For example, a vessel that terminates a Closed Area I trip on December 10, 2012, may not carry its additional compensation trip into the 2013 fishing year because Closed Area I is not open during the 2013 fishing year, and must complete any compensation trip by January 31, 2013.

(d) *Possession limit to defray costs of observers*—(1) *Observer set-aside limits by area*—(i) *Nantucket Lightship Access Area*. For the 2012 and 2013 fishing years, the observer set-asides for the Nantucket Lightship Access Area are 36,000 lb (16 mt) and 84,450 lb (38 mt), respectively.

(ii) *Closed Area I Access Area*. For the 2011 and 2012 fishing years, the observer set-asides for the Closed Area I Access Area are 111,540 lb (51 mt) and 36,000 lb (316 mt), respectively.

(iii) *Closed Area II Access Area*. For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Closed Area II Access Area are 35,060 lb (16 mt), 67,890 lb (31 mt), and 79,600 lb (36 mt), respectively.

(iv) *Delmarva Access Area*. For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Delmarva Access Area are 74,360 lb (34 mt), 36,000 lb (316 mt), and 42,230 lb (19 mt), respectively.

(v) *Hudson Canyon Access Area*. For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Hudson Canyon Access Area are 74,360 lb (34 mt), 107,980 lb (49 mt), and 126,680 lb (57 mt), respectively.

(vi) *Closed Area I Access Area*. For the 2011 and 2012 fishing years, the observer set-asides for the Closed Area I Access Area are 111,540 lb (51 mt) and 72,000 lb (33 mt), respectively.

(2) *Increase in the possession limit to defray the costs of observers*. The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified in paragraph (d)(1) of this section. An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise

notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) *Sea Scallop Research Set-Aside Harvest in Access Areas*—(1) *Access Areas available for harvest of research set-aside (RSA)*. RSA may be harvested in any access area that is open in a given fishing year, as specified through a framework adjustment and pursuant to § 648.56. The amount of pounds that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2011 through 2013 are:

(i) *2011:* Delmarva Access Area, Hudson Canyon Access Area, Closed Area I Access Area, and Closed Area II Access Area.

(ii) *2012:* Delmarva Access Area, Hudson Canyon Access Area, Closed Area I Access Area, Closed Area II Access Area, and Nantucket Lightship Access Area.

(iii) *2013:* Delmarva Access Area, Hudson Canyon Access Area, Nantucket Lightship Access Area, and Closed Area II Access Area.

(iv) *2012:* Hudson Canyon Access Area, Closed Area I Access Area, Closed Area II Access Area, and Nantucket Lightship Access Area.

(2) *Increase of possession limit to defray the costs of sea scallop research*. The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section or allow additional trips into a Sea Scallop Access Area to defray costs for approved sea scallop research up to the amount specified in paragraph (e)(1) of this section.

(3) *Yellowtail flounder research TAC set-aside*. Vessels conducting research approved under the process described in § 648.56, and in the Access Areas specified in § 648.59(b) through (d) may harvest cumulative yellowtail flounder up to a total amount that equals 0.2 percent of the yellowtail flounder TACs established annually, according to the specification procedure described in § 648.85(a)(2), and subject to the possession limits specified in paragraph (a)(5)(ii)(C) of this section. Once 0.2 percent of the yellowtail flounder TACs established according to the specification procedure described in § 648.85(a)(2) has been harvested by research vessels, research may no longer be authorized in the applicable Access Area.

(f) *VMS polling*. For the duration of the Sea Scallop Area Access Program, as described in this section, all sea scallop vessels equipped with a VMS unit shall be polled at a minimum of twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs of polling twice per hour.

(g) *Limited Access General Category Vessels*. (1) An LAGC scallop vessel may only fish in the scallop access areas specified in § 648.59(a) through (e), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (9), (d), (e), (f), and (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips

(2) *Limited Access General Category Gear restrictions*. An LAGC IFQ scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in Closed Area I, Closed Area II, and Nantucket Lightship Access Areas may not exceed 10.5 ft (3.2 m). The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in the remaining Access Areas described in § 648.59 may not exceed 31 ft

(9.4 m). Dredge width is measured at the widest point in the bail of the dredge.

(3) *LAGC IFQ Access Area Trips.* An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips specified in § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been or are projected to be taken. Upon a determination from the Regional Administrator that the total number of LAGC IFQ trips in a specified Access Area have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act. Once this determination has been made, an LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the specified Access Area after the effective date of the notification published in the FEDERAL REGISTER.

(4) *Possession Limits*—(i) *Scallops.* A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS, and that has not enrolled in the LAGC Access Area fishery, is prohibited from possessing scallops. An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) may possess scallops up to the possession limit specified in § 648.52(a).

(ii) *Other species.* Unless issued an LAGC scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Access Areas specified in § 648.59(a) through (e) is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8).

(5) *Number of trips.* An LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the Access Areas specified in § 648.59(a) through (e) after the effective date of the notification published in the FEDERAL REGISTER, stating that the total number of trips specified in § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been, or are projected to be, taken by LAGC IFQ scallop vessels.

[71 FR 33231, June 8, 2006, as amended at 72 FR 32559, June 13, 2007; 72 FR 72629, Dec. 21, 2007; 73 FR 20130, Apr. 14, 2008; 73 FR 30810, May 29, 2008; 74 FR 20555, May 4, 2009; 75 FR 18371, Apr. 9, 2010; 75 FR 36574, June 28, 2010; 75 FR 63723, Oct. 18, 2010; 76 FR 43769, 43795, July 21, 2011; 77 FR 26122, May 2, 2012; 77 FR 20741, Apr. 6, 2012; 77 FR 28314, June 13, 2012]

EFFECTIVE DATE NOTE: At 77 FR 28314, May 14, 2012, § 648.60 was amended by suspending paragraphs (a)(3)(i)(B)(*2*), (a)(3)(i)(C)(*2*), (a)(3)(i)(D)(*2*), (d)(1)(ii), (d)(1)(iv), and (e)(1)(ii), and adding paragraphs (a)(3)(i)(B)(*5*), (a)(3)(i)(C)(*5*), (a)(3)(i)(D)(*4*), (d)(1)(vi), and (e)(1)(iv), effective June 13, 2012, through Nov. 10, 2012.

§ 648.61 EFH closed areas.

(a) No vessel fishing for scallops, or person on a vessel fishing for scallops, may enter, fish in, or be in the EFH Closure Areas described in paragraphs (a)(1) through (6) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(1) *Western GOM Habitat Closure Area.* The restrictions specified in paragraph (a) of this section apply to the Western GOM Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

WESTERN GOM HABITAT CLOSURE AREA

Point	N. lat.	W. long.
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′
WGM5	42°15′	70°00′
WGM6	43°15′	70°00′
WGM4	43°15′	70°15′

(2) *Cashes Ledge Habitat Closure Area.* The restrictions specified in paragraph (a) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

CASHES LEDGE HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CLH1	43°01′	69°03′
CLH2	43°01′	68°52′
CLH3	42°45′	68°52′
CLH4	42°45′	69°03′
CLH1	43°01′	69°03′

(3) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (a) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

JEFFREY'S BANK HABITAT CLOSURE AREA

Point	N. lat.	W. long.
JB1	43°40′	68°50′
JB2	43°40′	68°40′
JB3	43°20′	68°40′
JB4	43°20′	68°50′
JB1	43°40′	68°50′

(4) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (a) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bounded by straight lines connecting the following points in the order stated, and so that the line connecting points CI1 and CIH1, and CI2 and CIH3 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between those points:

CLOSED AREA I—NORTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CI1	41°30′	69°23′
CI4	41°30′	68°30′
CIH1	41°26′	68°30′
CIH2	41°04.30′ N	69°01.29′ W
CI1	41°30′	69°23′

CLOSED AREA I—SOUTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIH3	40°54.95′ N	68°53.40′ W
CIH4	40°58′	68°30′
CI3	40°45′	68°30′
CI2	40°45′	68°45′
CIH3	40°54.95′ N	68°53.40′ W

(5) *Closed Area II Habitat Closure Area.* The restrictions specified in this paragraph (a) apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bounded by straight lines connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
CIIH1	42°10′	67°20′
CIIH2	42°10′	67°9.3′
CIIH3	42°00′	67°0.5′
CIIH4	42°00′	67°10′
CIIH5	41°50′	67°10′
CIIH6	41°50′	67°20′
CIIH1	42°10′	67°20′

(6) *Nantucket Lightship Habitat Closure Area.* The restrictions specified in paragraph (a) of this section apply to the Nantucket Lightship Habitat Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

NANTUCKET LIGHTSHIP HABITAT CLOSED AREA

Point	N. lat.	W. long.
NLH1	41°10′	70°00′
NLH2	41°10′	69°50′
NLH3	40°50′	69°30′
NLH4	40°20′	69°30′
NLH5	40°20′	70°00′
NLH1	41°10′	70°00′

(b) *Transiting.* A vessel may transit the EFH Closure Areas as defined in paragraphs (a)(1) through (6) of this section, unless otherwise restricted, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit the CAII EFH closed area, as defined in paragraph (a)(6) of this section, provided there is a compelling safety reason to enter the area and all gear is stowed in accordance with the provisions of § 648.23(b).

[76 FR 43770, July 21, 2011, as amended at 77 FR 20741, Apr. 6, 2012]

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(a) The NGOM scallop management area is the area north of 42°20' N. lat. and within the boundaries of the Gulf of Maine Scallop Dredge Exemption Area as specified in § 648.80(a)(11). To fish for or possess scallops in the NGOM scallop management area, a vessel must have been issued a scallop permit as specified in § 648.4(a)(2).

(1) If a vessel has been issued a NGOM scallop permit, the vessel is restricted to fishing for or possessing scallops only in the NGOM scallop management area.

(2) Scallop landings by vessels issued NGOM permits shall be deducted from the NGOM scallop total allowable catch when vessels fished all or part of a trip in the Federal waters portion of the NGOM. If a vessel with a NGOM scallop permit fishes exclusively in state waters within the NGOM, scallop landings from those trips will not be deducted from the Federal NGOM quota.

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area shall be deducted from the NGOM scallop total allowable catch specified in paragraph (b) of this section. Scallop landings by IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by incidental catch scallop vessels and limited access scallop vessels fishing under the scallop DAS program shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

(4) A vessel issued a NGOM or IFQ scallop permit that fishes in the NGOM may fish for, possess, or retain up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(b) *Total allowable catch.* The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The ABC/ACL as specified in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the ABC/ACL specified in § 648.53(a).

(1) *NGOM annual hard TACs.* The annual hard TAC for the NGOM is 70,000 lb (31.8 mt) for the 2011, 2012, and 2013 fishing years. The NGOM TAC for the 2013 fishing year is a default allocation and is subject to change in a future framework adjustment.

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the NGOM scallop management area with all fishing gear stowed in accordance with § 648.23(b), no vessel issued a scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the FEDERAL REGISTER that the NGOM scallop total allowable catch in accordance with this paragraph (b) has been reached. Once the NGOM hard TAC is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

(3) If the TAC specified in paragraph (b)(1) of this section is exceeded, the amount of NGOM scallop landings in excess of the TAC specified in paragraph (b)(1) of this section shall be deducted from the NGOM TAC for the subsequent fishing year, as soon as practicable, once scallop landings data for the NGOM fishery is available.

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a trip under the scallop DAS program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM permit, the vessel can declare either a Federal NGOM trip or a state-

waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

(d) *Gear restrictions.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have properly declared a trip under the scallop DAS program, the combined dredge width in use by, or in possession on board, LAGC scallop vessels fishing in the NGOM scallop management area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

[73 FR 20131, Apr. 14, 2008, as amended at 75 FR 36576, June 28, 2010; 76 FR 43770, 43797, July 21, 2011; 77 FR 20741, Apr. 6, 2012]

§ 648.63 General category Sectors and harvesting cooperatives.

(a) *Procedure for implementing Sector allocation proposals.* (1) Any person may submit a Sector allocation proposal for a group of LAGC scallop vessels to the Council, at least 1 year in advance of the start of the proposed sector, and request that the Sector be implemented through a framework procedure specified at § 648.55, in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation be initiated, the Council shall follow the framework adjustment provisions of § 648.55. Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector remain subject to the LAGC scallop vessel regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1) and (c) of this section, and comply with the conditions and restrictions of this paragraph (b).

(1) *Participation.* (i) Only LAGC scallop vessels are eligible to form Sectors, and Sectors may choose which eligible permit holders to include or exclude in the sector, consistent with all applicable law. A Sector may establish additional criteria for determining its membership, provided such criteria are specified in the Sector's operations plan and are consistent with all applicable law. Any interested group that meets the eligibility criteria may submit a proposal for a Sector. To initiate the process of Sector creation, a group (two or more) of permit holders must agree to cooperate and submit a binding plan for management of that Sector's allocation of total allowable catch. Vessels that do not choose to participate in a sector will fish under the IFQ program and remain in the non-sector scallop fishery.

(ii) Participation by incidental catch or NGOM scallop vessels in the Sector is subject to approval by the Council as part of the action that implements the Sector allocation, provided the details of such participation are specified in the Sector's operations plan. A Sector allocation may be harvested by non-Sector members, provided the Sector operations plan specifies that the Sector may authorize non-Sector vessels to harvest the Sector allocation. In this case, if the Sector is approved, the landings history of the participating non-Sector vessels may not be used in the calculation of future Sector shares and may not be used as scallop catch history for such vessels. The operations plan must specify how such participating non-Sector shall be subject to the rules of the Sector.

(iii) Once a vessel operator and/or vessel owner signs a binding contract to have his/her vessel participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(iv) Vessels that fish in the LAGC scallop fishery outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for IFQ used, or catch by the vessel, prior to implementation of the Sector.

(v) Once a vessel operator and/or vessel owner has agreed to participate in a Sector as specified in paragraph (b)(1)(iii) of this section, that vessel

must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(vi) Vessels and vessel operators and/or vessel owners removed from a Sector for violation of the Sector rules will not be eligible to fish under the scallop regulations for non-Sector vessels specified under this part either for any period specified in the final decision of penalty or sanction.

(vii) If a pre-existing Sector accepts a new member, the percentage share brought to the Sector is based on that vessel's average qualification landings at the time it joins the Sector (*i.e.*, the vessel is treated as a ''Sector of one'' and a share based on the appropriate adjusted TACs is calculated). This new single-vessel-Sector share is added to the existing Sector. If a vessel leaves a Sector, that Sector's share is reduced by the individual vessel share the exiting vessel had when it joined the Sector.

(viii) A vessel may not be a member of more than one Sector. Once a vessel enters into a Sector, it cannot fish during that fishing year under the regulations that apply to the common pool. Additionally, vessels cannot shift from one Sector to another during a single fishing year. Therefore, if a vessel leaves a Sector for any reason, it cannot participate in the general category scallop fishery during the remainder of that fishing year

(2) *Allocation of TAC to Sectors*. (i) The sector allocation shall be equal to a percentage share of the ACL allocation for IFQ scallop vessels specified in § 648.53(a), similar to an IFQ scallop vessel's IFQ as specified in § 648.53(h). The sector's percentage share of the IFQ scallop fishery ACL catch shall not change, but the amount of allocation based on the percentage share will change based on the ACL specified in § 648.53(a).

(ii) *Sector share determination*. When a Sector proposal is submitted, NMFS shall verify the contribution percentage as specified in § 648.53(h)(2)(iii) for each vessel listed as a Sector member. The Sector's share shall be the sum of the participating vessels' contribution percentages.

(iii) A sector shall not be allocated more than 20 percent of the ACL for IFQ vessels specified in § 648.53(a)(4)(i) or (ii).

(3) Once a Sector's allocation is projected to be harvested, Sector operations will be terminated for the remainder of the fishing year.

(4) If a Sector's allocation is exceeded in a given fishing year, the Sector, each vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanction pursuant to 15 CFR part 904. If a Sector exceeds its allocation in more than one fishing year, the Sector's authorization to operate may be withdrawn.

(5) A vessel operator and/or vessel owner participating in a Sector is not subject to the limit on the vessel's catch based on the vessel's own IFQ or contribution percentage as defined in § 648.53(h)(2)(iii), provided the vessel is participating in the Sector and carries on board a Letter of Authorization to participate in the Sector and exempts the vessel from its IFQ limit and any other related measures. The Sector shall determine how the Sector's allocation will be divided between its participating vessels, regardless of whether the catch by a participating vessel exceeds that vessel's own IFQ.

(6) Each vessel operator and/or vessel owner fishing under an approved Sector must comply with all scallop management measures of this part and other applicable law, unless exempted under a Letter of Authorization, as specified in paragraph (b)(11) of this section. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operations Plan specified in paragraph (c) of this section and the Letter of Authorization issued pursuant to paragraph (b)(11) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(7) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(8) It shall be the responsibility of each Sector to track its activity and internally enforce any provisions adopted through procedures established in the operations plan and agreed to through the Sector contract. Sector contracts should describe graduated sanctions, including grounds for expulsion of Sector member vessels. The Sector and participating Sector vessels shall be subject to NMFS enforcement action for violations of the regulations pertaining to Sectors and other regulations under 50 CFR part 648. Vessels operating within a Sector are responsible for judgments against the Sector. Sector operations plans shall specify how a Sector will monitor its landings to assure that Sector landings do not exceed the Sector allocation. At the end of the fishing year, NMFS shall evaluate landings using VMS and any other available information to determine whether a Sector has exceeded any of its allocations based on the list of participating vessels submitted in the operations plan. If a Sector exceeds its TAC, the Sector may have its authorization as a Sector withdrawn by the Regional Administrator, after consultation with the Council, and may be subject to enforcement action.

(9) Permanent or temporary transfers of allocation between Sectors or between Sector and non-Sector participants is prohibited. For purposes of harvesting a Sector allocation only, vessels under contract to a Sector are assumed to be part of that Sector for the duration of that contract.

(10) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(11) If a Sector is approved as specified in paragraph (d)(3) of this section, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or owner for the participating Sector vessel. The Letter of Authorization shall authorize participation in the Sector operations and may exempt the participating vessel from the requirement that the vessel cannot exceed its own IFQ and related measures. The Letter of Authorization may include requirements and conditions deemed necessary to ensure effective administration of and compliance with the Sector's operations plan and the Sector's allocation.

(c) *Operations plans.* (1) A group that wants to form a Sector and receive an allocation must submit a legally binding operations plan to the Council and the Regional Administrator. The operations plan must be agreed upon and signed by all members of the Sector and, if approved, shall constitute a contract.

(2) The operations plan among all of the Sector members must have, at a minimum, the following components:

(i) A list of all participants;

(ii) A contract signed by all participants indicating their agreement to abide by the operations plan;

(iii) An entity name, address, phone number, and the name and contact information for a Sector representative (a manager or director) that NMFS can contact regarding Sector management issues;

(iv) A plan explaining how the Sector will harvest its allocation, including methods to inform NMFS of changes in those arrangements over the year;

(v) The original distribution of catch history of vessels in the Sector (maintaining vessel data confidentiality);

(vi) A plan detailing how the Sector will avoid exceeding its allocated TACs, including provisions for monitoring and enforcement of the Sector regulations, and documenting all landings and discards;

(vii) Rules for entry to and exit from the Sector, including sanctions and procedures for removing members who do not comply with the operations plan;

(viii) Procedure for notifying NMFS if a member is no longer part of the Sector and the reason for leaving;

(ix) The process through which the operations plan can be amended by Sector members;

(x) If the Sector plans to authorize non-Sector vessels to harvest scallops allocated to the Sector, details of such arrangements must be described in the operations plan;

(xi) Any documents and analyses necessary to comply with the National Environmental Protection Act must be submitted to NMFS. The development of the analytical document is the responsibility of the applicants.

(xii) Any other information determined to be necessary and appropriate.

(d) *Sector review, approval, and revocation.* (1) A Sector shall submit its operations plan and any NEPA documents to the Regional Administrator and the Council no less than 1 year prior to the date that it wishes to begin operations under the Sector. The Council shall consider this plan in the course of the periodic framework adjustment or specification process and may, if approved, implement it through either of those processes. After Council approval of a Sector, the details of its operation shall be addressed between the Sector and NMFS, although the New England Fishery Management Council may review and provide comment on the proposed details.

(2) The Regional Administrator may withdraw approval of a Sector at any time if he/she, in consultation with the New England Fishery Management Council, determines that Sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a Sector shall be completed after notice and comment rulemaking, pursuant to the Administrative Procedure Act.

(3) A Sector is required to resubmit its operations plan to the Regional Administrator no later than July 1 of each year, whether or not the plan has changed. Once the submission documents specified under paragraphs (a)(1) and (c)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

[73 FR 20131, Apr. 14, 2008, as amended at 77 FR 20741, Apr. 6, 2012]

§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder. Unless otherwise specified in § 648.90(a)(4)(iii)(C) of the NE multispecies regulations, the sub-ACLs for the 2011 through 2013 fishing years are as follows:

(1) *2011.* 82 mt for the Southern New England/Mid-Atlantic stock of yellowtail flounder and 200.8 mt for the Georges Bank stock of yellowtail flounder.

(2) *2012.* 127 mt for the Southern New England/Mid-Atlantic stock of yellowtail flounder and 307.5 mt for the Georges Bank stock of yellowtail flounder.

(3) *2013.* To be determined.

(b) *Georges Bank accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (b)(2) of this section:

GEORGES BANK YELLOWTAIL CLOSURE

Point	N. lat.	W. long.
GBYT AM 1	41°50′	66°51.94′
GBYT AM 2	40°30.75′	65°44.96′
GBYT AM 3	40°30′	66°40′
GBYT AM 4	40°40′	66°40′
GBYT AM 5	40°40′	66°50′
GBYT AM 6	40°50′	66°50′
GBYT AM 7	40°50′	67°00′
GBYT AM 8	41°00′	67°00′
GBYT AM 9	41°00′	67°20′
GBYT AM 10	41°10′	67°20′
GBYT AM 11	41°10′	67°40′
GBYT AM 12	41°50′	67°40′
GBYT AM 1	41°50′	66°51.94′

(2) *Duration of closure.* The Georges Bank yellowtail flounder accountability measure closed area shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

(i) For years when the Closed Area II Sea Scallop Access Area is open, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
3 or less	October through November.
3.1–14	September through November.
14.1–16	September through January.
16.1–39	August through January.
39.1–56	July through January.
Greater than 56	March through February.

(ii) For fishing years when the Closed Area II Sea Scallop Access Area is closed to scallop fishing, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
1.9 or less	September through November.
2.0–2.9	August through January.
3.0–3.9	March and August through February.
4.0–4.9	March and July through February.
5.0–5.9	March through May and July through February.
6.0 or greater	March through February.

(c) *Southern New England/Mid-Atlantic accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (c)(2) of this section:

SOUTHERN NEW ENGLAND YELLOWTAIL CLOSURE

Point	N. lat.	W. long.
SNEYT AM 1	41°28.4′	71°10.25′
SNEYT AM 2	41°28.57′	71°10′
SNEYT AM 3	41°20′	71°10′
SNEYT AM 4	41°20′	70°50′
SNEYT AM 5	41°20′	70°30′
SNEYT AM 6	41°18′	70°15′
SNEYT AM 7	41°17.69′	70°12.54′
SNEYT AM 8	41°14.73′	70°00′
SNEYT AM 9	39°50′	70°00′
SNEYT AM 10	39°50′	71°00′
SNEYT AM 11	39°50′	71°40′
SNEYT AM 12	40°00′	71°40′
SNEYT AM 13	40°00′	73°00′
SNEYT AM 14	40°41.23′	73°00′
SNEYT AM 15	41°00′	71°55′
SNEYT AM 16	41°00′	71°40′
SNEYT AM 17	41°20′	71°40′
SNEYT AM 18	41°21.15′	71°40′

(2) *Duration of closure.* The Southern New England/Mid-Atlantic yellowtail flounder accountability measure closed area shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL, as follows:

Percent overage of YTF sub-ACL	Length of closure
2 or less	March through April.
2.1–3	March through April, and February.
3.1–7	March through May, and February.
7.1–9	March through May and January through February.
9.1–12	March through May and December through February.
12.1–15	March through June and December through February.
15.1–16	March through June and November through February.
16.1–18	March through July and November through February.
18.1–19	March through August and October through February.
19.1 or more	March through February.

(d) *Exemption for LAGC IFQ vessels.* Vessels issued an LAGC IFQ permit and fishing under the LAGC IFQ scallop fishery shall be exempt from the closure(s) specified in paragraphs (b) and (c) of this section. Yellowtail bycatch by such vessels shall be counted against the applicable yellowtail flounder sub-ACL specified in paragraph (a) of this section.

(e) *Process for implementing the AM.* On or about January 15 of each year, based upon catch and other information available to NMFS, the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year ending on February 28/29. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this initial projection in mid-January, the Regional Administrator shall implement the AM in accordance with the APA and notify owners of limited access scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure. The initial projected estimate shall be updated after the end of each scallop fishing

year once complete fishing year information becomes available. An AM implemented at the start of the fishing year will be reevaluated and adjusted proportionately, if necessary, once updated information is obtained. For example, if in January 2013, the preliminary estimate of 2012 Southern New England/Mid-Atlantic yellowtail flounder catch is estimated to be 5 percent over the 2012 sub-ACL, the Regional Administrator shall implement AMs for the 2013 scallop fishing year in that stock area. Based on the schedule in paragraph (c)(2) of this section, limited access vessels would be prohibited from fishing in the area specified in paragraph (c)(1) of this section for 4 months (i.e., March through May 2013, and February 2014). Continuing the example, after the 2012 fishing year is completed, if the final estimate of Southern New England/Mid-Atlantic yellowtail flounder catch indicates the scallop fishery caught 1.5 percent of the sub-ACL, rather than 5 percent, the Regional Administrator, in accordance with the APA, would adjust the AM for the 2014 fishing year based on the overage schedule in paragraph (c)(2) of this section. As a result, limited access vessels would be subject to a 2-month seasonal closure in March and April 2013. In this example, due to the availability of final fishing year data, it is possible that the original AM closure was already in effect during the month of May. However, the unnecessary AM closure in February 2014 would be avoided. If the Regional Administrator determines that a final estimate is higher than the original projection, the Regional Administrator, if necessary, shall make adjustments to the current fishing year's respective AM closure schedules in accordance with the overage schedule in paragraphs (b)(2)(i), (b)(2)(ii), and (c)(2) of this section.

(f) [Reserved]

[76 FR 43770, July 21, 2011, as amended at 77 FR 20742, Apr. 6, 2012; 77 FR 26122, May 2, 2012]

Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

§ 648.70 Surfclam and ocean quahog Annual Catch Limit (ACL).

(a) The MAFMC staff shall recommend to the MAFMC ACLs for the surfclam and ocean quahog fisheries, which shall be equal to the ABCs recommended by the SSC.

(1) *Sectors*. The surfclam and ocean quahog ACLs will be established consistent with the guidelines contained in the Atlantic Surfclam and Ocean Quahog FMP. The ACL for ocean quahog will then be allocated to the Maine and non-Maine components of the fishery according to the allocation guidelines of the Atlantic Surfclam and Ocean Quahog FMP as specified in § 648.78(b).

(2) *Periodicity*. The surfclam and ocean quahog ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The MAFMC staff shall conduct a detailed review of the fishery performance relative to the ACLs at least every 5 years.

(1) If the surfclam or the ocean quahog ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the MAFMC staff will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure the ACL is not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that a stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

[76 FR 60622, Sept. 29, 2011]

§ 648.71 Surfclam and ocean quahog Annual Catch Targets (ACT).

(a) The MAFMC staff shall identify and review the relevant sources of management uncertainty to recommend ACTs to the MAFMC as part of the surfclam and ocean quahog specification process. The MAFMC staff recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. The surfclam ACT and the sum of the Maine and non-Maine ocean quahog ACTs shall be less than or equal to the ACL for the corresponding stock. The MAFMC staff shall recommend any reduction in catch necessary to address management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The MAFMC staff shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.70(b)(1) through (3).

[76 FR 60622, Sept. 29, 2011]

§ 648.72 Surfclam and ocean quahog specifications.

(a) *Establishing catch quotas*. The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for up to a 3-year period by the Regional Administrator. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section. The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 million bu (98.5 to 181 million L). The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 million bu (213 to 319.4 million L). Quotas for surfclams and ocean quahogs may be specified below these ranges if the ABC recommendation of the SSC limits the ACL to a value less than the minimum of the range indicated.

(1) *Quota reports*. On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multiyear annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP within the ranges specified for up to a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the OY.

(ii) Fishing mortality rates relative to the OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review*. Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the FEDERAL REGISTER. The Regional Administrator shall consider public comments received, determine the appropriate annual quotas, and publish the annual quotas in the FEDERAL REGISTER. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional Administrator may set

quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act or the objectives of the Atlantic Surfclam and Ocean Quahog FMP or other applicable law.

(b) *Interim quota modifications*. Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the MAFMC's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3-year period. Such modification shall be in effect for a period of up to 3 years, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for up to a 3-year period.

(c) *Annual quotas*. The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. At the end of a multiyear quota period, NMFS will issue notification in the FEDERAL REGISTER if the previous year's specifications will not be changed.

[76 FR 60622, Sept. 29, 2011]

§ 648.73 Surfclam and ocean quahog Accountability Measures.

(a) *Commercial ITQ fishery*. (1) If the ACL for surfclam or ocean quahog is exceeded, and the overage can be attributed to one or more ITQ allocation holders, the full amount of the overage will be deducted from the appropriate ITQ allocation in the following fishing year.

(2) Any amount of an ACL overage that cannot be otherwise attributed to an ITQ allocation holder will be deducted from the appropriate ACL in the following fishing year.

(b) *Maine mahogany quahog fishery*. If the ocean quahog ACL is exceeded, and the Maine mahogany quahog fishery is responsible for the overage, than the Maine fishery ACT shall be reduced in the following year by an amount equal to the ACL overage.

[76 FR 60623, Sept. 29, 2011]

§ 648.74 Annual individual allocations.

(a) *General*. (1) Each fishing year, the Regional Administrator shall determine the initial allocation of surfclams and ocean quahogs for the next fishing year for each allocation holder owning an allocation pursuant to paragraph (a)(2) of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the allocation percentage owned by each allocation owner as of the last day of the previous fishing year in which allocation owners are permitted to permanently transfer allocation percentage pursuant to paragraph (b) of this section (*i.e.*, October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.72. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.77. Amounts of allocation of 0.5 cages or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 cages created by this division shall be rounded upward to the nearest whole number, so that allocations are specified in whole cages. These allocations shall be made in the form of an allocation permit specifying the allocation percentage and the allocation in cages and cage tags for each species. An allocation permit is only valid for the entity for which it is issued. Such permits shall be issued on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.77(b).

(2) The Regional Administrator may, after publication of a fee notification in the FEDERAL REGISTER, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(b) *Transfers*—(1) *Allocation percentage*. Subject to the approval of the Regional Administrator, part or all of an

allocation percentage may be transferred in the year in which the transfer is made, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags*. Cage tags issued pursuant to § 648.77 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

(3) *Review*. If the Regional Administrator determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson-Stevens Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

[76 FR 60623, Sept. 29, 2011]

§ 648.75 Shucking at sea and minimum surfclam size.

(a) *Shucking at sea*—(1) *Observers*. (i) The Regional Administrator may allow the shucking of surfclams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surfclams and ocean quahogs harvested in the shell prior to shucking.

(ii) Any vessel owner may apply in writing to the Regional Administrator to shuck surfclams or ocean quahogs at sea. The application shall specify: Name and address of the applicant; permit number of the vessel; method of calculating the amount of surfclams or ocean quahogs harvested in the shell; vessel dimensions and accommodations; and length of fishing trip.

(iii) The Regional Administrator shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(iv) Any observer shall certify at the end of each trip the amount of surfclams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(2) *Conversion factor*. (i) Based on the recommendation of the MAFMC, the Regional Administrator may allow shucking at sea of surfclams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surfclams or ocean quahogs harvested in the shell.

(ii) The Regional Administrator shall publish notification in the FEDERAL REGISTER specifying a conversion factor, together with the data used in its calculation, for a 30-day comment period. After consideration of the public comments and any other relevant data, the Regional Administrator may publish final notification in the FEDERAL REGISTER specifying the conversion factor.

(iii) If the Regional Administrator makes the determination specified in paragraph (b)(1) of this section, he/she may authorize the vessel owner to shuck surfclams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

(b) *Minimum surfclam size*—(1) *Minimum length*. The minimum length for surfclams is 4.75 inches (12.065 cm).

(2) *Determination of compliance*. No more than 50 surfclams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surfclams in any inspected cage of surfclams are less than 4.75 inches (12.065 cm) in length, all cages landed by the same vessel from the same trip are deemed

to be in violation of the minimum size restriction.

(3) *Suspension*. Upon the recommendation of the MAFMC, the Regional Administrator may suspend annually, by publication in the FEDERAL REGISTER, the minimum shell-length standard, unless discard, catch, and survey data indicate that 30 percent of the surfclams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell length is not attributable to beds where the growth of individual surfclams has been reduced because of density dependent factors.

(4) *Measurement*. Length is measured at the longest dimension of the surfclam shell.

[76 FR 60623, Sept. 29, 2011]

§ 648.76 Closed areas.

(a) *Areas closed because of environmental degradation*. Certain areas are closed to all surfclam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Regional Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Regional Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Regional Administrator in accordance with paragraph (c) of this section. The areas closed are:

(1) *Boston Foul Ground*. The waste disposal site known as the ''Boston Foul Ground'' and located at 42°25′36″ N. lat., 70°35′00″ W. long., with a radius of 1 nm (1.61 km) in every direction from that point.

(2) *New York Bight*. The polluted area and waste disposal site known as the ''New York Bight'' and located at 40°25′04″ N. lat., 73°42′38″ W. long., and with a radius of 6 nm (9.66 km) in every direction from that point, extending further northwestward, westward and southwestward between a line from a point on the arc at 40°31′00″ N. lat., 73°43′38″ W. long., directly northward toward Atlantic Beach Light in New York to the limit of the state territorial waters of New York; and a line from the point on the arc at 40°19′48″ N. lat., 73°45′42″ W. long., to a point at the limit of the state territorial waters of New Jersey at 40°14′00″ N. lat., 73°55′42″ W. long.

(3) *106 Dumpsite*. The toxic industrial site known as the ''106 Dumpsite'' and located between 38°40′00″ and 39°00′00″ N. lat., and between 72°00′00″ and 72°30′00″ W. long.

(4) *Georges Bank*. The paralytic shellfish poisoning (PSP) contaminated area, which is located on Georges Bank, and located east of 69° W. long., and south of 42°20′ N. lat.

(b) *Areas closed because of small surfclams*. Areas may be closed because they contain small surfclams.

(1) *Closure*. The Regional Administrator may close an area to surfclams and ocean quahog fishing if he/she determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surfclams of which:

(i) Sixty percent or more are smaller than 4.5 inches (11.43 cm); and

(ii) Not more than 15 percent are larger than 5.5 inches (13.97 cm) in size.

(2) *Reopening*. The Regional Administrator may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he/she determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches (12.065 cm); or

(ii) The yield or rate of growth of the dominant shell-length class in the area to be reopened would be significantly enhanced through selective, controlled, or limited harvest of surfclams in the area.

(c) *Procedure*. (1) The Regional Administrator may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Regional Administrator shall publish notification in the FEDERAL REGISTER of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening must be submitted to the Regional Administrator within 30 days after publication. The Regional Administrator shall consider all comments and publish the final notification of closure or reopening, and any restrictions on harvest, in

the FEDERAL REGISTER. Any adjustment to harvest restrictions in a reopened area shall be made by notification in the FEDERAL REGISTER. The Regional Administrator shall send notice of any action under this paragraph (c)(1) to each surfclam and ocean quahog processor and to each surfclam and ocean quahog permit holder.

(2) If the Regional Administrator determines, as the result of testing by state, Federal, or private entities, that a closure of an area under paragraph (a) of this section is necessary to prevent any adverse effects fishing may have on the public health, he/she may close the area for 60 days by publication of notification in the FEDERAL REGISTER, without prior comment or public hearing. If an extension of the 60-day closure period is necessary to protect the public health, the hearing and notice requirements of paragraph (c)(1) of this section shall be followed.

(d) *Areas closed due to the presence of paralytic shellfish poisoning toxin*—(1) *Maine mahogany quahog zone.* The Maine mahogany quahog zone is closed to fishing for ocean quahogs except in those areas of the zone that are tested by the State of Maine and deemed to be within the requirements of the National Shellfish Sanitation Program and adopted by the Interstate Shellfish Sanitation Conference as acceptable limits for the toxin responsible for PSP. Harvesting is allowed in such areas during the periods specified by the Maine Department of Marine Resources during which quahogs are safe for human consumption. For information regarding these areas contact the State of Maine Division of Marine Resources.

(2) [Reserved]

[76 FR 60624, Sept. 29, 2011]

§ 648.77 Cage identification.

Except as provided in § 648.78, the following cage identification requirements apply to all vessels issued a Federal fishing permit for surfclams and ocean quahogs:

(a) *Tagging.* Before offloading, all cages that contain surfclams or ocean quahogs must be tagged with tags acquired annually under provisions of paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage. A tag is required for every 60 ft^3 (1,700 L) of cage volume, or portion thereof. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for 60 days beyond the end of the calendar year, unless otherwise directed by authorized law enforcement agents.

(b) *Issuance.* The Regional Administrator will issue a supply of tags to each individual allocation owner qualifying for an allocation under § 648.74 prior to the beginning of each fishing year, or he/she may specify, in the FEDERAL REGISTER, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's initial allocation as specified in § 648.74(a). Each tag represents 32 bu (1,700 L) of allocation.

(c) *Expiration.* Tags will expire at the end of the fishing year for which they are issued, or if rendered null and void in accordance with 15 CFR part 904.

(d) *Return.* Tags that have been rendered null and void must be returned to the Regional Administrator, if possible.

(e) *Loss.* Loss or theft of tags must be reported by the owner, numerically identifying the tags to the Regional Administrator by telephone as soon as the loss or theft is discovered and in writing within 24 hours. Thereafter, the reported tags shall no longer be valid for use under this part.

(f) *Replacement.* Lost or stolen tags may be replaced by the Regional Administrator if proper notice of the loss is provided by the person to whom the tags were issued. Replacement tags may be purchased from the Regional Administrator or a vendor with a written authorization from the Regional Administrator.

(g) *Transfer.* See § 648.74(b)(2).

(h) *Presumptions.* Surfclams and ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation, unless the individual demonstrates that he/she has surrendered his/her Federal vessel permit issued under § 648.4(a)(4) and conducted fishing operations exclusively within waters under the jurisdiction of any state. Surfclams and ocean

quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued under the provisions of § 648.77(b) or transferred under the provisions of § 648.74(b).

[76 FR 60625, Sept. 29, 2011]

§ 648.78 Maine mahogany quahog zone.

(a) *Landing requirements.* (1) A vessel issued a valid Maine mahogany quahog permit pursuant to § 648.4(a)(4)(i), and fishing for or possessing ocean quahogs within the Maine mahogany quahog zone, must land its catch in the State of Maine.

(2) A vessel fishing under an individual allocation permit, regardless of whether it has a Maine mahogany quahog permit, fishing for or possessing ocean quahogs within the zone, may land its catch in the State of Maine, or, consistent with applicable state law in any other state that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose, and must comply with all requirements in §§ 648.74 and 648.77. Documentation required by the state and other laws and regulations applicable to food safety-based procedures must be made available by federally permitted dealers for inspection by NMFS.

(b) *ACT monitoring and closures*—(1) *Catch quota.* (i) The ACT for harvest of mahogany quahogs from within the Maine mahogany quahog zone is 100,000 Maine bu (35,239 hL). The ACL may be revised annually within the range of 17,000 and 100,000 Maine bu (5,991 and 35,239 hL) following the procedures set forth in §§ 648.72 and 648.73, if applicable.

(ii) All mahogany quahogs landed for sale in Maine by vessels issued a Maine mahogany quahog permit and not fishing for an individual allocation of ocean quahogs under § 648.74 shall be applied against the Maine mahogany quahog ACT, regardless of where the mahogany quahogs are harvested.

(iii) All mahogany quahogs landed by vessels fishing in the Maine mahogany quahog zone for an individual allocation of quahogs under § 648.74 will be counted against the ocean quahog allocation for which the vessel is fishing.

(iv) The Regional Administrator will monitor the ACT based on dealer reports and other available information, and shall determine the date when the ACT will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising the public that, effective upon a specific date, the Maine mahogany quahog quota has been harvested, and notifying vessel and dealer permit holders that no Maine mahogany quahog quota is available for the remainder of the year.

(2) *Maine Mahogany Quahog Advisory Panel.* The MAFMC shall establish a Maine Mahogany Quahog Advisory Panel consisting of representatives of harvesters, dealers, and the Maine Department of Marine Resources. The Advisory Panel shall make recommendations, through the Surfclam and Ocean Quahog Committee of the MAFMC, regarding revisions to the annual quota and other management measures.

[76 FR 60625, Sept. 29, 2011]

§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Atlantic Surfclam and Ocean Quahog FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of

new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; OY range; and suspension or adjustment of the surfclam minimum size limit. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation*. After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action*. If the MAFMC's recommendation includes adjustments or additions to management measures and after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the MAFMC recommendation, the measures will be published as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

[76 FR 60625, Sept. 29, 2011, as amended at 76 FR 81848, Dec. 29, 2011]

Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

Except as provided in § 648.17, all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine (GOM) and GB Regulated Mesh Areas—(1) GOM Regulated Mesh Area*. The GOM Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′

Point	N. lat.	W. long.
CII3	42°22′	67°20′ [2]

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
CII3	42°22′	67°20′ [1]
G6	42°20′	67°20′
G7	42°20′	69°30′
G8	42°00′	69°30′
G9	42°00′	([2])

[1] The U.S.-Canada Maritime Boundary.
[2] The intersection of the Cape Cod, MA, coastline and 42°00′ N. lat.

(2) *GB Regulated Mesh Area*. The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (a)(1)(ii) of this section; and

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

GB REGULATED MESH AREA

Point	N. latitude	W. longitude
CII3	42°22′	67°20′ [1]
SNE1	40°24′	65°43′ [2]

[1] The U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

(iii) Bounded on the west by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G12	([1])	70°00′
G11	40°50′	70°00′
NL1	40°50′	69°40′
NL2	40°18.7′	69°40′
NL3	40°22.7′	69°00′
	([2])	69°00′

[1] South facing shoreline of Cape Cod.
[2] Southward to its intersection with the EEZ.

(3) *GOM Regulated Mesh Area minimum mesh size and gear restrictions*—(i) *Vessels using trawls*. Except as provided in paragraphs (a)(3)(i) and (vi) of this section and § 648.85(b)(6), and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except a midwater trawl, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) For vessels greater than 45 ft (13.7 m) in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net.

(B) For vessels 45 ft (13.7 m) or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine*. Except as provided in paragraphs (a)(3)(ii) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels*. When fishing in the GOM Regulated Mesh Area, the minimum mesh size for any trawl net

vessel, or sink gillnet, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*—(A) *Trip gillnet vessels*—(*1*) *Mesh size*. Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for any vessel that obtains an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing in the NE multispecies DAS program or on a sector trip in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) *Net size requirements*. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels*—(*1*) *Mesh size*. Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for any vessel that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any sink gillnet when fishing under the NE multispecies DAS program or on a sector trip in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) *Number of nets*. A day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets, each of which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

(*3*) *Net size requirements*. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*4*) *Tags*. Roundfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish nets must have one tag per net, with one tag secured to every other bridle of every net within a string of nets. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(C) *Obtaining and replacing tags*. Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel or a Trip gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are onboard the vessel and can be made available for inspection.

(*1*) *Lost tags*. Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(*2*) *Replacement tags*. Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received by the Regional Administrator before tags will be reissued.

(v) *Hook gear restrictions*. Unless otherwise specified in this paragraph (a)(3)(v) or § 648.87(c), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS or on a sector trip, and vessels fishing with a valid NE

multispecies limited access Small-Vessel permit in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel during the fishing trip is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited during the fishing trip. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS or on a sector trip in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit, and persons on such vessels, are prohibited from fishing, or possessing on board the vessel, gear other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (a)(16) and (a)(18), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with § 648.89. Any gear used by a vessel in this area must be authorized under one of these exemptions. Any gear on a vessel that is not authorized under one of these exemptions must be stowed as specified in § 648.23(b).

(vii) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM23	42°00′	69°50′
GM24	43°00′	69°50′
GM11	43°00′	70°00′
GM17	43°30′	70°00′
GM18	43°30′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

(4) *GB regulated mesh area minimum mesh size and gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraph (a)(3)(vi) of this section, this paragraph (a)(4)(i), § 648.85(b)(6) and (8), and § 648.87(c)(2)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except a midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond

mesh or square mesh applied to the codend of the net as defined in paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraphs (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* Except as provided in paragraph (a)(3)(vi) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the GB Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i).

(*2*) *Net size requirements.* Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets. Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 150, counting the deployed net. Nets may not be longer than 300 ft (91.4 m).

(*3*) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(*4*) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph

(a)(4)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 3,600 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 3,600-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a multispecies DAS in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing or possessing on board the vessel, gear other than hand gear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(5) *Small Mesh Northern Shrimp Fishery Exemption*. Vessels subject to the minimum mesh size restrictions specified in this paragraph (a) may fish for, harvest, possess, or land northern shrimp in the GOM, GB, SNE, and MA Regulated Mesh Areas, as described under paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(5)(i) through (iii) of this section.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraphs (a)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission's letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. lat.	W. long.
C1	42°10′	68°10′
C2	41°30′	68°41′
CI4	41°30′	68°30′
C3	41°12.8′	68°30′
C4	41°05′	68°20′
C5	41°55′	67°40′
C1	42°10′	68°10′

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish; red hake; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length and applied to the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the FEDERAL REGISTER.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the more restrictive gear, possession limit, and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization and consistent with paragraph (a)(15)(i)(G) of this section.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting.* (i) Vessels fishing in the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraph (a)(9) of this section, may transit through the Scallop Dredge Fishery Exemption Area as specified in paragraph (a)(11) of this section with nets

of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b). Vessels fishing in the Small Mesh Northern Shrimp Fishery, as specified in paragraph (a)(3) of this section, may transit through the GOM, GB, SNE, and MA Regulated Mesh Areas, as described in paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3), (a)(4), (b)(2), and (c)(2) of this section, provided the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Areas defined in paragraphs (a)(11) and (18) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (a)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(6), (a)(10), (a)(15), (b), and (c) of this section. Vessels may retain exempted small-mesh species as provided in paragraphs (a)(6)(i), (a)(10)(i), (a)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions*—(i) *Exemption allowing no incidental catch of regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch, unless otherwise specified in this paragraph (a)(8)(i) of this section, and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental bycatch standard could be modified for a stock that is not in an overfished condition, or if overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality, sacrifices in yield that will result from that mortality, the ratio of target species to regulated species, status of stock rebuilding, and recent recruitment of regulated species. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. The Regional Administrator may modify or delete an existing exemption if he/she determines that the catch of regulated species is equal to or greater than 5 percent, by weight of total catch, or another pertinent approved amount, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications will be made through issuance of a rule in the FEDERAL REGISTER.

(ii) *Exemption allowing incidental catch of regulated species.* An exemption may be added in an existing fishery that would allow vessels to retain and land

regulated multispecies, under the restrictions specified in paragraphs (a)(8)(ii)(A) through (C) of this section, if the Regional Administrator, after consultation with the NEFMC, considers the status of the regulated species stock or stocks caught in the fishery, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery. Incidental catch in exempted fisheries under this paragraph (a)(8)(ii) are subject, at a minimum, to the following restrictions:

(A) A prohibition on the possession of regulated multispecies that are overfished or where overfishing is occurring;

(B) A prohibition on the possession of regulated species in NE multispecies closure areas; and

(C) A prohibition on allowing an exempted fishery to occur that would allow retention of a regulated multispecies stock under an ongoing rebuilding program, unless it can be determined that the catch of the stock in the exempted fishery is not likely to result in exceeding the rebuilding mortality rate.

(iii) For exemptions allowing no incidental catch of regulated species, as defined under paragraph (a)(8)(i) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(c), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species. For exemptions allowing incidental catch of regulated species, as defined under paragraph (a)(8)(ii) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(c), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery.

(iv) Unless otherwise specified within the exempted fisheries authorized under this paragraph (a)(8), incidental catch is restricted, at a minimum, to the following:

(A) With the exception of fisheries authorized under paragraph (a)(8)(ii) of this section, a prohibition on the possession of regulated species;

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (4), (5) or (6), as applicable, whichever is less;

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and

(D) A limit on the possession of skate or skate parts in the SNE Exemption Area described in paragraph (b)(10) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description*. (A) Unless otherwise prohibited in § 648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1; and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d), butterfish, dogfish, herring, Atlantic mackerel, scup, squid, and red hake.

(B) Small-mesh Areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request):

SMALL MESH AREA I

Point	N. lat.	W. long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

SMALL MESH AREA II

Point	N. lat.	W. long.
SM13	43°05.6′	69°55′
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40′
SM16	42°41.5′	69°40′
SM17	42°36.6′	69°55′
SM13	43°05.6′	69°55′

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope, with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than ½-inch (1.2-cm) for the top leg, not larger than ⅝-inch (1.6-cm) for the bottom leg, and not larger than ¾-inch (1.9-cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wingends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of ⅜-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5⁄16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals Dogfish Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(3) or paragraph (a)(4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with

the requirements specified in paragraph (a)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. lat.	W. long.
NS1	41°45′	70°00′
NS2	41°45′	69°20′
NS3	41°30′	69°20′
CI1	41°30′	69°23′
NS5	41°26.5′	69°20′
NS6	40°50′	69°20′
NS7	40°50′	70°00′
NS1	41°45′	70°00′

(i) *Requirements*. (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) and (4) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) *Incidental species provisions*. The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling*. The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *GOM Scallop Dredge Exemption Area*. Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Regulated Mesh Area specified in paragraph (a)(1) of this section, when not under a NE multispecies DAS, providing the vessel fishes in the GOM Scallop Dredge Exemption Area and complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N. latitude	W. longitude
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′
SM6	43°58′	67°22′
SM7	(1)	(1)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Requirements*. (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

(B) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area

under the exemption specified in this paragraph (a)(11) must fish with dredge gear. The combined dredge width in use by, or in possession on board, may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(d) and (e).

(ii) [Reserved]

(12) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area*. A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified in paragraph (a)(10) of this section.

(13) *GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area*. Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. lat.	W. long.
41°35′	70°00′
42°49.5′	70°00′
42°49.5′	69°40′
43°12′	69°00′
(1)	69°00′

[1] Due north to Maine shoreline.

(i) *Requirements*. (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption*. Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(13) of this section.

(i) *Requirements*. (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery*. Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(d) and (e). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[September 1 through November 20]

Point	N. lat.	W. long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA—Continued

[September 1 through November 20]

Point	N. lat.	W. long.
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 10	42°04.75′	70°16.95′
RF 11	42°00′	70°13.2′
RF 12	42°00′	70°24.1′
RF 13	42°07.85′	70°30.1′
RF 1	42°14.05′	70°08.8′

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[November 21 through December 31]

Point	N. lat.	W. long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 1	42°14.05′	70°08.8′

(i) *Requirements*. (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) All nets must be no smaller than a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake, subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake, butterfish, dogfish, herring, mackerel, scup, and squid.

(C) [Reserved]

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(15)(i)(B) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area, and would be restricted to a minimum mesh size of 3 inches (7.6 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area; the use of the raised footrope trawl; and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for scup.

(ii) *Sea sampling*. The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(16) *GOM Grate Raised Footrope Trawl Exempted Whiting Fishery*. Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, and possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[July 1 through November 30]

Point	N. lat.	W. long.
GRF1	43°15′	70°35.4′
GRF2	43°15′	70°00′
GRF3	43°25.2′	70°00′
GRF4	43°41.8′	69°20′
GRF5	43°58.8′	69°20′

(i) *Mesh requirements and possession restrictions*. (A) All nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than whiting and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, except for the following allowable incidental species: Red hake, butterfish, herring, mackerel, squid, and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications*. In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) of this section apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind (chain, roller frame, or rockhopper). The drop chains must be a maximum of ⅜-inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the

passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review*. On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action prior to the next fishing year through the framework adjustment process specified in §648.90(c), and in accordance with the Administrative Procedure Act.

(17) *GOM/GB Exemption Area—Area definition*. The GOM/GB Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE GEORGES BANK EXEMPTION AREA

Point	N. lat.	W. long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
G5	41°18.6′	66°24.8′

[1]The intersection of the shoreline and the U.S.-Canada Maritime Boundary

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

GULF OF MAINE/GEORGES BANK EXEMPTION AREA

Point	N. latitude	W. longitude
G6	40°55.5′	66°38′
G7	40°45′	68°00′
G8	40°37′	68°00′
G9	40°30′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12	(1)	70°00′

[1]Northward to its intersection with the shoreline of mainland Massachusetts.

(18) *Great South Channel Scallop Dredge Exemption Area*. Vessels issued a LAGC scallop permit, including limited access scallop permits that have used up their DAS allocations, may fish in the Great South Channel Scallop Dredge Exemption Area, as defined under paragraph (a)(18)(i) of this section, when not under a NE multispecies or scallop DAS or on a sector trip, provided the vessel complies with the requirements specified in paragraph (a)(18)(ii) of this section and applicable scallop regulations in subpart D of this chapter.

(i) *Area Definition*. The Great South Channel Scallop Dredge Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

GREAT SOUTH CHANNEL SCALLOP DREDGE EXEMPTION AREA

Point	N. lat.	W. long.
GSC 1	42°06 [min]	69°40 [min]
GSC 2	41°30 [min]	69°10 [min]
GSC 3	41°30 [min]	69°23 [min]
GSC 4	40°50 [min]	68°49.2 [min]
GSC 5	40°50 [min]	69°29.46 [min]
GSC 6	41°10 [min]	69°50 [min]
GSC 7	41°10 [min]	70°00 [min]
GSC 8	41°35 [min]	70°00 [min]
GSC 9	41°35 [min]	69°40 [min]

(ii) *Requirements*. (A) A vessel fishing in the Great South Channel Scallop Dredge Exemption Area specified in this paragraph (a)(18) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

(B) The combined dredge width in use by, or in possession on board, vessels

fishing in the Great South Channel Scallop Dredge Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(b) *Southern New England (SNE) Regulated Mesh Area*—(1) *Area definition*. The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the western boundary of the GB Regulated Mesh Area described under paragraph (a)(2)(iii) of this section; and

(ii) Bounded on the west by a line beginning at the intersection of 74°00′ W. long. and the south facing shoreline of Long Island, NY, and then running southward along the 74°00′ W. long. line.

(2) *Gear restrictions*—(i) *Vessels using trawls*. Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and § 648.85(b)(6), and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square or diamond mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine*. Except as provided in paragraphs (b)(2)(ii) and (vi) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels*. When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*. For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Day gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels*. A Trip gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the SNE Regulated Mesh Area may not fish with nets longer than 300 ft(91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels*—(*1*) *Number of nets*. A Day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the SNE Regulated Mesh Area may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets

not to exceed 160, counting deployed nets.

(*2*) *Net size requirements*. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(*3*) *Tags*. Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags*. See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions*. Unless otherwise specified in this paragraph (b)(2)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions*. A vessel is prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (b)(12), (c), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under a scallop state waters exemption specified in § 648.54; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing under a General Category scallop permit in accordance with paragraphs (b)(11)(i)(A) and (B) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(3) *Exemptions*—(i) *Species exemption*. Unless otherwise restricted in § 648.86, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (caught by trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(ii) *Possession and net stowage requirements*. Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by

nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as in paragraph (a)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section, and the monkfish and skate regulations, as applicable, under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10′ N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must comply with the minimum mesh size specified under § 648.91(c)(1)(i).

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has a valid letter of authorization on board to fish for skates as bait, and complies with the requirements specified at § 648.322(c); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section; the monkfish regulations, as applicable, under §§ 648.91 through 648.94; and the skate regulations, as applicable, under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area, as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has a valid letter of authorization on board to fish for skates as bait, and complies with the requirements specified at § 648.322(c); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent, by weight, of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area*. Unless otherwise required by monkfish regulations under this part, a gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section and the applicable dogfish regulations under subpart L of this part. The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements*. (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption*. A vessel may fish with a dredge in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area*. A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5′ N. lat. and 71°50.2′ W. long.; east-northeastly through Block Island, RI, to 41°15′ N. lat. and 71°07′ W. long.; then due north to the intersection of the RI-MA shoreline.

(i) *Requirements*. (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) of this section and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to evaluate the likelihood of gear interactions with protected resources.

(10) *SNE Exemption Area—Area definition*. The SNE Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND EXEMPTION AREA

Point	N. lat.	W. long.
G5	41°18.6′	66°24.8′
G6	40°55.5′	66°38′
G7	40°45.5′	68°00′
G8	40°37′	68°00′
G9	40°30.5′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12	.....	70°00′ [1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30′ W. long.; and south along that line to the intersection of the outer boundary of the EEZ.

(11) *SNE Scallop Dredge Exemption Area*. Unless otherwise prohibited in § 648.81, or 50 CFR part 648, subpart D, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocation, and vessels issued a General Category scallop permit, may fish in the SNE RMA when not under a NE multispecies DAS, provided the vessel fishes in the SNE Scallop Dredge Exemption Area and complies with the requirements specified in paragraph (b)(11)(ii) of this section.

(i) The SNE Scallop Dredge Exemption Area is that area (copies of a chart depicting this area are available from the Regional Administrator upon request):

(A) Bounded on the west, south and east by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
Sc1	([1])	72°30′
Sc2	40°00′	72°30′
Sc3	40°00′	71°40′
Sc4	39°50′	71°40′
Sc5	39°50′	70°00′
Sc6	([2])	70°00′
Sc7	([3])	70°00′
Sc8	([4])	70°00′

[1] South facing shoreline of Long Island, NY.
[2] South facing shoreline of Nantucket, MA.
[3] North facing shoreline of Nantucket, MA.
[4] South facing shoreline of Cape Cod, MA.

(B) Bounded on the northwest by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
Sc9	41°00′	([1])
Sc10	41°00′	71°40′
Sc11	([2])	71°40′

[1] East facing shoreline of the south fork of Long Island, NY.
[2] South facing shoreline of RI.

(ii) *Exemption program requirements*. (A) A vessel fishing in the SNE Scallop Dredge Exemption Area may not fish for, posses on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

(B) The combined dredge width in use by or in possession on board vessels fishing in the SNE Scallop Dredge Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The minimum mesh size used in the twine top of scallop dredges must be 10 in (25.4 cm).

(D) The exemption does not apply to the Nantucket Lightship Closed Area specified under § 648.81(c).

(12) *SNE Skate Bait Trawl Exemption Area*. Vessels issued an open access skate permit and a skate bait Letter of Authorization as specified in § 648.322(c) that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, may fish in the SNE Skate Bait Trawl Exemption Area as defined under paragraph (b)(12)(i) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the requirements specified in paragraph (b)(1)(ii) of this section.

(i) *Area definition*. The SNE Skate Bait Trawl Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SNE SKATE BAIT TRAWL EXEMPTION AREA

[July 1 through October 31]

Point	N. lat.	W. long.
SBT 1	Southeastern MA	71°00′
SBT 2	41°00′	71°00′
SBT 3	41°00′	72°05′
SBT 4	Southern CT	72°05′

(ii) *Requirements.* (A) A vessel fishing in the SNE Skate Bait Trawl Exemption Area specified in this paragraph (b)(12) may not fish for, possess on board, or land any NE regulated species.

(B) Vessels must use trawl gear, as specified in § 648.80(b)(2)(i).

(C) Vessels must possess an active skate bait letter of authorization issued by the Regional Administrator, as specified in § 648.322(c) and fish pursuant to the terms of authorization.

(D) Fishing may only occur from July 1 through October 31 of each fishing year.

(c) *Mid-Atlantic (MA) Regulated Mesh Area*—(1) *Area definition.* The MA Regulated Mesh Area is that area bounded on the east by the western boundary of the SNE Regulated Mesh Area, described under paragraph (b)(1)(ii) of this section.

(2) *Gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, and § 648.85(b)(6), the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Hook gear restrictions.* Unless otherwise specified in this paragraph (c)(2)(iv), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small Vessel permit, in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from using dehookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a NE multispecies DAS in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A ''snap-on'' hook is deemed to be a replacement

hook if it is not rigged or baited. Vessels fishing with a valid NE multispecies limited access Handgear permit are prohibited from fishing, or possessing on board the vessel gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 250 hooks.

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the MA Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

(*2*) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Addition or deletion of exemptions.* See paragraph (a)(8)(ii) of this section.

(5) *MA Exemption Area.* The MA Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(d) *Midwater trawl gear exempted fishery.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with the following restrictions:

(i) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20′ N. lat. and in the areas described in § 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20′ N. lat.; and

(ii) The vessel is issued a letter of authorization for a minimum of 7 days. The vessel can be issued LOAs for the midwater trawl exempted fishery and the purse seine exempted fishery at the same time.

(3) The vessel carries a NMFS-approved sea sampler/observer, if requested by the Regional Administrator;

(4) The vessel does not fish for, possess or land NE. multispecies, except that a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit and fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to paragraph (d) of this section, may possess and land haddock

and other regulated multispecies consistent with the catch caps and possession restrictions in § 648.86(a)(3) and (k). Such haddock or other regulated NE. multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated NE. multispecies that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to paragraph (d) of this section, may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), must provide notice of the following information to NMFS at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment: Vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and whether the vessel intends to engage in fishing in Closed Area I, as defined in § 648.81(a), at any point in the trip; and

(6) A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip with midwater trawl gear, or a vessel issued a Limited Access Incidental Catch Herring Permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act.

(7) *Fishing in Closed Area I.* (i) No vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear, may fish, possess or land fish in or from, Closed Area I unless it has declared first its intent to fish in Closed Area I as required by paragraph (d)(5) of this section, and is carrying onboard a NMFS-approved observer.

(ii) No vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in Closed Area I, may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer (*e.g.*, an Atlantic herring at-sea processing vessel or an Atlantic herring carrier vessel), or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure precludes bringing the fish aboard the vessel for inspection; or,

(C) After pumping of fish onto the vessel has begun, the vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures (such as strapping and splitting the net) to remove all fish which can be pumped from the net prior to release; or

(iii) If fish are released prior to being brought aboard the vessel due to any of the exceptions in paragraphs

(d)(7)(ii)(A) through (C) of this section, the vessel operator must:

(A) Exit Closed Area I. Once the vessel has exited CA I, it may continue to fish, but may not fish inside Closed Area I for the remainder of that trip.

(B) Complete and sign a Closed Area I Midwater Trawl Released Codend Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the total weight of fish caught on that tow; and the weight of fish released (if less than the full tow). A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(e) *Purse seine gear exempted fishery*. Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator and complies with the following:

(i) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(ii) The vessel must carry a NMFS-approved sea sampler/observer, if requested to do so by the Regional Administrator;

(3) The vessel is issued a letter of authorization for a minimum of 7 days, and cancels it only as instructed by the Regional Administrator. The vessel can be issued LOAs for the midwater trawl exempted fishery and the purse seine exempted fishery at the same time; and

(4) The vessel does not fish for, possess, or land NE. multispecies, except that vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip may possess and land haddock or other regulated species consistent with possession restrictions in § 648.86(a)(3) and (k), respectively. Such haddock or other regulated multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated species that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act.

(f) *Mesh measurements*—(1) *Gillnets*. Mesh size of gillnet gear shall be measured by lining up 5 consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring 10 consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of 10 consecutive measures.

(2) *All other nets*. With the exception of gillnets, mesh size is measured by a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches),

and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater, than 120 mm (4.72 inches).

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square-mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The diamond-mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.6 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching NE multispecies if the bars entering or exiting the knots twist around each other.

(3) Pair trawl prohibition. No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling, except as authorized under paragraph (d) of this section.

(4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies*—(i) *Nets of mesh size less than 2.5 inches (6.4 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets of mesh size smaller than 2.5 inches (6.4-cm), as measured by methods specified in paragraph (f) of this section, may use net strengtheners (covers, as described at § 648.23(d)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.4 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets with mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm) (as measured by methods specified in paragraph (f) of this section, and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (i.e., outside net), provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.2 cm), diamond or square mesh, as measured by methods specified in paragraph (f) of this section. The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer

than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (i.e., both square or both diamond mesh) as the outside net.

(6) *Gillnet requirements to reduce or prevent marine mammal takes*—(i) *Requirements for gillnet gear capable of catching NE multispecies to reduce harbor porpoise takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Harbor Porpoise Take Reduction Plan found in § 229.33 of this title.

(ii) *Requirements for gillnet gear capable of catching NE multispecies to prevent large whale takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Atlantic Large Whale Take Reduction Plan found in § 229.32 of this title.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies Combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Limited access scallop vessels issued a limited access NE multispecies permit and fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species or ocean pout, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS, but are prohibited from using scallop dredge gear on such trips.

(i) *State waters winter flounder exemption.* Any vessel issued a NE multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Administrator, to participate in the exemption program described by this section (for a particular fishing year).

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this

exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent, by weight, of all other species on board.

[69 FR 22951, Apr. 27, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.80, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 648.81 NE multispecies closed areas and measures to protect EFH.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (i) of this section:

CLOSED AREA I

Point	N. lat.	W. long.
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
CI4	41°30′	68°30′
CI1	41°30′	69°23′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies;

(ii) Fishing with or using pelagic longline gear or pelagic hook-and-line gear, or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies;

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated NE multispecies and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas;

(iv) Fishing with tuna purse seine gear, provided that there is no retention of NE multispecies, and provided there is no other gear on board gear capable of catching NE multispecies. If the Regional Administrator determines through credible information, that tuna purse seine vessels are adversely affecting habitat or NE multispecies stocks, the Regional Administrator may, through notice action, consistent with the Administrative Procedure Act, prohibit individual purse seine vessels or all purse seine vessels from the area; or

(v) Fishing in a SAP, in accordance with the provisions of § 648.85(b).

(vi) Fishing for scallops within the Closed Area I Access Area defined in § 648.59(b)(3) during the season specified in § 648.59(b)(4), and pursuant to the provisions specified in § 648.60.

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

CLOSED AREA II

Point	N. lat.	W. long.
C1I1	41°00′	67°20′
C1I2	41°00′	66°35.8′
G5	41°18.6′	66°24.8′ [1]
C1I3	42°22′	67°20′ [1]
C1I1	41°00′	67°20′ [1]

[1] The U.S.-Canada Maritime Boundary.

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gears as described in paragraphs (a)(2)(i) through (iii), and (a)(2)(v) of this section;

(ii) Fishing with tuna purse seine gear outside of the portion of CA II known as the Habitat Area of Particular Concern, as described in paragraph (h)(1)(v) of this section;

(iii) Fishing in the CA II Yellowtail Flounder/Haddock SAP or the Eastern U.S./Canada Haddock SAP Program as specified in § 648.85(b)(3)(ii) or (b)(8)(ii), respectively; or

(iv) Transiting the area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b); and

(A) The operator has determined, and a preponderance of available evidence indicates, that there is a compelling safety reason; or

(B) The vessel has declared into the Eastern U.S./Canada Area as specified in § 648.85(a)(3)(ii) and is transiting CA II in accordance with the provisions of § 648.85(a)(3)(vii).

(v) Fishing for scallops within the Closed Area II Access Area defined in § 648.59(c)(3), during the season specified in § 648.59(c)(4), and pursuant to the provisions specified in § 648.60.

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (i) of this section:

NANTUCKET LIGHTSHIP CLOSED AREA

Point	N. lat.	W. long.
G10	40°50′	69°00′
CN1	40°20′	69°00′
CN2	40°20′	70°20′
CN3	40°5O′	70°20′
G10	40°50′	69°00′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with gears as described in paragraph (a)(2) of this section; or

(ii) Classified as charter, party or recreational vessel, provided that:

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Administrator on board, which is valid from the date of issuance through a minimum duration of 7 days;

(B) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(D) The vessel does not fish outside the Nantucket Lightship Closed Area during the period specified by the letter of authorization; or

(iii) Fishing with or using dredge gear designed and used to take surfclams or ocean quahogs, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies.

(iv) Fishing for scallops within the Nantucket Lightship Access Area defined in § 648.59(d)(3), during the season specified in § 648.59(d)(4), and pursuant to the provisions specified in § 648.60.

(d) *Cashes Ledge Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d)(2) and (i) of this section (a chart depicting this area is available from the Regional Administrator upon request):

CASHES LEDGE CLOSURE AREA

Point	N. lat.	W. long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′

CASHES LEDGE CLOSURE AREA—Continued

Point	N. lat.	W. long.
CL1	43°07′	69°02′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (d)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section.

(e) *Western GOM Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (e)(2) and (i) of this section:

WESTERN GOM CLOSURE AREA [1]

Point	N. lat.	W. long.
WGM1	42°15′	70°15′
WGM2	42°15′	69°55′
WGM3	43°15′	69°55′
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′

[1] A chart depicting this area is available from the Regional Administrator upon request.

(2) Unless otherwise restricted under paragraph (h) of this section, paragraph (e)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section consistent with the requirements specified under § 648.80(a)(5).

(f) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas I through V, as described in paragraphs (f)(1)(i) through (v) of this section, for the times specified in paragraphs (f)(1)(i) through (v) of this section, except as specified in paragraphs (f)(2) and (i) of this section. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I

[March 1–March 31]

Point	N. lat.	W. long.
GM3	42°00′	(1)
GM5	42°00′	68°30′
GM6	42°30′	68°30′
GM23	42°30′	70°00′

[1] Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(1)(ii) apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II

[April 1–April 30]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM5	42°00′	68°30′
GM13	43°00′	68°30′
GM10	43°00′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] New Hampshire shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in paragraph (f)(1) of this section apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III

[May 1–May 31]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM23	42°30′	70°00′
GM6	42°30′	68°30′
GM14	43°30′	68°30′
GM18	43°30′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

(iv) *Rolling Closure Area IV*. From June 1 through June 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV

[June 1–June 30]

Point	N. lat.	W. long.
GM9	42°30′	(1)
GM23	42°30′	70°00′
GM17	43°30′	70°00′
GM19	43°30′	67°32′ or (2)
GM20	44°00′	67°21′ or (2)
GM21	44°00′	69°00′
GM22	(3)	69°00′

[1] Massachusetts shoreline.
[2] U.S.-Canada maritime boundary.
[3] Maine shoreline.

(v) *Rolling Closure Area V*. From October 1 through November 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V

[October 1–November 30]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM8	42°30′	70°00′
GM9	42°30′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (f)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, or in the Midwater Trawl Gear Exempted Fishery as specified under 648.80(d), and excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing under charter/party or recreational regulations, provided that:

(A) For vessels fishing under charter/party regulations in a Rolling Closure Area described under paragraph (f)(1) of this section, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater; for vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western GOM Area Closure, as described under paragraph (d) and (e) of this section, respectively, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment until the end of the fishing year;

(B) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid;

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip; or

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15), and in the GOM Rolling Closure Area V, as specified in paragraph (f)(1)(v) of this section.

(vi) That are fishing on a sector trip, or under the provisions of a Northeast

multispecies Handgear A permit, as specified at § 648.82(b)(6), provided such vessels comply with the following restricted areas referred to as the Sector Rolling Closure Areas:

(A) *Sector Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(2)(vi) apply to Sector Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

SECTOR ROLLING CLOSURE AREA II

[April 1–April 30]

Point	N. latitude	W. longitude
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
SGM1	42°00′	70°00′
SGM2	43°00′	70°00′
SGM3	43°00′	(4)

[1] MA shoreline.
[2] Cape Cod, MA shoreline on Cape Cod Bay.
[3] Cape Cod, MA shoreline on the Atlantic Ocean.
[4] NH shoreline.

(B) *Sector Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in this paragraph (f)(2)(vi) apply to Sector Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

SECTOR ROLLING CLOSURE AREA III

[May 1–May 31]

Point	N. latitude	W. longitude
SGM4	42°30′	(1)
SGM5	42°30′	70°00′
SGM6	43°00′	70°00′
SGM7	43°00′	69°30′
SGM8	43°30′	69°30′
GM18	43°30′	(2)

[1] MA shoreline.
[2] ME shoreline.

(C) *Sector Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in this paragraph (f)(2)(vi) apply to Sector Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

SECTOR ROLLING CLOSURE AREA IV

[June 1–June 30]

Point	N. latitude	W. longitude
SGM9	43°00′	(1)
SGM6	43°00′	70°00′
SGM10	43°30′	70°00′
SGM11	43°30′	69°00′

SECTOR ROLLING CLOSURE AREA IV—Continued

[June 1–June 30]

Point	N. latitude	W. longitude
GM22	(2)	69°00′

[1] NH shoreline.
[2] ME shoreline.

(g) *GB Seasonal Closure Area.* (1) From May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the GB Seasonal Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (g)(2) and (i) of this section:

GEORGES BANK SEASONAL CLOSURE AREA

[May 1–May 31]

Point	N. lat.	W. long.
GB1	42°00′	(1)
GB2	42°00′	68°30′
GB3	42°20′	68°30′
GB4	42°20′	67°20′
GB5	41°30′	67°20′
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
GB6	40°30′	68°30′
GB7	40°30′	69°00′
G10	40°50′	69°00′
GB8	40°50′	69°30′
GB9	41°00′	69°30′
GB10	41°00′	70°00′
G12	(1)	70° 00′

[1] Northward to its intersection with the shoreline of mainland MA.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or to fishing vessels:

(i) That meet the criteria in paragraphs (f)(2)(i) or (ii) of this section;

(ii) That are fishing as charter/party or recreational vessels;

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS, and provided that the vessel complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h); or when lawfully fishing in the Scallop Dredge Fishery Exemption Areas, as described in paragraphs (a)(11) and (18) of this section.

(iv) That are fishing in the CA I Hook Gear Haddock Access Area pursuant to § 648.85(b)(7).

(v) That are fishing under the restrictions and conditions of an approved sector operations plan, as specified in § 648.87(c).

(vi) That are fishing under the provisions of a Northeast multispecies Handgear A permit, as specified at § 648.82(b)(6), or the provisions of a Northeast multispecies Handgear B permit, as specified at § 648.88(a).

(h) *Essential Fish Habitat Closure Areas.* (1) In addition to the restrictions under paragraphs (a) through (e) of this section, no fishing vessel or person on a fishing vessel with bottom tending mobile gear on board the vessel may enter, fish in, or be in the EFH Closure Areas described in paragraphs (h)(1)(i) through (vi) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Western GOM Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Western GOM Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

WESTERN GOM HABITAT CLOSURE AREA

Point	N. lat.	W. long.
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′
WGM5	42°15′	70°00′
WGM6	43°15′	70°00′
WGM4	43°15′	70°15′

(ii) *Cashes Ledge Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area defined by straight lines connecting the following points in the order stated:

CASHES LEDGE HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CLH1	43°01′	69°03′
CLH2	43°01′	68°52′
CLH3	42°45′	68°52′
CLH4	42°45′	69°03′
CLH1	43°01′	69°03′

(iii) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

JEFFREY'S BANK HABITAT CLOSURE AREA

Point	N. lat.	W. long.
JB1	43°40′	68°50′
JB2	43°40′	68°40′
JB3	43°20′	68°40′
JB4	43°20′	68°50′
JB1	43°40′	68°50′

(iv) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bound by straight lines connecting the following points in the order stated:

CLOSED AREA I—NORTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CI1	41°30′	69°23′
CI4	41°30′	68°30′
CIH1	41°26′	68°30′
CIH2	41°04′	69°01′
CI1	41°30′	69°23′

CLOSED AREA I—SOUTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIH3	40°55′	68°53′
CIH4	40°58′	68°30′
CI3	40°45′	68°30′
CI2	40°45′	68°45′
CIH3	40°55′	68°53′

(v) *Closed Area II Habitat Closure Area.* The restrictions specified in this paragraph (h)(1) apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bound by straight lines connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
CIIH1	42°10′	67°20′
CIIH2	42°10′	67°9.3′
CIIH3	42°00′	67°0.5′
CIIH4	42°00′	67°10′
CIIH5	41°50′	67°10′
CIIH6	41°50′	67°20′
CIIH1	42°10′	67°20′

(vi) *Nantucket Lightship Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to

the Nantucket Lightship Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

NANTUCKET LIGHTSHIP HABITAT CLOSED AREA

Point	N. lat.	W. long.
NLH1	41°10′	70°00′
NLH2	41°10′	69°50′
NLH3	40°50′	69°30′
NLH4	40°20′	69°30′
NLH5	40°20′	70°00′
NLH1	41°10′	70°00′

(2) [Reserved]

(i) *Transiting*. Unless otherwise restricted or specified in this paragraph (i), a vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area, the EFH Closure Areas, and the GOM Cod Spawning Protection Area, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), and (o)(1), of this section, respectively, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit CA II, as defined in paragraph (b)(1) of this section, in accordance with paragraph (b)(2)(iv) of this section. Private recreational or charter/party vessels fishing under the Northeast multispecies provisions specified at § 648.89 may transit the GOM Cod Spawning Protection Area, as defined in paragraph (o)(1) of this section, provided all bait and hooks are removed from fishing rods, and any regulated species on board have been caught outside the GOM Cod Spawning Protection Area and has been gutted and stored.

(j) *Restricted Gear Area I*. (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
Inshore Boundary		
to 120		
69	40°07.9′	68°36.0′
70	40°07.2′	68°38.4′
71	40°06.9′	68°46.5′
72	40°08.7′	68°49.6′
73	40°08.1′	68°51.0′
74	40°05.7′	68°52.4′
75	40°03.6′	68°57.2′
76	40°03.65′	69°00.0′
77	40°04.35′	69°00.5′
78	40°05.2′	69°00.5′
79	40°05.3′	69°01.1′
80	40°08.9′	69°01.75′
81	40°11.0′	69°03.8′
82	40°11.6′	69°05.4′
83	40°10.25′	69°04.4′
84	40°09.75′	69°04.15′
85	40°08.45′	69°03.6′
86	40°05.65′	69°03.55′
87	40°04.1′	69°03.9′
88	40°02.65′	69°05.6′
89	40°02.00′	69°08.35′
90	40°02.65′	69°11.15′
91	40°00.05′	69°14.6′
92	39°57.8′	69°20.35′
93	39°56.65′	69°24.4′
94	39°56.1′	69°26.35′
95	39°56.55′	69°34.1′
96	39°57.85′	69°35.5′
97	40°00.65′	69°36.5′
98	40°00.9′	69°37.3′
99	39°59.15′	69°37.3′
100	39°58.8′	69°38.45′
102	39°56.2′	69°40.2′
103	39°55.75′	69°41.4′
104	39°56.7′	69°53.6′
105	39°57.55′	69°54.05′
106	39°57.4′	69°55.9′
107	39°56.9′	69°57.45′
108	39°58.25′	70°03.0′
110	39°59.2′	70°04.9′
111	40°00.7′	70°08.7′
112	40°03.75′	70°10.15′
115	40°05.2′	70°10.9′
116	40°02.45′	70°14.1′
119	40°02.75′	70°16.1′
to 181		
Offshore Boundary		
to 69		
120	40°06.4′	68°35.8′
121	40°05.25′	68°39.3′
122	40°05.4′	68°44.5′
123	40°06.0′	68°46.5′
124	40°07.4′	68°49.6′
125	40°05.55′	68°49.8′
126	40°03.9′	68°51.7′
127	40°02.25′	68°55.4′
128	40°02.6′	69°00.0′
129	40°02.75′	69°00.75′
130	40°04.2′	69°01.75′
131	40°06.15′	69°01.95′
132	40°07.25′	69°02.0′
133	40°08.5′	69°02.25′
134	40°09.2′	69°02.95′
135	40°09.75′	69°03.3′
136	40°09.55′	69°03.85′
137	40°08.4′	69°03.4′
138	40°07.2′	69°03.3′
139	40°06.0′	69°03.1′
140	40°05.4′	69°03.05′
141	40°04.8′	69°03.05′
142	40°03.55′	69°03.55′
143	40°01.9′	69°03.95′
144	40°01.0′	69°04.4′
146	39°59.9′	69°06.25′
147	40°00.6′	69°10.05′
148	39°59.25′	69°11.15′
149	39°57.45′	69°16.05′
150	39°56.1′	69°20.1′
151	39°54.6′	69°25.65′
152	39°54.65′	69°26.9′
153	39°54.8′	69°30.95′

Point	N. latitude	W. longitude
154	39°54.35′	69°33.4′
155	39°55.0′	69°34.9′
156	39°56.55′	69°36.0′
157	39°57.95′	69°36.45′
158	39°58.75′	69°36.3′
159	39°58.8′	69°36.95′
160	39°57.95′	69°38.1′
161	39°54.5′	69°38.25′
162	39°53.6′	69°46.5′
163	39°54.7′	69°50.0′
164	39°55.25′	69°51.4′
165	39°55.2′	69°53.1′
166	39°54.85′	69°53.9′
167	39°55.7′	69°54.9′
168	39°56.15′	69°55.35′
169	39°56.05′	69°56.25′
170	39°55.3′	69°57.1′
171	39°54.8′	69°58.6′
172	39°56.05′	70°00.65′
173	39°55.3′	70°02.95′
174	39°56.9′	70°11.3′
175	39°58.9′	70°11.5′
176	39°59.6′	70°11.1′
177	40°01.35′	70°11.2′
178	40°02.6′	70°12.0′
179	40°00.4′	70°12.3′
180	39°59.75′	70°13.05′
181	39°59.3′	70°14.0′
to 119		

(2) *Restricted Period*—(i) *Mobile gear*. From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish or be in Restricted Gear Area I, unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear*. From June 16 through September 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area I.

(k) *Restricted Gear Area II*. (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 1		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 48		
Offshore Boundary		
to 49		
1	39°59.3′ N.	70°14.0′ W.
2	39°58.85′ N.	70°15.2′ W.
3	39°59.3′ N.	70°18.4′ W.
4	39°58.1′ N.	70°19.4′ W.
5	39°57.0′ N.	70°19.85′ W.
6	39°57.55′ N.	70°21.25′ W.
7	39°57.5′ N.	70°22.8′ W.
8	39°57.1′ N.	70°25.4′ W.
9	39°57.65′ N.	70°27.05′ W.
10	39°58.58′ N.	70°27.7′ W.
11	40°00.65′ N.	70°28.8′ W.
12	40°02.2′ N.	70°29.15′ W.
13	40°01.0′ N.	70°30.2′ W.
14	39°58.58′ N.	70°31.85′ W.
15	39°57.05′ N.	70°34.35′ W.
16	39°56.42′ N.	70°36.8′ W.
21	39°58.15′ N.	70°48.0′ W.
24	39°58.3′ N.	70°51.1′ W.
25	39°58.1′ N.	70°52.25′ W.
26	39°58.05′ N.	70°53.55′ W.
27	39°58.4′ N.	70°59.6′ W.
28	39°59.8′ N.	71°01.05′ W.
29	39°58.2′ N.	71°05.85′ W.
30	39°57.45′ N.	71°12.15′ W.
31	39°57.2′ N.	71°15.0′ W.
32	39°56.3′ N.	71°18.95′ W.
33	39°51.4′ N.	71°36.1′ W.
34	39°51.75′ N.	71°41.5′ W.
35	39°50.05′ N.	71°42.5′ W.
36	39°50.0′ N.	71°45.0′ W.
37	39°48.95′ N.	71°46.05′ W.
38	39°46.6′ N.	71°46.1′ W.
39	39°43.5′ N.	71°49.4′ W.
40	39°41.3′ N.	71°55.0′ W.
41	39°39.0′ N.	71°55.6′ W.
42	39°36.72′ N.	71°58.25′ W.
43	39°35.15′ N.	71°58.55′ W.
44	39°34.5′ N.	72°00.75′ W.
45	39°32.2′ N.	72°02.25′ W.
46	39°32.15′ N.	72°04.1′ W.
47	39°28.5′ N.	72°06.5′ W.
48	39°29.0′ N.	72°09.25′ W.
to 70		

(2) *Restricted period*—(i) *Mobile gear*. From November 27 through June 15, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area II, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear*. From June 16 through November 26, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area II.

(l) *Restricted Gear Area III*. (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182	40°05.6′ N.	70°17.7′ W.
183	40°06.5′ N.	70°40.05′ W.
184	40°11.05′ N.	70°45.8′ W.
185	40°12.75′ N.	70°55.05′ W.
186	40°10.7′ N.	71°10.25′ W.
187	39°57.9′ N.	71°28.7′ W.
188	39°55.6′ N.	71°41.2′ W.
189	39°55.85′ N.	71°45.0′ W.
190	39°53.75′ N.	71°52.25′ W.
191	39°47.2′ N.	72°01.6′ W.
192	39°33.65′ N.	72°15.0′ W.
to 70		
Offshore Boundary		
to 182		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 192		

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through November 26, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area III, unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear*. From January 1 through April 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area III.

(m) *Restricted Gear Area IV*. (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60′ N.	68°40.60′ W.
194	40°11.60′ N.	68°53.00′ W.
195	40°14.00′ N.	69°04.70′ W.
196	40°14.30′ N.	69°05.80′ W.
197	40°05.50′ N.	69°09.00′ W.
198	39°57.30′ N.	69°25.10′ W.
199	40°00.40′ N.	69°35.20′ W.
200	40°01.70′ N.	69°35.40′ W.
201	40°01.70′ N.	69°37.40′ W.
202	40°00.50′ N.	69°38.80′ W.
203	40°01.30′ N.	69°45.00′ W.
204	40°02.10′ N.	69°45.00′ W.
205	40°07.60′ N.	70°04.50′ W.
206	40°07.80′ N.	70°09.20′ W.
to 119		
Offshore Boundary		
69	40°07.90′ N.	68°36.00′ W.
70	40°07.20′ N.	68°38.40′ W.
71	40°06.90′ N.	68°46.50′ W.
72	40°08.70′ N.	68°49.60′ W.
73	40°08.10′ N.	68°51.00′ W.
74	40°05.70′ N.	68°52.40′ W.
75	40°03.60′ N.	68°57.20′ W.
76	40°03.65′ N.	69°00.00′ W.
77	40°04.35′ N.	69°00.50′ W.
78	40°05.20′ N.	69°00.50′ W.
79	40°05.30′ N.	69°01.10′ W.
80	40°08.90′ N.	69°01.75′ W.
81	40°11.00′ N.	69°03.80′ W.
82	40°11.60′ N.	69°05.40′ W.
83	40°10.25′ N.	69°04.40′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.60′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.10′ N.	69°03.90′ W.
88	40°02.65′ N.	69°05.60′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.60′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.75′ N.	69°24.40′ W.
94	39°56.50′ N.	69°26.35′ W.
95	39°56.80′ N.	69°34.10′ W.
96	39°57.85′ N.	69°35.05′ W.
97	40°00.65′ N.	69°36.50′ W.
98	40°00.90′ N.	69°37.30′ W.
99	39°59.15′ N.	69°37.30′ W.
100	39°58.80′ N.	69°38.45′ W.
102	39°56.20′ N.	69°40.20′ W.
103	39°55.75′ N.	69°41.40′ W.
104	39°56.70′ N.	69°53.60′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.40′ N.	69°55.90′ W.
107	39°56.90′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.00′ W.
110	39°59.20′ N.	70°04.90′ W.
111	40°00.70′ N.	70°08.70′ W.
112	40°03.75′ N.	70°10.15′ W.

Point	Latitude	Longitude
115	40°05.20′ N.	70°10.90′ W.
116	40°02.45′ N.	70°14.1′ W.
119 to 206	40°02.75′ N.	70°16.1′ W.

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through September 30, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard may fish or be in Restricted Gear Area IV, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) [Reserved]

(n) *GOM Cod Spawning Protection Area*. (1) Except as specified in paragraph (n)(2) of this section, from April through June of each year, no fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies may be used on, or be on board, a vessel in the GOM Cod Spawning Protection Area, as defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the RA upon request):

GOM COD SPAWNING PROTECTION AREA

Point	N. latitude	W. longitude
CSPA1	42°50.95′	70°32.22′
CSPA2	42°47.65′	70°35.64′
CSPA3	42°54.91′	70°41.88′
CSPA4	42°58.27′	70°38.64′
CSPA1	42°50.95′	70°32.22′

(2) Paragraph (n)(1) of this section does not apply to persons on a fishing vessel or fishing vessels:

(i) That have not been issued a NE multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the vessel and fished in the upper two-thirds of the water column;

(B) The net is marked with the vessel owner's name and vessel identification number;

(C) There is no retention of regulated species or ocean pout; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing as a charter/party or recreational fishing vessel, provided that:

(A) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter, or sale, regardless where the species are caught;

(B) The vessel has no gear other than pelagic hook and line gear, as defined in this part, on board unless that gear is properly stowed pursuant to § 648.23(b); and

(C) There is no retention of regulated species, or ocean pout; and

(iv) That are transiting pursuant to paragraph (i) of this section.

[69 FR 22964, Apr. 27, 2004, as amended at 69 FR 35223, June 23, 2004; 69 FR 63480, Nov. 2, 2004; 69 FR 67798, Nov. 19, 2004; 70 FR 76426, Dec. 27, 2005; 71 FR 51784, Aug. 31, 2006; 72 FR 73279, Dec. 27, 2007; 75 FR 18317, Apr. 9, 2010; 76 FR 23071, Apr. 25, 2011; 76 FR 42584, July 19, 2011; 77 FR 26123, May 2, 2012]

§ 648.82 Effort-control program for NE multispecies limited access vessels.

(a) Except as provided in §§ 648.17 and 648.82(a)(2), a vessel issued a limited access NE multispecies permit may not fish for, possess, or land regulated species, except during a DAS, as allocated under, and in accordance with, the applicable DAS program described in this section, unless otherwise provided elsewhere in this part.

(1) *End-of-year carry-over*. With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For

the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (d)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (*e.g.*, for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B DAS, than Reserve B DAS. Category C DAS cannot be carried over.

(2) Notwithstanding any other provision of this part, any vessel issued a NE multispecies limited access permit may not call into the DAS program and fish under a DAS, fish on a sector trip, or fish under the provisions of a limited access Small Vessel Category or Handgear A permits pursuant to paragraphs (b)(5) and (6) of this section, respectively, if such vessel carries passengers for hire for any portion of a fishing trip.

(b) *Permit categories*. All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(*2*). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (b)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (d) of this section.

(1) *Individual DAS category*. This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(2) *Hook Gear category*. To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(3) *Combination vessel category*. To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(4) *Large Mesh Individual DAS category*. This category is for vessels allocated individual DAS that area not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS

category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in § 648.80(a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii).

(5) *Small Vessel category*—(i) *DAS allocation*. A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified at § 648.86(g). Such a vessel is subject to the possession limits specified for other regulated species and ocean pout, as specified at § 648.86. Any vessel may elect to switch into the Small Vessel category, as provided in § 648.4(a)(1)(i)(I)(*2*), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(ii) [Reserved]

(6) *Handgear A category*. A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (135 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout, as specified under § 648.86. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (2), respectively, is reduced below 300 lb (135 kg) per DAS by NMFS, the cod trip limit specified in this paragraph (b)(6) shall be adjusted to be the same as the applicable cod trip limit specified for NE multispecies DAS permits. For example, if the GOM cod trip limit for NE multispecies DAS vessels was reduced to 250 lb (113.4 kg) per DAS, then the cod trip limit for a vessel issued a Handgear A category permit that is fishing in the GOM Regulated Mesh Area would also be reduced to 250 lb (113.4 kg). Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(iv) *Declaration*. For any such vessel that is not required to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator

stating an intent to fish south of the GOM Regulated Mesh Area and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. For any such vessel that is required, or elects, to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must declare an intent to fish south of the GOM Regulated Mesh Area on each trip through the VMS prior to leaving port, in accordance with instructions provided by the Regional Administrator. Such vessels may transit the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), provided that their gear is stowed in accordance with the provisions at § 648.23(b).

(c) *Used DAS baseline*—(1) *Calculation of used DAS baseline*. For all valid limited access NE multispecies DAS vessels, vessels issued a valid small vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6–year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

(i) Except as provided in paragraphs (c)(1)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (b)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant to the provisions of the Large Mesh DAS category.

(2) [Reserved]

(d) *DAS categories and allocations*. For all valid limited access NE multispecies DAS permits, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS Categories (unless otherwise specified, ''NE multispecies DAS'' refers to any authorized category of DAS):

(1) *Category A DAS*. Calculation of Category A DAS for each fishing year is specified in paragraphs (d)(1)(i) through (iv) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (b)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land stocks of regulated species or ocean pout, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(iii) For fishing year 2009 (May 1, 2009, through April 30, 2010), Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(iv) Starting in fishing year 2010 (beginning May 1, 2010), Category A DAS are defined as follows:

(A) For a vessel fishing under the provisions of the common pool, as defined in this part, Category A DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section, or reduced pursuant to § 648.87(b)(1)(iii).

(B) For a sector vessel, Category A DAS allocated for use when fishing in other fisheries that require the concurrent use of a NE multispecies DAS are defined as 45 percent of the vessel's used DAS baseline specified in paragraph

(2) *Category B DAS*. Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (d)(2)(i) and (ii) of this section.

(i) *Regular B DAS*—(A) *Restrictions on use*. Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Program as specified in § 648.85(b)(6). Unless otherwise restricted under the Regular B DAS Program as described in § 648.85(b)(6)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (i.e., when fishing in an approved SAP as described in § 648.85(b)). Vessels that are required by the Monkfish Fishery Management Plan to utilize a NE multispecies DAS, as specified under § 648.92(b)(2), may not elect to use a NE multispecies Category B DAS to satisfy that requirement.

(B) *Calculation*. Regular B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) For fishing year 2009 (May 1, 2009, through April 30, 2010), Regular B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(*4*) Starting in fishing year 2010 (beginning May 1, 2010), Regular B DAS are defined as follows:

(*i*) For a common pool vessel, Regular B DAS are defined as 36.25 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section.

(*ii*) For a sector vessel, Regular B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(ii) *Reserve B DAS*—(A) *Restrictions on use*. Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation*. Reserve B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) For fishing year 2009 (May 1, 2009, through April 30, 2010), Reserve B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(*4*) Starting in fishing year 2010 (beginning May 1, 2010), Reserve B DAS are defined as follows:

(*i*) For a common pool vessel, Reserve B DAS are defined as 36.25 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section.

(*ii*) For a sector vessel, Reserve B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(3) *Category C DAS*—(i) *Restriction on use*. Category C DAS are reserved and may not be fished.

(ii) *Calculation*. Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(1) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(e) *Accrual of DAS*. (1) When a vessel is participating in the NE multispecies DAS program, as required by the regulations in this part, NE multispecies DAS shall accrue as specified in paragraphs (e)(1)(i) and (ii) of this section and shall be based upon the time called, or logged into the DAS program, consistent with the DAS notification requirements specified in § 648.10. For the purpose of calculating trip limits specified in this part, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally.

(i) *Common pool vessels*. For a common pool vessel, Category A DAS shall accrue in 24-hr increments, unless otherwise required under paragraphs (n) or (o) of this section. For example, a vessel that fished from 6 a.m. to 10 p.m. would be charged 24 hr of Category A DAS, not 16 hr; a vessel that fished for 25 hr would be charged 48 hr of Category A instead of 25 hr.

(ii) [Reserved]

(2) [Reserved]

(3) *Regular B DAS Program 24-hr clock*. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on 1 calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in an area subject to differential DAS counting pursuant to paragraph (n)(1)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (n)(1) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(8), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS rules specified in § 648.10(e)(5)(iv).

(f) *DAS credits*—(1) *Good Samaritan credit*. A limited access vessel fishing under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, shall not accrue DAS for the time documented.

(2) *Canceled trip DAS credit*. A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements:

(i) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(ii) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancelation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the

operator must that no fish were onboard and no fishing activity occurred; and

(iii) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancelation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(iv) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (f)(2)(ii) and (iii) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (f)(2)(ii) and (iii) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(v) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(vi) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (a)(1) of this section.

(3) *DAS credit for standing by entangled whales.* A limited access vessel fishing under the DAS program that reports and stands by an entangled whale may request a DAS credit for the time spent standing by the whale. The following conditions and requirements must be met to receive this credit:

(i) At the time the vessel begins standing by the entangled whale, the vessel operator must notify the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the location of the entangled whale and that the vessel is going to stand by the entangled whale until the arrival of an authorized response team;

(ii) Only one vessel at a time may receive credit for standing by an entangled whale. A vessel standing by an entangled whale may transfer its stand-by status to another vessel while waiting for an authorized response team to arrive, provided it notifies the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the transfer. The vessel to which stand-by status is transferred must also notify the USCG and the Center for Coastal Studies or another organization authorized by the Regional Administrator of this transfer and comply with the conditions and restrictions of this part;

(iii) The stand-by vessel must be available to answer questions on the condition of the animal, possible species identification, severity of entanglement, etc., and take photographs of the whale, if possible, regardless of the species of whale or whether the whale is alive or dead, during its stand-by status and after terminating its stand-by status. The stand-by vessel must remain on scene until the USCG or an authorized response team arrives, or the vessel is informed that an authorized response team will not arrive. If the vessel receives notice that a response team is not available, the vessel may discontinue standing-by the entangled whale and continue fishing operations; and

(iv) To receive credit for standing by an entangled whale, a vessel must submit a written request to the Regional Administrator. This request must include at least the following information: Date and time when the vessel began its stand-by status; date of first communication with the USCG; and

date and time when the vessel terminated its stand-by status. DAS credit shall not be granted for the time a vessel fishes when standing by an entangled whale. Upon a review of the request, NMFS shall consider granting the DAS credit based on information available at the time of the request, regardless of whether an authorized response team arrives on scene or a rescue is attempted. NMFS shall notify the permit holder of any DAS adjustment that is made or explain the reasons why an adjustment will not be made.

(g) *Spawning season restrictions*. A vessel issued a valid Small Vessel or Handgear A category permit specified in paragraphs (b)(5) or (b)(6) of this section, respectively, or a vessel issued an open access Handgear B permit, as specified in § 648.88(a), may not fish for, possess, or land regulated species or ocean pout from March 1 through March 20 of each year. A common pool vessel must declare out and be out of the NE multispecies DAS program, and a sector must declare that the vessel will not fish with gear capable of catching NE multispecies (i.e., gear that is not defined as exempted gear under this part), for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species, ocean pout, or non-exempt species during the period May 12 through May 31, inclusive.

(h) *Declaring DAS and blocks of time out*. A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program; declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (j) of this section; and declaration of its 20-day period out of the NE multispecies DAS program, or, for a sector vessel that the vessel will not fish with gear capable of catching NE multispecies, using the notification requirements specified in § 648.10.

(i) [Reserved]

(j) *Gillnet restrictions*. A vessel issued a limited access NE multispecies permit may fish under a NE multispecies DAS, under the provisions of the small vessel permit category, or on a sector trip with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels*. Unless otherwise exempted in this part, a Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS, the provisions of a small vessel permit category, or on a sector trip is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, as appropriate, provided the vessel complies with the restrictions specified in paragraphs (j)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear*. All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery*. (A) During each fishing year, a Day gillnet vessel must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section shall be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to

meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies, ocean pout, or non-exempt species harvested with gillnet gear and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b) while fishing under a NE multispecies DAS, the provisions of the small vessel category permit, or on a sector trip from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable, unless otherwise exempt pursuant to § 648.87.

(B) Any such vessel shall declare its required time periods through the notification procedures specified in § 648.10(j)(2).

(C) During each period of time declared out, any such vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, under the provisions of the small vessel category permit, or on a sector trip, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS shall accrue DAS as follows:

(A) A Day gillnet vessel fishing with gillnet gear that has elected to fish in the Regular B DAS Program, as specified in § 648.85(b)(6), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(1)(i) of this section.

(B) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS shall accrue DAS as follows:

(*1*) A Day gillnet vessel on a common pool trip is subject to the DAS accrual provisions of paragraph (e)(1)(i) of this section.

(*2*) A Day gillnet vessel on a sector trip is subject to the DAS accrual provisions of paragraph (e)(1)(ii) of this section.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, under the provisions of the small vessel category permit, or on a sector trip, a Trip gillnet vessel is required to remove all gillnet gear from the water before returning to port upon the completion of a fishing trip and calling out of a NE multispecies DAS, as applicable, under § 648.10(e)(5) or (h)(5), respectively. When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized by § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(k) *NE Multispecies DAS Leasing Program*—(1) *Program description.* Eligible vessels, as specified in paragraph (k)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) *Eligible vessels.* (i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (b)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

(ii) Subject to the conditions and requirements of this part, DAS associated with a confirmation of permit history may be leased to another vessel without placing the permit on an active vessel.

(3) *Application to lease NE multispecies DAS*—(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained

from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application*. Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application*. The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions, restrictions, and requirements of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

(4) *Conditions and restrictions on leased DAS*—(i) *Confirmation of permit history*. Pursuant to paragraph (k)(2)(ii) of this section, DAS associated with a confirmation of permit history may be leased.

(ii) *Sub-leasing*. In a fishing year, a Lessor or Lessee vessel may not sublease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased more than one time during a fishing year.

(iii) *Carry-over of leased DAS*. Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) [Reserved]

(v) *History of leased DAS use*. The history of leased DAS use shall be presumed to remain with the Lessor vessel. In the case of multiple leases to one vessel, the history of leased DAS use shall be presumed to remain with the Lessor in the order in which such leases were approved by NMFS. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS.

(vi) *Monkfish Category C, D, F, G and H vessels*. A vessel that possesses a valid limited access NE multispecies DAS permit and a valid limited access monkfish Category C, D, F, G, or H permit and leases NE multispecies DAS to or from another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *DAS Category restriction*. A vessel may lease only Category A DAS, as described under paragraph (d)(1) of this section.

(viii) *Duration of lease*. A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

(ix) *Size restriction of Lessee vessel*. A Lessor vessel only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the Lessor vessel. A Lessor vessel may only lease DAS to a Lessee vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004, unless otherwise modified according to paragraph (k)(4)(xi) of this section.

(x) *Leasing by vessels fishing under a sector allocation*. A sector vessel may not lease DAS to or from common pool vessels, but may lease DAS to or from another sector vessel during the fishing year in which the vessel is a member of a sector.

(xi) *One-time downgrade of DAS Leasing Program baseline*. Unless otherwise specified in paragraph (k)(4)(xi)(B) and

(C) of this section, for the purposes of determining eligibility for leasing DAS only, a vessel owner may elect to make a one-time downgrade to the vessel's DAS Leasing Program baseline length and horsepower as specified in paragraph (k)(4)(ix) of this section to match the length overall and horsepower specifications of the vessel that is currently issued the permit.

(A) *Application for a one-time DAS Leasing Program baseline downgrade.* To downgrade the DAS Leasing Program baseline, eligible NE multispecies vessels must submit a completed application form obtained from the Regional Administrator. An application to downgrade a vessel's DAS Leasing Program baseline must contain at least the following information: Vessel owner's name, vessel name, permit number, official number or state registration number, current vessel length overall and horsepower specifications, an indication whether additional information is included to document the vessel's current specifications, and the signature of the vessel owner.

(B) *Applicability of the one-time DAS Leasing Program baseline downgrade.* The downgraded DAS Leasing Program baseline may only be used to determine eligibility for the DAS Leasing Program and does not affect or change the baseline associated with the DAS Transfer Program specified in paragraph (l)(1)(ii) of this section, or the vessel replacement or upgrade restrictions specified at § 648.4(a)(1)(i)(E) and (F), or any other provision.

(C) *Duration of the one-time DAS Leasing Program baseline downgrade.* Unless otherwise specified in this paragraph (k)(4)(xi)(C) of this section, the downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement, or through a DAS transfer. With the exception of vessels combining DAS Leasing Program baselines from two different vessels through the DAS Transfer Program as outlined in paragraph (k)(4)(xi)(C)(2) of this section, once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit.

(*1*) *Vessel replacement.* If the permit is transferred to another vessel via a vessel replacement, the DAS Leasing Program baseline reverts to the baseline horsepower and length overall specifications associated with the permit prior to the one-time downgrade.

(*2*) *DAS Transfer Program.* For vessels involved in a DAS Transfer Program transaction as described in paragraph (l) of this section, if the transferee vessel baseline is adopted, consistent with the regulations under paragraph (l)(1)(ii) of this section, and the DAS Leasing Program baseline of the transferee vessel was previously downgraded, consistent with the regulations under this paragraph (k)(4)(xi), the downgraded DAS Leasing Program baseline specifications remain valid. For vessels involved in a DAS Transfer Program transaction where a combination of the transferor and transferee vessel baselines is adopted resulting in a new vessel baseline, any previous DAS Leasing Program baseline downgrade for either the transferor or transferee vessel will be voided and the transferee vessel would have an additional opportunity to downgrade its combined DAS Leasing Program baseline.

(l) *DAS Transfer Program.* Except for vessels fishing under a sector allocation as specified in § 648.87, or a vessel that acted as a lessee or lessor in the DAS Leasing Program transaction, a vessel issued a valid limited access NE multispecies permit may transfer all of its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions.* (i) The transferor vessel must transfer all of its DAS. Upon approval of the DAS transfer, all history associated with the transferred NE multispecies DAS (moratorium right history, DAS use history, and catch history) shall be associated with the permit rights of the transferee. Neither the individual permit history elements, nor

total history associated with the transferred DAS may be retained by the transferor.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded either its size (including LOA, GRT, and NT) or HP under the vessel replacement rules, the vessel owner could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, provided such an upgrade is consistent with provisions of this paragraph (l)(1)(ii). A subsequent upgrade to another specification through a subsequent action (either a vessel replacement or DAS transfer) is not permissible. A vessel that has executed a one-time downgrade of a DAS Leasing Program baseline in accordance with paragraph (k)(4)(xi) is subject to the restrictions of paragraph (k)(4)(xi)(C) of this section.

(iii) The transferor vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits. When duplicate permits exist, i.e, those permits for which both the transferor and transferee vessel are eligible, one of the duplicate permits must be permanently cancelled.

(iv) [Reserved]

(v) In any particular fishing year, a vessel may not execute a DAS transfer as a transferor if it previously participated in the DAS Leasing Program as either a lessee or a lessor, as described under paragraph (k) of this section. A vessel may participate in DAS lease transaction (as a lessee or a lessor) and submit an application for a DAS transfer (as a transferor) during the same fishing year, but the transfer, if approved, would not be effective until the beginning of the following fishing year. Other combinations of activities under the DAS Leasing and DAS Transfer programs are permissible during the same fishing year (i.e., act as a transferee, or act as transferor and subsequently conduct a DAS lease).

(vi) *Confirmation of permit history*. NE multispecies DAS associated with a Confirmation of Permit History may be transferred.

(vii) *Transfer by sector vessels*. A sector vessel may not transfer DAS to or from vessels that are fishing under the provisions of the common pool or another sector, but may transfer DAS to or from another vessel participating in that vessel's sector during the fishing year in which the vessel is a member of a particular sector.

(viii) Unless otherwise restricted by this part, a vessel with a NE multispecies limited access Category D permit may transfer DAS only to a vessel with a NE multispecies limited access Category D permit, but may receive transferred DAS from any eligible NE multispecies vessel.

(2) *Application to transfer DAS*. Owners of the vessels applying to transfer and receive DAS must submit a completed application form obtained from the Regional Administrator. The application must be signed by both seller/transferor and buyer/transferee of the DAS, and submitted to the Regional Office at least 45 days before the date on which the applicant desires to have the DAS effective on the buying vessel. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the fishing year, up until March 1.

(i) *Application information requirements*. An application to transfer NE multispecies DAS must contain the following information: Seller's/transferor's name, vessel name, permit number and official number or state registration number; buyer's/transferee's name, vessel name, permit number and official number or state registration

number; total price paid for purchased DAS; signatures of seller and buyer; and date the form was completed. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery.

(ii) *Approval of transfer application.* Unless an application to transfer NE multispecies DAS is denied according to paragraph (l)(2)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both seller/transferor and buyer/transferee within 45 days of receipt of an application.

(iii) *Denial of transfer application.* The Regional Administrator may reject an application to transfer NE multispecies DAS for the following reasons: The application is incomplete or submitted past the March 1 deadline; the seller/transferor or buyer/transferee does not possess a valid limited access NE multispecies permit; the seller's/transferor's or buyer's/transferee's DAS is sanctioned, pursuant to an enforcement proceeding; the seller's/transferor's or buyer/transferee's vessel is prohibited from fishing; the seller's/transferor's or buyer's/transferee's limited access NE multispecies permit is sanctioned pursuant to enforcement proceedings; or the seller/transferor has a DAS baseline of zero. Upon denial of an application to transfer NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

(m) [Reserved]

(n) *NE multispecies common pool accountability measure (AM).* Common pool vessels are subject to the following AMs, in addition to the DAS accrual provisions specified in paragraph (e) of this section and other measures specified in this part.

(1) *Differential DAS counting AM for fishing years 2010 and 2011.* Unless otherwise specified pursuant to § 648.90(a)(5), based upon catch and other information available to NMFS by February of each year, the Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels for the fishing year ending on April 30 to determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii). This initial projection of common pool catch shall be updated shortly after the end of each fishing year once information becomes available regarding the catch of regulated species and ocean pout by vessels fishing for groundfish in state waters outside of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery; and the catch of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish by sector vessels to determine if excessive catch by such vessels resulted in the overall ACL for a particular stock to be exceeded. If such catch resulted in the overall ACL for a particular stock being exceeded, the common pool's catch of that stock shall be increased by an amount equal to the amount of the overage of the overall ACL for that stock multiplied by the common pool's share of the overall ACL for that stock calculated pursuant to § 648.90(a)(4)(iii)(E)(*2*). For example, if the 2010 overall ACL for GOM cod was exceeded by 10,000 lb (4,536 kg) due to excessive catch of that stock by vessels fishing in state waters outside the FMP, and the common pool's share of the 2010 overall GOM cod ACL was 5 percent, then the common pool's 2010 catch of GOM cod shall be increased by 500 lb (226.8 kg) (10,000 lb (4,536 kg) × 0.05 of the overall GOM cod ACL). If based on the initial projection completed in February, the Regional Administrator projects that any of the sub-ACLs specified for common pool vessels will be exceeded or underharvested, the Regional Administrator shall implement a differential DAS counting factor to all Category A DAS used within the stock area in which the sub-ACL was exceeded or underharvested, as specified in paragraph (n)(1)(i) of this section, during the following fishing year, in a manner consistent with the Administrative Procedure Act. Any differential DAS counting implemented at the start of the fishing year will be reevaluated and recalculated, if necessary, once updated

information is obtained. The differential DAS counting factor shall be based upon the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified pursuant to § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod during fishing year 2010, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels only within the Inshore GOM Differential DAS Area during fishing year 2011 (*i.e.*, Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch in a particular fishing year will exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, including both exceeding and underharvesting several sub-ACLs within a particular stock area, the Regional Administrator shall implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that common pool vessels will be responsible for 1.2 times the GOM cod sub-ACL and 1.1 times the CC/GOM yellowtail flounder sub-ACL, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels only within the Inshore GOM Differential DAS Area during the following fishing year. For any differential DAS counting factor implemented in fishing year 2011, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area, pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS use because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded up to the next 24-hr increment to determine DAS charged). For any differential DAS counting factor implemented in fishing year 2012, the differential DAS counting factor shall be applied against the DAS accrual provisions in paragraph (e)(1)(i) of this section, or if a differential DAS counting factor was implemented for that stock area during fishing year 2011, against the DAS accrual rate applied in fishing year 2011. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011 due to a 20-percent overage of the GOM cod sub-ACL, yet the GOM cod sub-ACL was exceeded again, but by 50 percent during fishing year 2011, an additional differential DAS factor of 1.5 would be applied to the DAS accrual rate applied during fishing year 2012 (*i.e.*, the DAS accrual rate in the Inshore GOM Differential DAS Counting Area during fishing year 2012 would be 43.2 hr charged for every 24-hr fished—1.2 × 1.5 × 24-hr DAS charge). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas, the Regional Administrator will adjust the ratio of Category A:Category B DAS specified in paragraph (d)(1) of this section to reduce the number of available Category A DAS available based upon the amount of the overage, rather than apply a differential DAS counting factor to all Category A DAS used in all stock areas.

(i) *Differential DAS counting areas.* The following differential DAS counting areas shall be used for the purposes of implementing the differential DAS counting AM specified in paragraph (n)(1) of this section:

(A) *Inshore GOM Differential DAS Area.* The Inshore GOM Differential DAS Area applies to the following stocks of regulated species: White hake, pollock, GOM cod, GOM haddock,

CC/GOM yellowtail flounder, GOM winter flounder, and Atlantic wolffish. The Inshore GOM Differential DAS Area is defined as the area bounded on the west by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

INSHORE GOM DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
INGOM1	(1)	69°30′
INGOM2	43°00′	69°30′
INGOM3	43°00′	70°00′
INGOM4	(2)	70°00′

[1] Intersection with ME shoreline.
[2] North-facing shoreline of Cape Cod, MA.

(B) *Offshore GOM Differential DAS Area*. The Offshore GOM Differential DAS Area applies to the following stocks of regulated species: GOM haddock, white hake, pollock, redfish, witch flounder, American plaice, and Atlantic halibut. The Offshore GOM Differential DAS Area is defined as the area bounded on the north by the shoreline of Maine, bounded on the east by the U.S./Canadian maritime boundary, and bounded on the south and west by straight lines connecting the following points in the order stated:

OFFSHORE GOM DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
CII3	42°22′	67°20′
OFFGOM1	42°20′	67°20′
OFFGOM2	42°20′	70°00′
OFFGOM5	43°00′	70°00′
INGOM2	43°00′	69°30′
INGOM1	(1)	69°30′

[1] Intersection with ME shoreline.

(C) *Inshore GB Differential DAS Area*. The Inshore GB Differential DAS Area applies to the following stocks of regulated species: Witch flounder, American plaice, white hake, Atlantic halibut, redfish, pollock, CC/GOM yellowtail flounder, GB cod, GB haddock, SNE/MA winter flounder, and Atlantic wolffish. The Inshore GB Differential DAS Area is defined as the area bounded by straight lines connecting the following points in the order stated:

INSHORE GB DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
G9	(1)	70°00′

INSHORE GB DIFFERENTIAL DAS AREA—Continued

Point	N. latitude	W. longitude
G10	42°20′	70°00′
IGB1	42°20′	68°50′
IGB2	41°00′	68°50′
IGB3	41°00′	69°30′
IGB4	41°10′	69°30′
IGB5	41°10′	69°50′
IGB6	41°20′	69°50′
IGB7	41°20′	70°00′
G12	(2)	70°00′

[1] The intersection of the Cape Cod, MA, coastline and 70°00′ W. longitude.
[2] South-facing shoreline of Cape Cod, MA.

(D) *Offshore GB Differential DAS Area*. The Offshore GB Differential DAS Area applies to the following stocks of regulated species: Witch flounder, American plaice, Atlantic halibut, northern windowpane flounder, GB cod, GB haddock, GB yellowtail flounder, and GB winter flounder. The Offshore GB Differential DAS Area is defined as the area bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

OFFSHORE GB DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
IGB1	42°20′	68°50′
OGB1	42°20′	67°20′
CII3	(1)	67°20′
OGB2	40°10′	(1)
OGB3	40°10′	68°50′
IGB1	42°20′	68°50′

[1] The U.S./Canada maritime boundary as it intersects with the EEZ.

(E) *SNE/MA Differential DAS Area*. The SNE/MA Differential DAS Area applies to the following stocks of regulated species or ocean pout: SNE/MA winter flounder, SNE/MA yellowtail flounder, southern windowpane flounder, and ocean pout. The SNE/MA Differential DAS Area is defined as the area bounded on the north and west by the coastline of the United States, bounded on the east and south by straight lines connecting the following points in the order stated:

SNE/MA DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
G12	(1)	70°00′
IGB7	41°20′	70°00′
IGB6	41°20′	69°50′
IGB5	41°10′	69°50′
IGB4	41°10′	69°30′

SNE/MA DIFFERENTIAL DAS AREA—Continued

Point	N. latitude	W. longitude
IGB3	41°00′	69°30′
IGB2	41°00′	68°50′
SNEDA1	40°10′	68°50′
SNEDA2	40°10′	73°10′
SNEDA3	39°50′	73°10′
SNEDA4	39°50′	(2)

[1] South-facing shoreline of Cape Cod, MA.
[2] East-facing shoreline of NJ.

(ii) *Differential DAS counting factor.* For determining the differential DAS counting AM specified in this paragraph (n)(1), or the inseason differential DAS counting adjustment specified in paragraph (o) of this section, the following differential DAS factor shall, except as provided in paragraph (n)(1)(iii) of this section, be applied to the DAS accrual rate specified in paragraph (e)(1) of this section, and implemented in a manner consistent with the Administrative Procedure Act.

Proportion of ACL caught	Differential DAS factor
0.5	0.5
0.6	0.6
0.7	0.7
0.8	0.8
0.9	No change
1.0	No change
1.1	1.1
1.2	1.2
1.3	1.3
1.4	1.4
1.5	1.5
1.6	1.6
1.7	1.7
1.8	1.8
1.9	1.9
2.0	2.0

(iii) *Mixed-stock exception.* When determining the differential DAS counting AM specified in this paragraph (n)(1), the Regional Administrator shall conduct an analysis to determine whether the mixed-stock exception, as specified in § 600.310(m), may be applicable. If the analysis concludes that the mixed-stock exception is applicable, the Regional Administrator shall modify or not apply a differential DAS counting AM on specific stocks, as appropriate, in accordance with the mixed-stock exception.

(iv) *Fishing year 2012.* Any adjustments to DAS counting necessary as a result of either underharvesting or overharvesting any of the sub-ACLs specified for common pool vessels during the 2011 fishing year pursuant to § 648.90(a)(4) shall become effective and remain effective for the duration of fishing year 2012 in addition to the implementation of the trimester TAC AM specified in paragraph (n)(2) of this section.

(2) *Trimester TAC AM for fishing years 2012 and beyond.* Beginning in fishing year 2012, common pool vessels shall be subject to the following restrictions:

(i) *Trimester TACs*–(A) *Trimester TAC distribution.* Any sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4) shall be apportioned into trimesters of 4 months in duration, beginning at the start of the fishing year (i.e., Trimester 1: May 1–August 31; Trimester 2: September 1–December 31; Trimester 3: January 1–April 30), as follows):

PORTION OF COMMON POOL SUB-ACLS APPORTIONED TO EACH STOCK FOR EACH TRIMESTER

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
GOM cod	27	36	37
GB cod	25	37	38
GOM haddock	27	26	47
GB haddock	27	33	40
CC/GOM yellowtail flounder	35	35	30
GB yellowtail flounder	19	30	52
SNE/MA yellowtail flounder	21	37	42
GOM winter flounder	37	38	25
GB winter flounder	8	24	69
Witch flounder	27	31	42
American plaice	24	36	40
Pollock	28	35	37
Redfish	25	31	44
White hake	38	31	31

(B) *Trimester TAC adjustment*. The distribution of trimester TACs specified in paragraph (n)(2)(i)(A) of this section may be adjusted pursuant to the biennial adjustment process specified in § 648.90. Future adjustments to the distribution of trimester TACs shall use catch data for the most recent 5-year period prior to the reevaluation of trimester TACs.

(ii) *Stock area closures*. If the Regional Administrator projects that 90 percent of the trimester TACs specified in paragraph (n)(2)(i) of this section will be caught based upon available information, the Regional Administrator shall close the area where 90 percent of the catch for each such stock occurred, according to available VTR data and other information, to all common pool vessels using gear capable of catching such stocks for the remainder of that trimester, as specified in paragraphs (n)(2)(ii)(A) through (N) of this section, in a manner consistent with the Administrative Procedure Act. For example, if the Regional Administrator projects that 90 percent of the CC/GOM yellowtail flounder Trimester 1 TAC will be caught, common pool vessels using trawl and gillnet gear shall be prohibited from fishing in the CC/GOM Yellowtail Flounder Closure Area specified in paragraph (n)(2)(ii)(G) of this section until the beginning of Trimester 2 on September 1 of that fishing year. Based upon all available information, the Regional Administrator is authorized to expand or narrow the areas closed under this paragraph (n)(2)(ii) in a manner consistent with the Administrative Procedure Act. If it is not possible to identify an area where only 90 percent of the catch occurred, the Regional Administrator shall close the smallest area possible where greater than 90 percent of the catch occurred.

(A) *GB Cod Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

GB COD TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GB1	42°20′	70°00′
GB2	42°20′	(1)
GB3	40°30′	(1)
GB4	40°30′	66°40′
GB5	39°50′	66°40′
GB6	39°50′	68°50′
GB7	41°00′	68°50′
GB8	41°00′	69°30′
GB9	41°10′	69°30′
GB10	41°10′	69°50′
GB11	41°20′	69°50′
GB12	41°20′	(2)
GB13	(3)	70°00′
GB14	(4)	70°00′
GB15	(5)	70°00′
GB1	42°20′	70°00′

[1] U.S./Canada maritime boundary.
[2] East-facing shoreline of Nantucket, MA.
[3] North-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of Cape Cod, MA.
[5] North-facing shoreline of Cape Cod, MA.

(B) *GOM Cod Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded on the south, west, and north by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

GOM COD TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GOM1	(1)	69°20′
GOM2	43°40′	69°20′
GOM3	43°40′	69°00′
GOM4	43°20′	69°00′
GOM5	43°20′	69°10′
GOM6	43°00′	69°10′
GOM7	43°00′	69°20′
GOM8	42°50′	69°20′
GOM9	42°50′	69°40′
GOM10	42°20′	69°40′
GOM11	42°20′	70°00′
GOM12	(2)	70°00′

[1] Intersection with ME shoreline.
[2] North-facing shoreline of Cape Cod, MA.

(C) *GB Haddock Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Haddock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

GB HADDOCK TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GB1	42°20′	70°00′
GB2	42°20′	(1)
GB3	40°30′	(1)
GB4	40°30′	66°40′
GB5	39°50′	66°40′
GB6	39°50′	68°50′
GB7	41°00′	68°50′
GB8	41°00′	69°30′
GB9	41°10′	69°30′
GB10	41°10′	69°50′
GB11	41°20′	69°50′
GB12	41°20′	(2)
GB13	(3)	70°00′
GB14	(4)	70°00′
GB15	(5)	70°00′
GB1	42°20′	70°00′

[1] U.S./Canada maritime boundary.
[2] East-facing shoreline of Nantucket, MA.
[3] North-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of Cape Cod, MA.
[5] North-facing shoreline of Cape Cod, MA.

(D) *GOM Haddock Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Haddock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded on the south, west, and north by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

GOM HADDOCK TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GOM1	(1)	69°20′
GOM2	43°40′	69°20′
GOM3	43°40′	69°00′
GOM4	43°20′	69°00′
GOM5	43°20′	67°40′
GOM6	(2)	67°40′
GOM7	42°53.1′	67°44.4′
GOM8	(2)	67°40′
GOM9	42°20′	67°40′
GOM10	42°20′	70°00′
GOM12	(3)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] North-facing shoreline of Cape Cod, MA.

(E) *GB Yellowtail Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

GB YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GB1	42°20′	68°50′
GB2	42°20′	(1)
GB3	40°30′	(1)
GB4	40°30′	66°40′
GB5	39°50′	66°40′
GB6	39°50′	68°50′
GB1	42°20′	68°50′

[1] U.S./Canada maritime boundary.

(F) *SNE/MA Yellowtail Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the SNE/MA Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
SNEMA1	(1)	70°00′
SNEMA2	(2)	70°00′
SNEMA3	(3)	70°00′
SNEMA4	39°50′	70°00′
SNEMA5	39°50′	71°40′
SNEMA6	40°00′	71°40′
SNEMA7	40°00′	73°00′
SNEMA8	(4)	73°00′
SNEMA9	41°00′	(5)
SNEMA10	41°00′	71°40′
SNEMA11	(6)	71°40′

[1] South-facing shoreline of Cape Cod, MA.
[2] North-facing shoreline of Nantucket, MA.
[3] South-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of Long Island, NY.
[5] East-facing shoreline of Long Island, NY.
[6] Intersection with RI shoreline.

(G) *CC/GOM Yellowtail Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the CC/GOM Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
CCGOM1	42°50′	(1)
CCGOM2	42°50′	69°40′
CCGOM3	42°20′	69°40′

CC/GOM YELLOWTAIL FLOUNDER TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
CCGOM4	42°20′	68°50′
CCGOM5	41°00′	68°50′
CCGOM6	41°00′	69°30′
CCGOM7	41°10′	69°30′
CCGOM8	41°10′	69°50′
CCGOM9	41°20′	69°50′
CCGOM10	41°20′	(2)
CCGOM11	(3)	70°00′
CCGOM12	(4)	70°00′

1 Intersection with MA shoreline.
2 East-facing shoreline of Nantucket, MA.
3 North-facing shoreline of Nantucket, MA.
4 South-facing shoreline of MA.

(H) *American Plaice Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the American Plaice Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

AMERICAN PLAICE TRIMESTER TAC AREA

Point	N. latitude	W. longitude
AP1	(1)	68°00′
AP2	44°10′	67°50′
AP3	44°00′	67°50′
AP4	44°00′	67°40′
AP5	(2)	67°40′
AP6	42°53.1′	67°44.4′
AP7	(2)	67°40′
AP8	41°20′	67°40′
AP9	41°10′	67°40′
AP10	41°10′	67°10′
AP11	41°00′	67°10′
AP12	41°00′	67°00′
AP13	40°50′	67°00′
AP14	40°50′	66°50′
AP15	40°40′	66°50′
AP16	40°40′	66°40′
AP17	39°50′	66°40′
AP18	39°50′	68°50′
AP19	41°00′	68°50′
AP20	41°00′	69°30′
AP21	41°10′	69°30′
AP22	41°10′	69°50′
AP23	41°20′	69°50′
AP24	41°20′	(3)
AP25	(4)	70°00′
AP26	(5)	70°00′

1 Intersection with ME shoreline.
2 U.S./Canada maritime boundary.
3 East-facing shoreline of Nantucket, MA.
4 North-facing shoreline of Nantucket, MA.
5 South-facing shoreline of Cape Cod, MA.

(I) *Witch Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Witch Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

WITCH FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
AP1	(1)	68°00′
AP2	44°10′	67°50′
AP3	44°00′	67°50′
AP4	44°00′	67°40′
AP5	(2)	67°40′
AP6	42°53.1′	67°44.4′
AP7	(2)	67°40′
AP8	41°20′	67°40′
AP9	41°10′	67°40′
AP10	41°10′	67°10′
AP11	41°00′	67°10′
AP12	41°00′	67°00′
AP13	40°50′	67°00′
AP14	40°50′	66°50′
AP15	40°40′	66°50′
AP16	40°40′	66°40′
AP17	39°50′	66°40′
AP18	39°50′	68°50′
AP19	41°00′	68°50′
AP20	41°00′	69°30′
AP21	41°10′	69°30′
AP22	41°10′	69°50′
AP23	41°20′	69°50′
AP24	41°20′	(3)
AP25	(4)	70°00′
AP26	(5)	70°00′

1 Intersection with ME shoreline.
2 U.S./Canada maritime boundary.
3 East-facing shoreline of Nantucket, MA.
4 North-facing shoreline of Nantucket, MA.
5 South-facing shoreline of Cape Cod, MA.

(J) *GB Winter Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Winter Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

GB WINTER FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GB1	42°20′	68°50′
GB2	42°20′	67°40′
GB3	41°50′	67°40′
GB4	41°50′	(1)
GB5	40°30′	(1)
GB6	40°30′	66°40′
GB7	40°40′	66°40′
GB8	40°40′	66°50′
GB9	40°50′	66°50′
GB10	40°50′	67°00′
GB11	41°00′	67°00′
GB12	41°00′	67°10′
GB13	41°10′	67°10′
GB14	41°10′	67°40′
GB15	41°20′	67°40′
GB16	41°20′	68°10′
GB17	41°10′	68°10′
GB18	41°10′	68°20′
GB19	41°00′	68°20′
GB20	41°00′	68°50′

GB WINTER FLOUNDER TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
GB1	42°20′	68°50′

[1] U.S./Canada maritime boundary.

(K) *GOM Winter Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Winter Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

GOM WINTER FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GOM1	42°50′	(1)
GOM2	42°50′	69°40′
GOM3	42°20′	69°40′
GOM4	42°20′	70°00′
GOM5	(2)	70°00′

[1] Intersection with MA shoreline
[2] North-facing shoreline of Cape Cod, MA

(L) *Redfish Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Redfish Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

REDFISH TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(M) *White Hake Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the White Hake Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

WHITE HAKE TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(N) *Pollock Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Pollock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

POLLOCK TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′

POLLOCK TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(iii) *Trimester TAC overage/underage.* If any trimester TAC, as specified in paragraph (n)(2)(i) of this section, is not caught during Trimester 1 or 2, the uncaught portion of the trimester TAC shall be carried forward into the next trimester. Uncaught portions of any trimester TAC following Trimester 3 may not be carried over into the following fishing year. If any trimester TAC is exceeded during the Trimesters 1 or 2, the overage shall be deducted from the Trimester 3 TAC for that stock. If the entire sub-ACL for a particular stock that is allocated to the common pool is exceeded (i.e., the common pool catch of that stock at the end of the fishing year, including the common pool's share of any overage of the overall ACL for a particular stock caused by excessive catch by other subcomponents of the fishery pursuant to § 648.90(a)(5), exceeds all three trimester TACs for that stock combined), an amount equal to the overage shall be deducted from the sub-ACL for that stock that is allocated to common pool vessels pursuant to § 648.90(a)(4) for the following fishing year.

(iv) *Monitoring requirements.* Except as specified in paragraph (n)(2)(iv)(C), starting in fishing year 2012 (May 1, 2012), landings of regulated species or ocean pout by common pool vessels shall be monitored at the point of offload by independent, third-party service providers approved to provide such services by NMFS, as specified in paragraphs (n)(2)(iv)(A) and (B) of this section. Unless otherwise instructed by NMFS, these service providers shall deploy dockside monitors to monitor the offload of catch directly to a dealer, and roving monitors to monitor the offload of catch onto a truck for subsequent shipment to a dealer. For fishing year 2012 only, common pool vessels must comply with any dockside/roving monitoring program specified by NMFS pursuant to § 648.87(b)(1)(v)(B)(*1*). None of the costs associated with dockside/roving monitors during fishing year 2012 shall be paid by the owner or operator of a vessel subject to these requirements. Starting in fishing year 2013 and thereafter, the costs associated with monitoring vessel offloads shall be the responsibility of individual vessels, unless otherwise instructed by NMFS. An individual vessel owner or operator may only use one dockside/roving monitoring service provider per fishing year beginning in fishing year 2013, and must contract for such services with a service provider approved by NMFS pursuant to § 648.87(b)(4), as instructed by the Regional Administrator. Both common pool vessels and service providers providing offloading monitoring services will be subject to the requirements specified in § 648.87(b)(5).

(A) *Coverage levels.* For fishing year 2012, dockside/roving monitoring coverage levels shall be determined by NMFS based on available funding. If NMFS does not require 100-percent coverage of all common pool trips, NMFS shall first provide dockside/roving monitoring for trips that are not also assigned an observer or at-sea monitor pursuant to § 648.11. Starting in fishing year 2013, at least 20 percent of the trips taken by vessels operating under the provisions of the common pool shall be monitored. To ensure that these levels of coverage are achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip must be monitored by a dockside/roving monitor, as specified in paragraph (n)(2) of this section, and a vessel may not offload any of its catch until the dockside/roving monitor arrives. For example, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during offload at each location. All landing events at remote ports that are selected to be observed by a dockside/roving monitor must have a roving monitor present to witness offload activities to the truck, as well as a dockside monitor present at each dealer to certify weigh-out of all landings. Except as provided in this paragraph

(n)(2)(iv)(A) or paragraph (n)(2)(iv)(C) of this section, or as instructed by the Regional Administrator, any service provider providing dockside/monitoring services required under this paragraph (n)(2)(iv) must ensure that coverage is randomly distributed among all such trips, and that the landing events monitored are representative of fishing operations by common pool vessels throughout the fishing year.

(B) *Dockside/roving monitor service provider standards*. Starting in fishing year 2013, a common pool vessel must employ a service provider approved by NMFS to provide dockside/roving monitor services, as identified by the Regional Administrator. To be approved to provide the services specified in paragraph (n)(2) of this section, dockside/roving monitor service providers must meet the standards in § 648.87(b)(4).

(C) *Exemption*. Common pool vessels operating under the provisions of either a limited access Northeast multispecies Small Vessel Category permit or Handgear A permit, as specified at §§ 648.82(b)(5) and (6), respectively, or an open access Northeast multispecies Handgear B permit, as specified at § 648.88(a), are exempt from the dockside/roving monitoring requirements specified in this paragraph (n)(2)(iv).

(v) *Adjustments to trimester TACs*. The distribution of trimester TACs specified in paragraph (n)(2)(i) of this section may be revised pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2) and shall use the distribution of landings of the most recent 5-year period available.

(vi) *Trip limit adjustment*. When 60 percent of the northern or southern windowpane flounder, ocean pout, or Atlantic halibut sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii)(E)(*2*) is projected to be caught, the Regional Administrator may specify a possession limit for these stocks that is calculated to prevent the yearly sub-ACL from being exceeded prior to the end of the fishing year.

(o) *Inseason adjustment to differential DAS counting for NE multispecies common pool vessels*. (1) In addition to the DAS accrual provisions specified in paragraphs (e) and (n) of this section, and other measures specified in this part, common pool vessels are subject to the following restrictions: The Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels and shall determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels as described in § 648.90(a)(4). This projection shall include catch by common pool vessels, as well as available information, regarding the catch of regulated species and ocean pout by vessels fishing for NE multispecies in State waters outside of the authority of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery. If it is projected that catch will exceed or under-harvest the common pool sub-ACL, the Regional Administrator may, at any time during the fishing year, implement a differential DAS counting factor to all Category A DAS used within the pertinent stock area(s), as specified in paragraph (n)(1)(i) of this section, in a manner consistent with the Administrative Procedure Act. Notwithstanding the fact that the differential DAS accountability measures described in paragraph (n)(1) of this section are intended to address potential over-harvests in fishing year 2010 and 2011, the scope of the Regional Administrator authority specified in this paragraph (o) is not limited to FY 2010 and 2011.

(2) The differential DAS counting factor shall be based on the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified in § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod by the end of fishing year 2010, the Regional Administrator may implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels within the Inshore GOM Differential DAS Area during fishing year 2010 (*i.e.*, Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch will simultaneously exceed

or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, the Regional Administrator may implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that the common pool vessel catch will exceed the GOM cod sub-ACL by a factor of 1.2 and the CC/GOM yellowtail flounder sub-ACL by a factor of 1.1, the Regional Administrator may implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels within the Inshore GOM Differential DAS Area during the fishing year. For any inseason differential DAS counting factor implemented, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS, because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded to the next 24-hr increment to determine DAS charged).

(3) For any inseason differential DAS counting factor implemented in fishing year 2011, the inseason differential DAS counting factor shall be applied in accordance with the DAS accrual provisions specified in paragraph (e)(1)(i) of this section, and, if pursuant to paragraph (n)(1) of this section, in conjunction with a differential DAS counting factor also implemented for the same differential DAS area during fishing year 2011 as an AM. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011, as an AM due to a 20-percent overage of the GOM cod sub-ACL in fishing year 2010, and during fishing year 2011 the GOM cod sub-ACL was projected to be exceeded by 30 percent, an additional differential DAS factor of 1.3 would be applied to the DAS accrual rate as an inseason action during fishing year 2011. Under this example, the DAS accrual rate after both the AM and the inseason differential DAS rate is applied to FY 2011 in the Inshore GOM Differential DAS Counting Area would be 37.4 hr charged for every 24 hr fished—1.2 × 1.3 × 24-hr DAS charge.

[69 FR 22969, Apr. 27, 2004]

EDITORIAL NOTE: 1. For FEDERAL REGISTER citations affecting § 648.82, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

2. At 75 FR 18319, Apr. 9, 2010, in § 648.82, paragraph (e)(1)(ii) was revised, however no (e)(1)(ii) existed, so it could not be revised.

§ 648.83 Multispecies minimum fish sizes.

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Size (inches)
Cod	22 (55.9 cm)
Haddock	18 (45.7 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	41 (104.1 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole-gutted or gilled fish only, after landing. For purposes of determining compliance with the possession limits in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be

multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(b) *Exceptions.* (1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the NE multispecies DAS program or on a sector trip may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. The weight of fillets and parts of fish, other than whole-gutted or gilled fish, shall be multiplied by 3. For the purposes of accounting for all catch by sector vessels as specified at § 648.87(b)(1)(v), the weight of all fillets and parts of fish, other than whole-gutted or gilled fish reported for at-home consumption shall be multiplied by a factor of 3.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) Vessels fishing exclusively with pot gear may possess NE multispecies frames used, or to be used, as bait, that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

(4) Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may possess and land haddock and other regulated species that are smaller than the minimum size specified under § 648.83, consistent with the bycatch caps specified in §§ 648.86(a)(3) and 648.86(k). Such fish may not be sold for human consumption.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

[69 FR 22974, Apr. 27, 2004, as amended at 71 FR 46876, Aug. 15, 2006; 72 FR 11276, Mar. 12, 2007; 75 FR 18328, Apr. 9, 2010; 76 FR 42585, July 19, 2011]

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of, or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM and GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of

the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

[69 FR 22974, Apr. 27, 2004]

§ 648.85 Special management programs.

(a) *U.S./Canada Resource Sharing Understanding*. No NE multispecies fishing vessel, or person on such vessel, may enter, fish in, or be in the U.S./Canada Resource Sharing Understanding Management Areas (U.S./Canada Management Areas), as defined in paragraph (a)(1) of this section, unless the vessel is fishing in accordance with the restrictions and conditions of this section. These restrictions do not preclude fishing under an approved Special Access Program specified under paragraph (b) of this section.

(1) *U.S./Canada Management Areas*. A vessel issued a NE multispecies permit that meets the requirements of paragraph (a)(3) of this section may fish in the U.S./Canada Management Areas described in paragraphs (a)(1)(i) and (ii) of this section.

(i) *Western U.S./Canada Area*. The Western U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

WESTERN U.S./CANADA AREA

Point	N. lat.	W. long.
USCA 1	42°20′	68°50′
USCA 2	39°50′	68°50′
USCA 3	39°50′	66°40′
USCA 4	40°40′	66°40′
USCA 5	40°40′	66°50′
USCA 6	40°50′	66°50′
USCA 7	40°50′	67°00′
USCA 8	41°00′	67°00′
USCA 9	41°00′	67°20′
USCA 10	41°10′	67°20′
USCA 11	41°10′	67°40′
USCA 12	42°20′	67°40′
USCA 1	42°20′	68°50′

(ii) *Eastern U.S./Canada Area*. The Eastern U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

EASTERN U.S./CANADA AREA

Point	N. latitude	W. longitude
USCA 12	42°20′	67°40′
USCA 11	41°10′	67°40′
USCA 10	41°10′	67°20′
USCA 9	41°00′	67°20′
USCA 8	41°00′	67°00′
USCA 7	40°50′	67°00′
USCA 6	40°50′	66°50′
USCA 5	40°40′	66°50′
USCA 4	40°40′	66°40′
USCA 15	40°30′	66°40′
USCA 14	40°30′	65°44.3′
USCA 13	42°20′	67°18.4′
USCA 12	42°20′	67°40′

(2) *TAC allocation*—(i) *Process for establishing TACs*. The amount of GB cod and haddock TAC that may be harvested from the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section, and the amount of GB yellowtail flounder TAC that may be harvested from the Western U.S./Canada Area and the Eastern U.S./Canada Area, as described in paragraphs (a)(1)(i) and (ii) of this section, combined, shall be determined by the process specified in paragraphs (a)(2)(i)(A) through (D) of this section.

(A) To the extent practicable, by June 30 of each year, the Terms of Reference for the U.S./Canada shared resources for GB cod, haddock, and yellowtail flounder shall be established by the Steering Committee and the Transboundary Management Guidance Committee (TMGC).

(B) To the extent practicable, by July 31 of each year, a Transboundary Resource Assessment Committee (TRAC) joint assessment of the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall occur.

(C) To the extent practicable, by August 31 of each year, the TMGC shall recommend TACs for the U.S./Canada shared resources for GB cod, haddock, and yellowtail flounder. Prior to October 31 of each year, the Council may refer any or all recommended TACs back to the TMGC and request changes to any or all TACs. The TMGC shall consider such recommendations and respond to the Council prior to October 31.

(D) To the extent practicable, by October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada

Management Area resources for GB cod, haddock, and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year as a subset of the ACLs for these stocks available to the commercial fishery pursuant to § 648.90(a)(4). NMFS shall review the Council's recommendations and shall publish the proposed TACs in the FEDERAL REGISTER and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and publish notification of the approved TACs and responses to public comments in the FEDERAL REGISTER. The Council, at this time, may also consider modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

(ii) *Adjustments to TACs*. Any overages of the GB cod, GB haddock, and GB yellowtail flounder TACs specified for either the common pool or individual sectors pursuant to this paragraph (a)(2) that occur in a given fishing year shall be subtracted from the respective TAC in the following fishing year and may be subject to the overall groundfish AM provisions as specified in § 648.90(a)(5)(ii) if the overall ACL for a particular stock in a given fishing year, specified pursuant to § 648.90(a)(4), is exceeded.

(iii) *Distribution of TACs*. For stocks managed by the U.S./Canada Resource Sharing Understanding, as specified in paragraph (a)(1) of this section, the TAC allocation determined pursuant to this paragraph (a)(2) shall be distributed between sectors approved pursuant to § 648.87(c), common pool vessels, and scallop vessels, as specified in § 648.90(a)(4). Approved sectors will be allocated ACE for Eastern GB cod and Eastern GB haddock proportional to the sector's allocation of the overall ACL for these stocks, based upon the fishing histories of sector vessels, as specified in § 648.87(b)(1)(i). Any ACE for Eastern GB cod and Eastern GB haddock allocated to an individual sector is considered a subset of the overall GB cod and GB haddock ACE allocated to that sector and may only be harvested from the Eastern U.S./Canada Area, while the remaining ACE for GB cod and GB haddock available to that sector may only be harvested outside of the Eastern U.S./Canada Area. For example, if a sector is allocated 10 percent of the GB haddock ACL, it will also be allocated 10 percent of the Eastern GB haddock TAC for that particular fishing year.

(3) *Requirements for vessels in U.S./Canada Management Areas*. Any common pool or sector vessel, provided the sector to which a vessel belongs is allocated ACE for stocks caught in the Eastern U.S./Canada Area pursuant to paragraph (a)(2)(iii) of this section and § 648.87(b)(1)(i), may fish in the U.S./Canada Management Areas, provided it complies with conditions and restrictions of this section. A vessel other than a NE multispecies vessel may fish in the U.S./Canada Management Area, subject to the restrictions specified in paragraph (a)(3)(iv)(E) of this section and all other applicable regulations for such vessels.

(i) *VMS requirement*. A NE multispecies vessel fishing in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(ii) *Declaration*. To fish in the U.S./Canada Management Area under a NE multispecies DAS or on a sector trip, a NE multispecies vessel must declare through the VMS the specific area within the U.S./Canada Management Areas, as described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP within the U.S./Canada Management Areas, as described in paragraph (b) of this section, the vessel will be fishing in prior to leaving the dock, in accordance with instructions to be provided by the Regional Administrator, and must comply with the restrictions and conditions in paragraphs (a)(3)(ii)(A) through (C) of this section. Vessels other than NE multispecies vessels are not required to declare into the U.S./Canada Management Areas.

(A) A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish

both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished for the entire trip, and the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*4*) of this section. A vessel on a sector trip may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*3*) of this section. When a vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on that trip shall count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(*1*) The vessel operator must notify NMFS via VMS prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish outside the Eastern U.S./Canada Area, as instructed by the Regional Administrator. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS and vessels on a sector trip that are not fishing under a NE multispecies DAS for the purposes of complying with the restrictions of other fisheries, once a vessel elects to fish outside of the Eastern U.S./Canada Area, Category A DAS shall accrue from the time the vessel crosses the VMS Demarcation Line at the start of its fishing trip until the time the vessel crosses the VMS Demarcation Line on its return to port, in accordance with § 648.10(e)(5)(iii).

(*2*) Unless otherwise exempted pursuant to this part, the vessel must comply with the reporting requirements of the U.S./Canada Management Area specified in § 648.85(a)(3)(v) for the duration of the trip.

(*3*) [Reserved]

(*4*) If a common pool vessel fishing under a NE multispecies DAS possesses yellowtail flounder in excess of the trip limits for CC/GOM yellowtail flounder or SNE/MA yellowtail flounder, as specified in § 648.86(g), the vessel may not fish in either the CC/GOM or SNE/MA yellowtail flounder stock area during that trip (i.e., may not fish outside of the U.S./Canada Management Area).

(B) A common pool vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the more restrictive regulations applicable to the area fished for the entire trip (e.g., the possession restrictions specified in paragraph (a)(3)(iv)(C)(*4*) of this section), and the reporting requirements specified in § 648.85(a)(3)(v). A vessel on a sector trip in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the more restrictive reporting requirements specified in § 648.85(a)(3)(v), unless otherwise exempted pursuant to this part.

(C) For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 48 hr prior to the beginning of any trip that it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

(iii) *Gear requirements*. A NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(6) and (8) of this section, must fish with a Ruhle trawl, as described in paragraph (b)(6)(iv)(J)(*1*) of this section, or a haddock separator trawl, or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (all three nets may be onboard the fishing vessel simultaneously). Unless otherwise restricted by § 648.80(n), gear other than the Ruhle trawl, haddock separator trawl, or the flounder trawl net, or gear authorized under paragraphs (b)(6) and (8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations in

§ 648.23(b). The description of the haddock separator trawl and the flounder trawl net, and the description of the Ruhle trawl may be further specified by the Regional Administrator through publication of such specifications in the FEDERAL REGISTER, in a manner consistent with the Administrative Procedure Act.

(A) *Haddock Separator Trawl.* A haddock separator trawl is defined as a groundfish trawl modified to a vertically oriented trouser trawl configuration, with two extensions arranged one over the other, where a codend shall be attached only to the upper extension, and the bottom extension shall be left open and have no codend attached. A horizontal large mesh separating panel constructed with a minimum of 6.0 inch (15.2 cm) diamond mesh must be installed between the selvedges joining the upper and lower panels, as described in paragraph (a)(3)(iii)(A) and (B) of this section, extending forward from the front of the trouser junction to the aft edge of the first belly behind the fishing circle.

(*1*) *Two-seam bottom trawl nets*—For two seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 80-85 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 160-170 meshes wide.

(*2*) *Four-seam bottom trawl nets*—For four seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 90-95 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 180-190 meshes wide. The separator panel will be attached to both of the side panels of the net along the midpoint of the side panels. For example, if the side panel is 100 meshes tall, the separator panel must be attached at the 50th mesh.

(B) *Flounder Trawl Net.* A flounder trawl net is defined as bottom trawl gear meeting one of the following two net descriptions:

(*1*) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), where the maximum footrope length is not greater than 105 ft (32.0 m) and the headrope is at least 30 percent longer than the footrope. The footrope and headrope lengths shall be measured from the forward wing end.

(*2*) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), with the exception that the top panel of the net contains a section of mesh at least 10 ft (3.05 m) long and stretching from selvedge to selvedge, composed of at least 12–in (30.5–cm) mesh that is inserted no farther than 4.5 meshes behind the headrope.

(iv) *Harvest controls.* Unless otherwise specified in this paragraph (a)(3)(iv), any NE multispecies vessel fishing in the U.S./Canada Management Areas is subject to the following restrictions. For common pool vessels, the trip limits specified in this paragraph (a)(3)(iv) are in addition to any other possession or landing limits applicable to vessels not fishing in the U.S./Canada Management Areas. A sector vessel is subject to the trip limits specified in § 648.87(b)(1)(ix).

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, a common pool vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs, as required under this section.

(*1*) *Initial cod landing limit.* Unless modified pursuant to paragraph (a)(3)(iv)(D) of this section, notwithstanding other applicable possession and landing restrictions under this part, a common pool vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by

participation in other Special Management Programs, as required under this section.

(*2*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for cod specified in paragraph (a)(2) of this section will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies DAS and sector vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, by prohibiting such vessels and all other vessels not issued a limited access NE multispecies permit from entering or being in this area and from harvesting, possessing, or landing cod in or from the Eastern U.S./Canada Area during the closure period.

(B) *Haddock landing limit*—(*1*) *Initial haddock landing limit.* The initial haddock landing limit for common pool vessels is specified in § 648.86(a), unless adjusted pursuant to paragraphs (a)(3)(iv)(B)(*2*) and (*3*) of this section.

(*2*) *Implementation of haddock landing limit for Eastern U.S./Canada Area.* When the Regional Administrator projects that 70 percent of the haddock TAC allocation specified for common pool vessels, as described in paragraph (a)(2) of this section, will be harvested, NMFS shall implement, in a manner consistent with the Administrative Procedure Act, a haddock trip limit for common pool vessels fishing in the Eastern U.S./Canada Area of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for haddock distributed to either common pool vessels or a particular sector, as specified in paragraph (a)(2) of this section, will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, and prohibit such vessels and all other vessels not issued a limited access NE multispecies permit from harvesting, possessing, or landing haddock in or from the Eastern U.S./Canada Area.

(C) *Yellowtail flounder landing limit*—(*1*) *Initial yellowtail flounder landing limit.* Unless further restricted under paragraphs (a)(3)(iv)(C)(*2*) or (D) of this section (gear performance incentives), or modified pursuant to paragraph (a)(3)(iv)(D) of this section, there is no initial limit to the amount of yellowtail flounder that could be landed for each fishing year.

(*2*) *Regional Administrator authority to adjust the yellowtail flounder landing limit mid-season.* If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch may exceed the yellowtail flounder TAC for a fishing year, the Regional Administrator may implement, adjust, or remove the yellowtail flounder landing limit at any time during that fishing year in order to prevent yellowtail flounder catch from exceeding the TAC, or to facilitate harvesting the TAC, in a manner consistent with the Administrative Procedure Act. If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch is less than 90 percent of the TAC, the Regional Administrator may adjust or remove the yellowtail flounder landing limit at any time during the fishing year in order to facilitate the harvest of the TAC, in a manner consistent with the Administrative Procedure Act. The Regional Administrator may specify yellowtail flounder trip limits that apply to the entire U.S./Canada Management Area or to only the Western or Eastern Area.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for yellowtail flounder distributed to either common pool vessels or a particular sector, as specified in paragraph (a)(2) of this section, will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, and

prohibit such vessels and all other vessels not issued a limited access NE multispecies permit from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area.

(*4*) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip.* A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(ii)(B) of this section, is subject to the most restrictive landing limits that apply to any of the areas fished, for the entire trip.

(D) *Other restrictions or inseason adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, the Regional Administrator, in a manner consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or to facilitate achieving the TAC specified in paragraph (a)(2) of this section. Such adjustments may be made at any time during the fishing year, or prior to the start of the fishing year. If necessary to give priority to using Category A DAS versus using Category B DAS, the Regional Administrator may implement different management measures for vessels using Category A DAS than for vessels using Category B DAS. If the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, unless further restricted elsewhere in this part, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg) (whole weight) each (*i.e.*, no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

(E) *Closure of Eastern U.S./Canada Area.* Based upon available information, when the Regional Administrator projects that any individual TAC allocation specified in paragraph (a)(2)(iii) of this section will be caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all vessels subject to that particular TAC allocation, unless otherwise allowed under this paragraph (a)(3)(iv)(E). For example, if the Eastern GB cod TAC specified for common pool vessels is projected to be caught, NMFS shall close the Eastern U.S./Canada Area to all common pool vessels operating under a NE multispecies DAS. Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), common pool vessels fishing under a DAS may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP (i.e., haddock for the Eastern U.S./Canada Haddock SAP or haddock or yellowtail flounder for the CA II Yellowtail Flounder/Haddock SAP) has not been fully harvested. A vessel fishing on a sector trip may only fish in a SAP if that vessel's sector has ACE available for all stocks caught in that SAP. For example, should the GB cod TAC allocation specified for common pool vessels in paragraph (a)(2)(iii) of this section be attained, and the Eastern U.S./Canada Area closure implemented for common pool vessels, common pool vessels could continue to fish for yellowtail flounder within the SAP identified as the Closed Area II Yellowtail Flounder/Haddock SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

(v) *Reporting.* The owner or operator of a common pool vessel must submit reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into either of the U.S./Canada Management Areas. A vessel fishing on a sector trip is subject to the reporting requirements specified in this paragraph (a)(3)(v) unless the Regional Administrator determines

that weekly sector catch reports, as required by § 648.87(b)(1)(v), are sufficient to monitor sector catch within the U.S./Canada Management Areas, and the Regional Administrator makes that determination in a manner consistent with the Administrative Procedure Act. Vessels subject to this reporting requirement must continue to report daily, even after exiting the U.S./Canada Management Area. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr, and must be submitted by 0900 hr of the following day, or as instructed by the Regional Administrator. The reports must include at least the following information:

(A) VTR serial number or other universal ID specified by the Regional Administrator;

(B) Date fish were caught and statistical area in which fish were caught; and

(C) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, ocean pout, Atlantic wolffish, and white hake kept (in pounds, live weight) in each broad stock area, specified in § 648.10(k)(3), as instructed by the Regional Administrator.

(vi) *Withdrawal from U.S./Canada Resource Sharing Understanding*. At any time, the Regional Administrator, in consultation with the Council, may withdraw from the provisions of the U.S./Canada Resource Sharing Understanding described in this section, if the Understanding is determined to be inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, or other applicable law. If the United States withdraws from the Understanding, the implementing measures, including TACs, remain in place until changed through the framework or FMP amendment process.

(vii) *Transiting*. A NE multispecies vessel that has declared into the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, and that is not fishing in the CA II Yellowtail Flounder/Haddock SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder/Haddock SAP Area, as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is stowed in accordance with the regulations in § 648.23(b).

(b) *Special Access Programs*. A SAP is a narrowly defined fishery that results in increased access to a stock that, in the absence of such authorization, would not be allowed due to broadly applied regulations. A SAP authorizes specific fisheries targeting either NE multispecies stocks or non-multispecies stocks in order to allow an increased yield of the target stock(s) without undermining the achievement of the goals of the NE Multispecies FMP. A SAP should result in a harvest level that more closely approaches OY, without compromising efforts to rebuild overfished stocks, end overfishing, minimize bycatch, or minimize impact on EFH. Development of a SAP requires a relatively high level of fishery dependent and fishery independent information in order to be consistent with this rationale.

(1) *SAPs harvesting NE multispecies*. A SAP to harvest NE multispecies may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(2) *SAPs harvesting stocks other than NE multispecies*. A SAP to harvest stocks of fish other than NE multispecies (non-multispecies SAP) may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(3) *Closed Area II Yellowtail Flounder/Haddock SAP*—(i) *Eligibility*. Any vessel issued a valid limited access NE multispecies permit fishing under a NE multispecies DAS or on a sector trip, provided the sector to which the vessel belongs has been allocated ACE for all stocks that may be caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i), are eligible to participate in the Closed Area II Yellowtail Flounder/Haddock SAP, and may fish in the Closed Area II Yellowtail Flounder/Haddock Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, provided the Eastern U.S./Canada Area, as described in paragraph (a)(1)(ii) of this section, is not closed according to the provisions specified in paragraph (a)(3)(iv)(E) of this section, or that the sector to

which a vessel belongs no longer has ACE available for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i). All eligible vessels must comply with the requirements of this section, unless otherwise specified in this paragraph (b)(3).

(ii) *Closed Area II Yellowtail Flounder/Haddock SAP Area.* The Closed Area II Yellowtail Flounder/Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II YELLOWTAIL FLOUNDER/HADDOCK SAP AREA

Point	N. latitude	W. longitude
Ytail 1	41°30′	67°20′
Ytail 2	41°30′	66°34.8′
G5	41°18.6′	66°24.8′1
CII 2	41°00′	66°35.8′
CII 1	41°00′	67°20′
Ytail 1	41°30′	67°20′

(iii) *Season*—(A) *Season when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder.* When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, eligible vessels may fish in the Closed Area II Yellowtail Flounder/Haddock SAP from July 1 through December 31.

(B) *Season when the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock.* When the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock, as specified in paragraph (b)(3)(vii) of this section, eligible vessels may fish in the CA II Yellowtail Flounder/Haddock SAP from August 1 through January 31.

(iv) *VMS requirement.* All NE multispecies vessels fishing in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; date, time and port of departure; and special access program to be fished, at least 48 hr prior to the beginning of any trip that it declares into the SAP as required under this paragraph (b)(3)(v). To fish in the Closed Area II Yellowtail Flounder/Haddock SAP, a vessel must declare into this area through the VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Closed Area II Yellowtail Flounder/Haddock SAP may also fish in the area outside the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, on the same trip, provided the vessel also declares into this area prior to departure from port and fishes under the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished during the entire trip.

(vi) *Number of trips per vessel*—(A) *Number of trips allowed when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder.* When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, eligible common pool vessels are restricted to one trip per calendar month during the season described in paragraph (b)(3)(iii) of this section.

(B) *Number of trips allowed when the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock.* When the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock, as specified in paragraph (b)(3)(vii) of this section, there is no limit on the number of trips that can be taken by eligible vessels during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Opening criteria*—(A) *Opening the CA II Yellowtail Flounder/Haddock SAP to target yellowtail flounder.* Unless otherwise authorized by the Regional Administrator, as specified in paragraph (a)(3)(iv)(D) of this section, the total number of allowed trips by common pool vessels that may be declared into the Closed Area II Yellowtail Flounder/Haddock SAP for each fishing year shall be as announced by the Regional Administrator on or about June 1, after consultation with the Council, in a manner consistent with the Administrative Procedure Act. Except as provided in paragraph (b)(3)(vii)(B) of this

section, the total number of trips by all common pool vessels that may be declared into this SAP when the SAP is open to target yellowtail flounder shall not exceed 320 per year. When determining the total number of trips, the Regional Administrator shall consider the available yellowtail flounder TAC under the U.S./Canada Resource Sharing Understanding, the potential catch of GB yellowtail flounder by all vessels fishing outside of the SAP, recent discard estimates in all fisheries that catch yellowtail flounder, the expected number of SAP participants, and any other available information. If the Regional Administrator determines that the available catch, as determined by subtracting the potential catch of GB yellowtail flounder by all vessels outside of the SAP from the GB yellowtail flounder TAC allocation specified in paragraph (a)(2) of this section, is insufficient to allow for at least 150 trips with a possession limit of 15,000 lb (6,804 kg) of yellowtail flounder per trip, the Regional Administrator may choose not to authorize any trips into the SAP during a fishing year.

(B) *Opening the CA II Yellowtail/Haddock SAP to only target haddock.* If the CA II Yellowtail Flounder/Haddock SAP is not open to targeting yellowtail flounder due to an insufficient amount of yellowtail flounder TAC, or because the maximum number of trips allowed into the CA II Yellowtail Flounder/Haddock SAP to target yellowtail flounder has been achieved pursuant to paragraph (b)(3)(vii)(A) of this section, eligible vessels may target haddock in the CA II Yellowtail Flounder/Haddock Access Area, as specified in paragraph (b)(3)(ii) of this section, provided the Eastern GB haddock TAC specified in paragraph (a)(2) of this section has not been caught, the Eastern U.S./Canada Area is not closed pursuant to paragraph (a)(3)(iv)(D) of this section; and, for vessels on a sector trip, the sector to which the sector vessel belongs has ACE remaining for the stocks caught in the Eastern U.S./Canada Area.

(viii) *Trip limits.* Vessels subject to the provisions of the common pool that are fishing in the Closed Area II Yellowtail Flounder/Haddock SAP are subject to the following trip limits, unless otherwise restricted in this part. Vessels subject to the restrictions and conditions of an approved sector operations plan fishing in the Closed Area II Yellowtail Flounder/Haddock SAP are subject to the trip limits specified in § 648.87(b)(1)(ix).

(A) *Yellowtail flounder trip limit—(1) Trip limits when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, a vessel subject to the provisions of the common pool that is fishing in the CA II Yellowtail Flounder/Haddock SAP may fish for, possess, and land up to 10,000 lb (4,536 kg) of yellowtail flounder per trip. The Regional Administrator may adjust this limit to a maximum of 30,000 lb (13,608 kg) per trip after considering the factors listed in paragraph (b)(3)(vii) of this section for the maximum number of trips.

(*2*) *Trip limits when the CA II Yellowtail Flounder/Haddock SAP is open to target haddock.* Unless otherwise specified by the Regional Administrator pursuant to paragraph (a)(3)(iv)(D) of this section, when the CA II Yellowtail Flounder/Haddock SAP is only open to target haddock, as specified in paragraph (b)(3)(vii) of this section, the trip limit for yellowtail flounder is specified in paragraph (b)(3)(viii)(C) of this section.

(B) *Cod and haddock trip limit.* Unless otherwise restricted, a common pool vessel fishing any portion of a trip in the Closed Area II Yellowtail Flounder/Haddock SAP on a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A common pool vessel fishing on a NE multispecies DAS in the Closed Area II Yellowtail Flounder/Haddock SAP is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section.

(C) *Other species trip limits.* A common pool vessel fishing on a NE multispecies DAS in the CA II Yellowtail

Flounder/Haddock SAP using a haddock separator trawl, a Ruhle trawl, or any other gear specified pursuant to paragraph (b)(3)(x)(B) must comply with the trip limits specified in § 648.86, unless further restricted by the trip limits specified in paragraph (e) of this section.

(ix) *Area fished*. Eligible vessels that have declared a trip into the Closed Area II Yellowtail Flounder/Haddock SAP, and other areas as specified in paragraph (b)(3)(v) of this section, may not fish for, possess, or land fish in or from outside of the declared area during the same trip.

(x) *Gear requirements*—(A) *Approved gear*. When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, NE multispecies vessels fishing with trawl gear must use a haddock separator trawl or a flounder trawl net, as described in paragraph (a)(3)(iii) of this section, or the Ruhle trawl, as described in paragraph (b)(6)(iv)(J)(*3*) of this section (all three nets may be onboard the fishing vessel simultaneously). When this SAP is only open to target haddock, NE multispecies vessels must use a haddock separator trawl, a Ruhle trawl, or hook gear. Gear other than the haddock separator trawl, the flounder trawl, or the Ruhle trawl may be on board the vessel during a trip to the Eastern U.S./Canada Area outside of the CA II Yellowtail Flounder/Haddock SAP, provided the gear is stowed according to the regulations at § 648.23(b).

(B) *Approval of additional gear*. The Regional Administrator may authorize additional gear for use in the CA II Yellowtail Flounder/Haddock SAP in accordance with the standards and requirements specified in paragraph (b)(6)(iv)(J)(*2*) of this section.

(xi) *No-discard provision and DAS flips*. A vessel fishing in the CA II Yellowtail Flounder/Haddock SAP under a NE multispecies DAS or on a sector trip may not discard legal-sized regulated NE multispecies, unless the possession of the species is prohibited pursuant to § 648.86, or unless otherwise specified in this paragraph (b)(3)(xi). A vessel may discard Atlantic halibut exceeding the one fish per trip possession limit. If a vessel fishing in the CA II Yellowtail Flounder/Haddock SAP exceeds an applicable trip limit, the vessel must exit the SAP. If a common pool vessel operator fishing in the CA II Yellowtail Flounder/Haddock SAP under a Category B DAS harvests and brings on board more legal-sized regulated NE multispecies or Atlantic halibut than the maximum landing limits allowed per trip, as specified in paragraph (b)(3)(iv) or (viii) of this section, or in § 648.86, the vessel operator must immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). Once this notification has been received by NMFS, the vessel's entire trip will accrue as a Category A DAS trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS (i.e., either at the beginning of the trip, or at the time the vessel crossed into the Eastern U.S./Canada Area) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Category B DAS.

(xii) *Minimum Category A DAS*. For vessels fishing under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(xiii) *Catch distribution*. All catch of GB haddock from vessels declared into the CA II Yellowtail Flounder/Haddock SAP shall be applied against the Eastern GB haddock TAC, as specified in paragraph (a)(2) of this section, for either common pool vessels or individual approved sectors.

(4) [Reserved]

(5) *Incidental Catch TACs*. Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be based upon the portion of the ACL for a stock specified for the common pool vessels pursuant to § 648.90(a)(4), and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. Because GB yellowtail

flounder and GB cod are transboundary stocks, the incidental catch TACs for these stocks shall be based upon the common pool portion of the ACL available to U.S. vessels. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder, and GB winter flounder*. With the exception of GB cod, GB yellowtail flounder, and GB winter flounder, 100 percent of the Incidental Catch TACs specified in this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod*. The Incidental Catch TAC for GB cod specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(6) *Regular B DAS Pilot Program*—(i) *Eligibility*. Vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS are eligible to participate in the Regular B DAS Program, and may elect to fish under a Regular B DAS, provided they comply with the requirements and restrictions of this paragraph (b)(6), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(6)(iv)(G) or (H), or paragraph (b)(6)(vi) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(6)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(6)(iv)(F) of this section. Vessels may fish under the B Regular DAS Program and in the U.S./Canada Management Area on the same trip, but may not fish under the Regular B DAS Program and in a SAP on the same trip.

(ii) [Reserved]

(iii) *Quarterly Incidental Catch TACs*. The Incidental Catch TACs specified in accordance with paragraph (b)(5) of this section shall be divided into quarterly catch TACs as follows: The first quarter shall receive 13 percent of the Incidental Catch TACs and the remaining quarters shall each receive 29 percent of the Incidental Catch TACs. NMFS shall send letters to all limited access NE multispecies permit holders notifying them of such TACs.

(iv) *Program requirements*—(A) *VMS requirement*. A NE multispecies DAS vessel fishing in the Regular B DAS Program described in paragraph (b)(6)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification*. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 72 hr prior to the beginning of any trip declared into the Regular B DAS Program as required by paragraph (b)(6)(iv)(C) of this section, and in accordance with the Regional Administrator's instructions. Providing notice of the area that the vessel intends to fish does not restrict the vessel's activity on that trip to that area only (*i.e.*, the vessel operator may change his/her plans regarding planned fishing areas).

(C) *VMS declaration*. To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Program cannot fish in an approved SAP described under this section on the same trip. Mere declaration of a Regular B DAS Program trip does not reserve a vessel's right to fish under the Program, if the vessel has not crossed the VMS demarcation line.

(D) *Landing limits*. Unless otherwise specified in this paragraph (b)(6)(iv)(D), or restricted pursuant to § 648.86, a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of

1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod (both GOM and GB), American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, and pollock; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl, as specified in paragraph (a)(3)(iii)(A), or a Ruhle trawl, as specified in paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described in paragraph (b)(6)(iv)(J) of this section, are restricted to the trip limits specified in paragraph (e) of this section.

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated species, ocean pout, or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of regulated species or ocean pout is prohibited, as specified in §§ 648.85 and 648.86. If such a vessel harvests and brings on board legal-sized regulated species or ocean pout in excess of the allowable landing limits specified in paragraph (b)(6)(iv)(D) of this section or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to an A DAS. Once this notification has been received by NMFS, the vessel shall automatically be switched by NMFS to fishing under a Category A DAS for its entire fishing trip. Thus, any Category B DAS that accrued between the time the vessel declared into the Regular B DAS Program at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the applicable trip limits specified in § 648.85(a) or § 648.86 and may discard fish in excess of the applicable trip limits.

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip. If a vessel is fishing in an area subject to differential DAS counting pursuant to § 648.82(n)(1), the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip divided by the applicable differential DAS counting factor specified in § 648.82(n)(1)(ii). For example, if a vessel plans a trip under the Regular B DAS Program in the Inshore GOM Differential DAS Area during a fishing year in which the area is subject to a differential DAS counting factor of 1.2, and the vessel has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B Program is 8 (10 divided by 1.2 = 8.33, but since Regular B DAS are charged in 24-hr intervals, 8 Regular B DAS is the maximum that can be used for this trip). A vessel fishing in the Regular B DAS Program for its entire trip shall accrue DAS in accordance with § 648.82(e)(1).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested.* With the exception of white hake, when the Regional Administrator provides notification through rulemaking consistent with the Administrative Procedure Act, that 100 percent of one or more of quarterly incidental TACs specified under paragraph (b)(6)(iii) of this section has projected to have been harvested, the use of Regular B DAS shall be prohibited in the pertinent stock area(s) as defined under paragraph (b)(6)(v) of this section for the duration of the calendar quarter. The closure of a stock area to all Regular B DAS use will occur even if the quarterly incidental catch TACs for other stocks in that stock area have not been completely harvested. When the Regional Administrator projects that 100 percent of the quarterly white hake incidental catch TAC specified under paragraph (b)(6)(iii) of this section has been harvested, vessels fishing under a Regular B DAS, or that complete a trip under a

Regular B DAS, will be prohibited from retaining white hake.

(H) *Closure of Regular B DAS Program and quarterly DAS limits*. Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described in paragraph (b)(6)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May–July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, in accordance with § 648.82(e)(1).

(I) *Reporting requirements*. The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: VTR serial number or other universal ID specified by the Regional Administrator; date fish were caught; statistical area fished; and the total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, and white hake kept in each broad stock area (in pounds, live weight), specified in § 648.10(k)(3), as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to flip, as described in paragraph (b)(6)(iv)(E) of this section.

(J) *Gear requirement*. (*1*) Vessels fishing with trawl gear in the Regular B DAS Program must use the haddock separator trawl or Ruhle trawl, as described in paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(*3*) of this section, respectively, or other type of gear if approved as described in this paragraph (b)(6)(iv)(J). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program pursuant to § 648.23(b).

(*2*) *Approval of additional gear*. At the request of the Council or the Council's Executive Committee, the Regional Administrator may authorize additional gear for use in the Regular B DAS Program, through notice consistent with the Administrative Procedure Act. The proposed gear must satisfy standards specified in paragraph (b)(6)(iv)(J)(*2*)(*i*) or (*ii*) of this section in a completed experiment that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator. Comparisons of the criteria specified in this paragraph (b)(6)(iv)(J)(*2*) will be made to an appropriately selected control gear.

(*i*) The gear must show a statistically significant reduction in catch of at least 50 percent (by weight, on a trip-by-trip basis) of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(J)(*2*)(*i*), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council. This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards; or

(*ii*) The catch of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(J)(*2*)(*ii*), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council, must be less than 5 percent of the total catch of regulated groundfish (by weight, on a trip-by-trip basis). This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards.

(*3*) *Ruhle Trawl*. The Ruhle Trawl is a four-seam bottom groundfish trawl designed to reduce the bycatch of cod while retaining or increasing the catch of haddock, when compared to traditional groundfish trawls. A Ruhle Trawl must be constructed in accordance with the standards described and referenced in this paragraph

§ 648.85(b)(6)(iv)(J)(*3*). The mesh size of a particular section of the Ruhle Trawl is measured in accordance with § 648.80(f)(2), unless insufficient numbers of mesh exist, in which case the maximum total number of meshes in the section will be measured (between 2 and 20 meshes).

(*i*) The net must be constructed with four seams (i.e., a net with a top and bottom panel and two side panels), and include at least the following net sections as depicted in Figure 1 of this part (this figure is also available from the Administrator, Northeast Region): Top jib, bottom jib, jib side panels (× 2), top wing, bottom wing, wing side panels (× 2), bunt, square, square side panels (× 2), first top belly, first bottom belly, first belly side panels (× 2), and second bottom belly.

(*ii*) The top and bottom jibs, jib side panels, top and bottom wings, and wing side panels, bunt, and first bottom belly (the first bottom belly and all portions of the net in front of the first bottom belly, with the exception of the square and the square side panels) must be at least two meshes long in the fore and aft direction. For these net sections, the stretched length of any single mesh must be at least 7.9 ft (240 cm), measured in a straight line from knot to knot.

(*iii*) Mesh size in all other sections must be consistent with mesh size requirements specified under § 648.80 and meet the following minimum specifications: Each mesh in the square, square side panels, and second bottom belly must be 31.5 inches (80 cm); each mesh in the first top belly, and first belly side panels must be at least 7.9 inches (20 cm); and 6 inches (15.24 cm) or larger in sections following the first top belly and second bottom belly sections, all the way to the codend. The mesh size requirements of the top sections apply to the side panel sections.

(*iv*) The trawl must have at least 15 meshes (240 cm each) at the wide end of the first bottom belly, excluding the gore.

(*v*) The trawl must have a single or multiple kite panels with a total surface area of at least 19.3 sq. ft. (1.8 sq. m) on the forward end of the square to help maximize headrope height, for the purpose of capturing rising fish. A kite panel is a flat structure, usually semi-flexible, used to modify the shape of trawl and mesh openings by providing lift when a trawl is moving through the water.

(*4*) *Mesh size*. An eligible vessel fishing in the Regular B DAS Program within the GB Cod Stock Area as defined in paragraph (b)(6)(v)(B) of this section pursuant to paragraph (b)(6) of this section must use trawl gear described in this paragraph (b)(6)(iv)(J) with a minimum codend mesh size of 6-inch (15.24-cm) square or diamond mesh.

(v) *Definition of stock areas*. The species stock areas associated with the incidental catch TACs for the Regular B DAS Program are defined in paragraphs (b)(6)(v)(A) through (K) of this section. Where specified, these areas also identify stock areas applicable for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of ACE pursuant to § 648.87(b). Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(A) *GOM cod stock area*. The GOM cod stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

GOM COD STOCK AREA

Point	N. latitude	W. longitude
GOM1	(1)	70°00′
GOM2	42°20′	70°00′
GOM3	42°20′	67°40′
GOM4	(2)	67°40′
GOM5	(3)	67°40′
GOM6	43°50′	67°40′
GOM7	43°50′	(4)
GOM8	(4)	67°00′
GOM9	(5)	67°00′

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.

[2] U.S./Canada maritime boundary (southern intersection with 67°40′ W. long.).

[3] U.S./Canada maritime boundary (northern intersection with 67°40′ W. long.).

[4] U.S./Canada maritime boundary.

[5] Intersection of the south-facing ME coastline and 67°00′ W. long.

(B) *GB cod stock area.* The GB cod stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

GB COD STOCK AREA

Point	N. latitude	W. longitude
GB1	(1)	70°00′
GB2	42°20′	70°00′
GB3	42°20′	(2)
GB4	35°00′	(2)
GB5	35°00′	(3)

1 Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
2 U.S./Canada maritime boundary.
3 Intersection of the east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

(C) *CC/GOM yellowtail flounder stock area.* For the purposes of the Regular B DAS Program, the CC/GOM yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
CCGOM 1	43°00′	(1)
CCGOM 2	43°00′	70°00′
CCGOM 3	42°30′	70°00′
CCGOM 4	42°30′	69°30′
CCGOM 5	41°30′	69°30′
CCGOM 6	41°30′	69°00′
CCGOM 7	41°00′	69°00′
CCGOM 8	41°00′	69°30′
CCGOM 5	41°30′	69°30′
CCGOM 9	41°30′	70°00′
CCGOM 10	(2)	70°00′
CCGOM 11	42°00′	70°00′
CCGOM 12	42°00′	(3)
CCGOM 13	42°00′	(4)
CCGOM 14	42°00′	(5)

1 Intersection with the NH coastline.
2 Intersection of the south-facing shoreline of Cape Cod, MA.
3 Intersection with the east-facing shoreline of Cape Cod, MA.
4 Intersection with the west-facing shoreline of Cape Cod, MA.
5 Intersection with the east-facing shoreline of Massachusetts.

(D) *American plaice stock area.* The American plaice stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

AMERICAN PLAICE STOCK AREA

Point	N. latitude	W. longitude
AMP1	(1)	67°00′
AMP2	(2)	67°00′
AMP3	43°50′	(2)
AMP4	43°50′	67°40′
AMP5	(3)	67°40′
AMP6	(4)	67°40′
AMP7	42°30′	67°40′
AMP8	42°30′	(2)
AMP9	35°00′	(2)
AMP10	35°00′	(5)

1 Intersection of south-facing ME coastline and 67°00′ W. long.
2 U.S./Canada maritime boundary.
3 U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.).
4 U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.)
5 Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

(E) *SNE/MA yellowtail flounder stock area.* For the purposes of the Regular B DAS Program, the SNE/MA stock area is the area bounded on the north, east, and south by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
SNEMA1	40°00′	74°00′
SNEMA2	40°00′	72°00′
SNEMA3	40°30′	72°00′
SNEMA4	40°30′	69°30′
SNEMA5	41°10′	69°30′
SNEMA6	41°10′	69°50′
SNEMA7	41°20′	69°50′
SNEMA8	41°20′	(1)
SNEMA9	(2)	70°00′
SNEMA10	41°00′	70°00′
SNEMA11	41°00′	70°30′
SNEMA12	(3)	70°30′
SNEMA13	(4)	72°00′
SNEMA14	(5)	72°00′
SNEMA15	(6)	73°00′
SNEMA16	40°30′	73°00′
SNEMA17	40°30′	74°00′
SNEMA1	40°00′	74°00′

1 East-facing shoreline of Nantucket, MA.
2 South-facing shoreline of Nantucket, MA.
3 Intersection of the south-facing shoreline of Cape Cod, MA.
4 South-facing shoreline of CT.
5 North-facing shoreline of Long Island, NY.
6 South-facing shoreline of Long Island, NY.

(F) *SNE/MA winter flounder stock area.* The SNE winter flounder stock area, for the purposes of the Regular B DAS Program and identifying stock areas for trip limits specified in §§ 648.86 and 648.89 is the area defined by straight lines connecting the following points in the order stated:

SNE/MA WINTER FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
1	(1)	70°00′
2	42°20′	70°00′
3	42°20′	68°50′
4	39°50′	68°50′
5	39°50′	69°00′
6	39°00′	69°00′
7	39°00′	(2)
8	35°00′	(2)
9	35°00′	(3)

[1] Intersection of the north-facing Coastline of Cape Cod, MA, and 70°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] The intersection of the east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

(G) *Witch flounder stock area.* The witch flounder stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the north and west by the coastline of the United States, bounded on the south and east by a line running east from the intersection of the east-facing coastline of Outer Banks, NC, at 35°00′ N. lat. to the boundary of the EEZ, and running northward to the U.S.-Canada border.

(H) *GB yellowtail flounder stock area.* The GB yellowtail flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded by straight lines connecting the following points in the order stated:

GB YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
USCA1	42°20′	68°50′
USCA16	42°20′	(1)
USCA5	39°00′	(1)
USCA17	39°00′	69°00′
USCA18	39°50′	69°00′
USCA2	39°50′	68°50′
USCA1	42°20′	68°50′

[1] U.S./Canada maritime boundary.

(I) *GB winter flounder stock area.* The GB winter flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded by straight lines connecting the following points in the order stated:

GB WINTER FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
USCA1	42°20′	68°50′
USCA16	42°20′	(1)
USCA5	39°00′	(1)
USCA17	39°00′	69°00′
USCA18	39°50′	69°00′
USCA2	39°50′	68°50′
USCA1	42°20′	68°50′

[1] U.S./Canada maritime boundary.

(J) *White hake stock area.* The white hake stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the north and west by the coastline of the United States, bounded on the south and east by a line running east from the intersection of the east-facing coastline of Outer Banks, NC, at 35°00′ N. lat. to the boundary of the EEZ, and running northward to the U.S.-Canada border.

(K) *Pollock stock area.* The pollock stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

POLLOCK STOCK AREA

Point	N. latitude	W. longitude
P1	(1)	67°00′
P2	(2)	67°00′
P3	43°50′	(2)
P4	43°50′	67°40′
P5	(3)	67°40′
P6	(4)	67°40′
P7	42°30′	67°40′
P8	42°30′	(2)
P9	35°00′	(2)
P10	35°00′	(5)

[1] Intersection of south-facing ME coastline and 67°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.).
[4] U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.).
[5] Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

(vi) *Closure of the Regular B DAS Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, in a manner consistent with the Administrative Procedure Act, prohibit the use

of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or Regular B DAS Program. Reasons for terminating the program include, but are not limited to the following: Inability to constrain catches to the Incidental Catch TACs; evidence of excessive discarding; a significant difference in flipping rates between observed and unobserved trips; or insufficient observer coverage to adequately monitor the program.

(7) *CA I Hook Gear Haddock SAP*—(i) *Eligibility*. A vessel issued a valid limited access NE multispecies permit operating under a NE multispecies DAS or on a sector trip, provided the sector to which the vessel belongs has been allocated ACE for all stocks caught within the CA I Hook Gear Haddock Access Area pursuant to § 648.87(b)(1)(i), is eligible to participate in the CA I Hook Gear Haddock SAP and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided any such vessel complies with the requirements of this section, the SAP is not closed according to the provisions specified in paragraph (b)(7)(iv)(H) or (b)(7)(vi)(F) of this section, or the sector in which the vessel is participating no longer has ACE available for all stocks caught within the CA I Hook Gear Haddock Access Area pursuant to § 648.87(b)(1)(i). Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *CA I Hook Gear Haddock SAP Area*. The CA I Hook Gear Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

CA I HOOK GEAR HADDOCK SAP AREA

Point	N. latitude	W. longitude
Hook 1	41°09′	68°30′
CI4	41°30′	68°30′
CI1	41°30′	69°23′
Hook 2	41°04′	69°01.1′

(iii) *Season*. The season for the CA I Hook Gear Haddock SAP is May 1 through January 31.

(iv) *General program restrictions*. General program restrictions specified in this paragraph (b)(7)(iv) apply to all eligible vessels, as specified in paragraph (b)(7)(i) of this section. Further program restrictions specific to sector and common pool vessels are specified in paragraphs (b)(7)(v) and (vi) of this section, respectively.

(A) *DAS use restrictions*. A vessel fishing in the Closed Area I Hook Gear Haddock SAP under a NE multispecies DAS may not initiate a DAS flip. A vessel is prohibited from fishing in the Closed Area I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described in paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

(B) *VMS requirement*. An eligible NE multispecies vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications*. For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 48 hr prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration*. To fish in the CA I Hook Gear Haddock SAP prior to departure from port, a vessel must declare into the SAP via VMS, and, for a vessel fishing under a NE multispecies DAS, indicate the type of DAS that it intends to fish, prior to departure from port, as instructed by the Regional Administrator. A vessel declared into the CA I Hook Gear Haddock SAP may fish only in the CA I Hook Gear Haddock Special Access Area described in paragraph (b)(7)(ii) of this section on a declared trip.

(E) *Gear restrictions*. A vessel declared into, and fishing in, the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline

gear or tub trawl gear only, unless further restricted as specified in paragraphs (b)(7)(v)(A) and (vi)(B) of this section.

(F) *Haddock TAC.* The maximum total amount of haddock that may be caught (landings and discards) in the CA I Hook Gear Haddock SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula: BiomassYEAR X = (1,130 mt live weight) × (Projected WGB Haddock ExploitableBiomassYEAR X/ WGB Haddock Exploitable Biomass2004). The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with the Administrative Procedure Act.

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the CA I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the CA I Hook Gear Haddock SAP. A vessel operating under a NE multispecies DAS must end the trip if the vessel exceeds the applicable landing limits described in paragraphs (b)(7)(v)(B) and (b)(7)(vi)(C) of this section.

(H) *Landing limits.* For all vessels legally declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies are specified in paragraphs (b)(7)(v)(B) and (b)(7)(vi)(C) of this section, respectively. Unless otherwise specified in this part, such vessels are prohibited from discarding legal-sized regulated species and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator determines that the haddock TAC specified in paragraph (b)(7)(iv)(F) of this section has been caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock SAP Area as specified in paragraph (b)(7)(ii) of this section, to all eligible vessels, including both common pool and sector vessels.

(v) *Sector vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, a sector vessel declared into the CA I Hook Gear Haddock SAP is also required to comply with the restrictions specified in this paragraph (b)(7)(v).

(A) *Gear restrictions.* A sector vessel is subject to the gear requirements of the sector Operations Plan as approved under § 648.87(c) and those specified under paragraph (b)(7)(iv)(E) of this section.

(B) *Landing limits.* A sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section is subject to the landing limits for regulated species in effect under the sector's Operations Plan, as approved under § 648.87(c).

(C) *Reporting requirements.* The owner or operator of a sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports to the sector Manager, consistent with instructions to be provided by the sector Manager, for each day fished in the CA I Hook Gear Haddock SAP Area. The sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, ocean pout, Atlantic halibut, Atlantic wolffish, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, ocean pout, Atlantic halibut, Atlantic wolffish, and white hake discarded; date fish were caught; and VTR serial numbers for each trip declared into the CA I Hook Gear Haddock SAP, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) or (H) of this section.

(D) *Incidental catch TACs.* There are no incidental catch TACs specified for regulated species or ocean pout for sector vessels declared into the CA I Hook Gear Haddock SAP. All regulated species or ocean pout caught by sector

vessels fishing in the SAP count toward the sector's annual ACE for each stock, as specified in § 648.87(b)(1)(i).

(vi) *Common pool vessel program restrictions*. In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, a common pool vessel declared into the CA I Hook Gear Haddock SAP is also required to comply with the restrictions specified in this paragraph (b)(7)(vi).

(A) *DAS use restrictions*. A common pool vessel may only use Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A) and (d)(2)(ii)(A). A common pool vessel is prohibited from using Category A DAS and may not initiate a DAS flip when declared into the SAP. A common pool vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described under paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

(B) *Gear restrictions*. A common pool vessel is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v), but must comply with the gear restrictions in paragraph (b)(7)(iv)(E) of this section. Such vessels are prohibited from using as bait, or possessing on board, squid or mackerel during a trip into the CA I Hook Gear Haddock SAP.

(C) *Landing limits*. A common pool vessel may not land, fish for, or possess on board more than 1,000 lb (453.6 kg) of cod per trip. A common pool vessel is not permitted to discard legal-sized cod prior to reaching the landing limit, and is required to end its trip if the cod trip limit is achieved or exceeded.

(D) *Reporting requirements*. The owner or operator of a common pool vessel must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr local time and ending at 2359 hr local time. The reports must be submitted by 0900 hr local time of the day following fishing. The reports must include at least the following information: VTR serial number or other universal ID specified by the Regional Administrator; date fish were caught; statistical area fished; and the total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, and white hake kept in each broad stock area (in pounds, live weight), specified in § 648.10(k)(3), as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

(E) *Incidental catch TACs*. The maximum amount of GB cod and pollock (landings and discards) that may be cumulatively caught by a common pool vessel from the CA I Hook Gear Haddock SAP Area in a fishing year is the amount specified in paragraph (b)(5)(ii) of this section.

(F) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of any incidental catch TAC*. When the Regional Administrator determines that either the GB cod or pollock incidental catch TAC specified in paragraph (b)(7)(vi)(E) of this section has been caught, the CA I Hook Gear Haddock SAP Area shall be closed to all common pool vessels in a manner consistent with the Administrative Procedure Act.

(8) *Eastern U.S./Canada Haddock SAP*—(i) *Eligibility*. A vessel issued a valid limited access NE multispecies permit and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section while operating under a NE multispecies DAS or on a sector trip, provided the sector to which the vessel belongs has been allocated ACE for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i), is eligible to participate in the Eastern U.S./Canada Haddock SAP and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the season specified in paragraph (b)(8)(iv) of this section, provided such vessel complies with the requirements of this section and provided the SAP is not closed according to the provisions specified in paragraph (b)(8)(v)(K) or (L) of this section, the Eastern U.S./Canada Area is not closed as described under paragraph

(a)(3)(iv)(E) of this section, or the sector to which the vessel belongs no longer has ACE available for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i).

(ii) *Eastern U.S./Canada Haddock SAP Area*. The Eastern U.S./Canada Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

EASTERN U.S./CANADA HADDOCK SAP AREA

Point	N. Lat.	W. Long.
CAII3	42° 22′	67° 20′ [1]
SAP1	42° 20′	67° 20′
SAP2	42° 20′	67° 40′
SAP3	41° 10′	67° 40′
SAP4	41° 10′	67° 20′
SAP5	42° 10′	67° 20′
SAP6	42° 10′	67° 10′
CAII3	42° 22′	67° 20′ [1]

[1] U.S./Canada maritime boundary.

(iii) [Reserved]

(iv) *Season*. An eligible vessel may fish in the Eastern U.S./Canada Haddock SAP from August 1 through December 31.

(v) *Program restrictions*—(A) *Area and DAS use restrictions*. A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP may elect to fish under a Category A or Category B DAS in accordance with § 648.82(d)(2), or in multiple areas in accordance with the restrictions of this paragraph (b)(8)(v)(A). A vessel on a sector trip in the Eastern U.S./Canada Haddock SAP may elect to fish in multiple areas in accordance with the restrictions of this paragraph (b)(8)(v)(A).

(*1*) If fishing under a Category B DAS, a vessel is required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(8)(v)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(v)(J) of this section.

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8)(i) of this section may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the Closed Area II Yellowtail Flounder/Haddock SAP Area, as described in paragraph (b)(3)(ii) of this section, and, for common pool vessels fishing a NE multispecies DAS, while under either a Category A DAS or a Category B DAS.

(*3*) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the Closed Area II Yellowtail Flounder/Haddock SAP Area, and in the portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided a common pool vessel fishes under a Category A DAS and all eligible vessels comply with the VMS restrictions of paragraph (b)(8)(v)(D) of this section. Such a vessel may also elect to fish outside of the Eastern U.S./Canada Area on the same trip, in accordance with the restrictions of paragraph (a)(3)(ii)(A) of this section.

(*4*) A common pool vessel fishing under a NE multispecies DAS that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements of the areas fished for the entire trip. A vessel on a sector trip that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must comply with the most restrictive reporting requirements of the areas fished for the entire trip, unless otherwise specified by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(B) *VMS requirement*. A vessel issued a limited access NE multispecies permit fishing in the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications*. For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in

paragraph (b)(8)(i) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration*. To fish in the Eastern U.S./Canada Haddock SAP, a vessel issued a limited access NE multispecies permit must declare into the SAP via VMS and provide information on the areas within the Eastern U.S./Canada Area that it intends to fish and the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, if operating under the provisions of the common pool, prior to departure from port, in accordance with paragraph (b)(8)(v)(A) of this section and any instructions provided by the Regional Administrator.

(E) *Gear requirement*—(*1*) Unless otherwise specified in this paragraph (b)(8)(v)(E)(1), a vessel issued a limited access NE multispecies permit fishing in the Eastern U.S./Canada Haddock SAP must use the haddock separator trawl or the Ruhle Trawl, as described in paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(*3*) of this section, respectively, or another type of gear, if approved as described in this paragraph (b)(8)(v)(E). A vessel on a sector trip in the Eastern U.S./Canada Haddock SAP is not restricted to only using the haddock separator trawl or the Ruhle trawl, but may use any gear authorized in paragraph (a)(3)(iii) of this section, unless otherwise restricted by a sector operations plan approved pursuant to § 648.87(c). Other gear may be on board the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, provided that the gear is stowed in accordance with § 648.23(b).

(*2*) *Approval of additional gear*. The Regional Administrator may authorize additional gear for use in the Eastern U.S./Canada Haddock SAP in accordance with the standards and requirements specified at § 648.85(b)(6)(iv)(J)(*2*).

(F) *Landing limits*. Unless otherwise restricted under this part, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder and 100 lb (45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight) and skates (whole weight) is limited to 500 lb (227 kg) each, unless otherwise restricted by § 648.94(b)(3), and possession of lobsters is prohibited.

(G) *Reporting requirements*. The owner or operator of a vessel declared into the Eastern U.S./Canada Haddock SAP, as described in paragraph (b)(8) of this section, must submit reports in accordance with the reporting requirements described in paragraph (a)(3)(v) of this section.

(H) *Incidental TACs*. The maximum amount of GB cod, GB yellowtail flounder, GB winter flounder, and pollock, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A), is the amount specified in paragraphs (b)(5)(ii) and (iii) of this section. All regulated species and ocean pout caught by a vessel on a sector trip will be applied against the ACE for each stock that is specified for the sector in which the vessel participates.

(I) *No discard provision and DAS flips*. A vessel fishing in the Eastern U.S./Canada Haddock SAP Program may not discard legal-sized regulated or ocean pout unless otherwise required due to a prohibition of the possession of such species specified in this part. If a common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS exceeds the applicable maximum landing limit per trip specified in paragraph (b)(8)(v)(F) of this section, or in § 648.86, the vessel operator must retain the fish and immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). After flipping to a Category A DAS, the vessel is

subject to all applicable landing limits specified in § 648.85(a) or § 648.86. If a common pool vessel fishing in this SAP while under a Category B DAS or a Category A DAS exceeds a trip limit specified in paragraph (b)(8)(v)(F) of this section or § 648.86, or other applicable trip limit, the vessel must immediately exit the SAP area defined in paragraph (b)(8)(ii) of this section for the remainder of the trip. For a common pool vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS and the time the vessel declared its DAS flip will be accrued as Category A DAS pursuant to § 648.82(e)(1), and not Category B DAS.

(J) *Minimum Category A DAS.* To fish under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP.* When the Regional Administrator projects that one or more of the TAC allocations specified in paragraph (b)(8)(v)(H) of this section has been caught by vessels fishing under Category B DAS, NMFS shall prohibit the use of Category B DAS in the Eastern U.S./Canada Haddock SAP, through publication in the FEDERAL REGISTER consistent with the Administrative Procedure Act. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Program.

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area.* The Regional Administrator, based upon information required under § 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Pilot Program for the duration of the season, if it is determined that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program.

(c) *Scallop fishery closed area access program.* Limited access scallop vessels operating under the Sea Scallop Area Access Program, as defined in § 648.59, and fishing in accordance with the regulations at § 648.60 may possess and land up to 1,000 lb (453.6 kg) of all NE multispecies combined, as provided in § 648.60(a)(5)(ii), unless otherwise restricted in this section.

(d) *Haddock incidental catch allowance for some Atlantic herring vessels.* The haddock incidental catch allowance for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), is 1 percent of each of the ABCs for GOM haddock and GB haddock (U.S. catch only) specified according to § 648.90(a)(4) for a particular NE. multispecies fishing year. Such haddock catch will be determined as specified in § 648.86(a)(3)(ii).

(e) *Authorized gear performance standards.* Unless otherwise restricted in this part, in areas and times when a special management program, as specified in this section, requires the use of gear authorized by that program to reduce catches of stocks of concern, participating vessels are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

[69 FR 22975, Apr. 27, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.85, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov.*

§ 648.86 NE Multispecies possession restrictions.

Except as provided in § 648.17 or elsewhere in this part, the following possession restrictions apply:

(a) *Haddock*—(1) *NE multispecies common pool vessels.* Haddock possession restrictions for such vessels may be implemented through Regional Administrator authority, as specified in paragraph (r) of this section.

(2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge

vessel issued a NE multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without an NE multispecies permit may possess haddock in, or harvested from, the EEZ from January 1 through June 30.

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels also issued limited access NE multispecies permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3)(i) *Incidental catch allowance for some Atlantic herring vessels.* A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may only possess and land haddock, in accordance with requirements specified in § 648.80(d) and (e).

(ii) *Haddock incidental catch cap.* (A)(*1*) When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock as specified in § 648.85(d), has been caught, no vessel issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, i.e., the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(*2*) and (*3*) of this section, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a NE. multispecies permit and is operating on a declared (consistent with § 648.10(g)) NE. multispecies trip. In making this determination, the Regional Administrator shall use haddock catches observed by NMFS-approved observers by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

(*2*) *Herring GOM Haddock Accountability Measure Area.* The Herring GOM Haddock AM Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

HERRING GOM HADDOCK ACCOUNTABILITY MEASURE AREA

Point	N. latitude	W. longitude
HGA1	(1)	69°20′
HGA	43°40′	69°20′
HGA3	43°40′	69°00′
HGA4	43°20′	69°00′
HGA5	43°20′	(2)
HGA6	42°20′	(3)
HGA7	42°20′	70°00′
HGA8	(4)	70°00′

[1] The intersection of the Maine coastline and 69°20′ W. long.
[2] The intersection of the U.S./Canada maritime boundary and 43°20′ N. lat.
[3] The intersection of the U.S./Canada maritime boundary and 42°20′ N. lat.
[4] The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00′ W. long.

(*3*) *The Herring GB Haddock Accountability Measure Area.* The Herring GB Haddock AM Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available

from the Regional Administrator upon request):

HERRING GOM HADDOCK ACCOUNTABILITY MEASURE AREA

Point	N. latitude	W. longitude
HBA1	42°20′	70°00′
HBA2	42°20′	(1)
HBA3	40°30′	(1)
HBA4	40°30′	66°40′
HBA5	39°50′	66°40′
HBA6	39°50′	68°50′
HBA7	(2)	68°50′
HBA8	41°00′	(3)
HBA9	41°00′	69°30′
HBA10	41°10′	69°30′
HBA11	41°10′	69°50′
HBA12	41°20′	69°50′
HBA13	41°20′	(4)
HBA14	(5)	70°00′
HBA15	(6)	70°00′
HBA16	(7)	70°00′

[1] The intersection of the U.S./Canada maritime boundary.
[2] The intersection of the boundary of Closed Area I and 68°50′ W. long.
[3] The intersection of the boundary of Closed Area I and 41°00′ N. lat.
[4] The intersection of the east-facing shoreline of Nantucket, MA, and 41°20′ N. lat.
[5] The intersection of the north-facing shoreline of Nantucket, MA, and 70°00′ W. long.
[6] The intersection of the south-facing shoreline of Cape Cod, MA, and 70°00′ W. long.
[7] The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00′ W. long.

(*4*) The haddock incidental catch caps specified are for the NE multispecies fishing year (May 1–April 30), which differs from the herring fishing year (January 1–December 31). If the haddock incidental catch allowance is attained by the herring midwater trawl fishery for the GOM or GB, as specified in § 648.85(d), the 2,000-lb (907.2-kg) limit on herring possession in the applicable AM Area, as described in paragraph (a)(3)(ii)(A)(*2*) or (*3*) of this section, shall be in effect until the end of the NE. multispecies fishing year. For example, the 2011 haddock incidental catch cap is specified for the period May 1, 2011–April 30, 2012, and the 2012 haddock catch cap would be specified for the period May 1, 2012–April 30, 2013. If the catch of haddock by herring midwater trawl vessels reached the 2011 incidental catch cap at any time prior to the end of the NE. multispecies fishing year (April 30, 2012), the 2,000-lb (907.2-kg) limit on possession of herring in the applicable AM Area would extend through April 30, 2012. Beginning May 1, 2012, the 2012 catch cap would go into effect.

(B) [Reserved]

(b) *Cod*—(1) *GOM cod landing limit*. Except as provided in paragraph (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 800 lb (362.9 kg) of cod for each DAS, or part of a DAS, up to 4,000 lb (1,818.2 kg) per trip. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(2) *GB cod landing and maximum possession limits*. Unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 2,000 lb (907.2 kg) of cod per DAS, or part of a DAS, up to 20,000 lb (9,072 kg) provided it complies with the requirements specified in paragraph (b)(4) of this section and this paragraph (b)(2). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) [Reserved]

(4) *Exemption*. A common pool vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of the GOM Regulated Mesh Area, defined in § 648.80(a)(1), provided that it complies with the requirement of this paragraph (b)(4).

(i) *Declaration*. With the exception of a vessel declared into the U.S./Canada Management Area, as described in § 648.85(a)(3)(ii), a common pool vessel that fishes or intends to fish under a NE multispecies DAS south of the line described in paragraph (b)(4) of this section, under the cod trip limits described in paragraph (b)(2) of this section, must, prior to leaving port, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter

of authorization. If a letter of authorization is required, such vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the letter of authorization on board.

(ii) A common pool vessel exempt from the GOM cod landing limit pursuant to paragraph (b)(4)(i) of this section may not fish north of the line specified in paragraph (b)(4) of this section for the duration of the trip, but may transit the GOM Regulated Mesh Area, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel fishing north and south of the line on the same trip is subject to the most restrictive applicable cod trip limit.

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part, unless otherwise specified in § 648.90(a)(5)(i)(D)(*2*).

(d) *Small-mesh multispecies.* (1) Vessels issued a valid Federal NE multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by, or on board vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels possessing on board or using nets of mesh size smaller than 2.5 inches (6.35 cm).* Owners or operators of a vessel may possess and land not more than 3,500 lb (1,588 kg) of combined silver hake and offshore hake if either of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is smaller than 2.5 inches (6.35 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured in accordance with § 648.80(f); or

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is smaller than 2.5 inches (6.35 cm), as measured by methods specified in § 648.80(f). ''Incorporated into a fully constructed net'' means that any mesh smaller than 2.5 inches (6.35 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(ii) *Vessels possessing on board or using nets of mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62 cm).* Owners or operators of a vessel that is not subject to the possession limit specified in paragraph (d)(1)(i) of this section may possess and land not more than 7,500 lb (3,402 kg) of combined silver hake and offshore hake if either of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); or

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). ''Incorporated into a fully constructed net'' means that any mesh smaller than 2.5 inches (6.35 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(iii) *Vessels possessing on board or using nets of mesh size equal to or greater than 3 inches (7.62 cm).* An owner or operator of a vessel that is not subject to the possession limits specified in paragraphs (d)(1)(i) and (ii) of this section may possess and land not more than 30,000 lb (13,608 kg) of combined silver hake and offshore hake if both of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); and

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is equal to or greater than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). ''Incorporated into a fully constructed net'' means that any mesh smaller than 3 inches (7.62 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(iv) *Application of mesh size*. Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i) through (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.3 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft by 3 ft (0.9 m by 0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery*. Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption Area, as described in § 648.80(a)(3), with a vessel issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh NE multispecies at sea*. Owners and operators of vessels issued a valid Federal NE multispecies permit and issued a letter of authorization to transfer small-mesh NE multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(4) *In-season adjustment of small-mesh multispecies possession limits*. If the Regional Administrator projects that 90 percent of a stock area TAL, as defined in § 648.90(b)(3), has been landed, the Regional Administrator shall reduce the possession limit of that stock described in paragraphs (d)(4)(i) and (ii) of this section, for the remainder of the fishing year through notice consistent with the Administrative Procedure Act, unless such a reduction in the possession limit would be expected to prevent the TAL from being reached.

(i) *Red hake*. If a possession limit reduction is needed for a stock area, the incidental possession limit for red hake in that stock area will be 400 lb (181.44 kg) for the remainder of the fishing year.

(ii) *Silver hake and offshore hake*. If a possession limit reduction is needed for a stock area, the incidental possession limit for silver hake and offshore hake, combined, in that stock area will be 1,000 lb (453.59 kg) for the remainder of the fishing year.

(e) *White hake*. Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions is not restricted in the amount of white hake the vessel may land per trip during fishing years 2010 and 2011. Starting in fishing year 2012, unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 500 lb (226.8 kg) of white hake per DAS, or any part of a DAS, up to 2,000 lb (907.2 kg) per trip.

(f) *Calculation of weight of fillets or parts of fish*. The possession limits described under this part are based on the weight of whole, whole-gutted, or gilled

fish. For purposes of determining compliance with the possession limits specified in paragraphs (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under § 648.83(a) and (b), will be multiplied by 3.

(g) *Yellowtail flounder*—(1) *CC/GOM and SNE/MA yellowtail flounder landing limit.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing exclusively outside of the U.S./Canada Management Area, as defined in § 648.85(a)(1), may land or possess on board up to 250 lb (113.6 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 1,500 lb (680.4 kg) per trip. A vessel fishing outside and inside of the U.S./Canada Management Area on the same trip is subject to the more restrictive yellowtail flounder trip limit (i.e., that specified by this paragraph (g) or § 648.85(a)(3)(iv)(C)).

(2) *GB yellowtail flounder landing limit.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined in § 648.85(a)(1) is subject to the GB yellowtail flounder limit described in paragraph § 648.85(a)(3)(iv)(c).

(h) *Other possession restrictions.* Vessels are subject to any other applicable possession limit restrictions of this part.

(i) *Offloading requirement for vessels possessing species regulated by a daily possession limit.* A vessel that has ended a trip as specified in § 648.10(e)(2)(iii) or (h)(5) that possesses on board species regulated by a daily possession limit (*i.e.*, pounds per DAS), as specified at § 648.85 or § 648.86, must offload species in excess of the daily landing limit prior to leaving port on a subsequent trip. A vessel may retain on board up to one day's worth of such species prior to the start of a subsequent trip. Other species regulated by an overall trip limit may be retained on board for a subsequent trip. For example, a vessel that possesses cod and winter flounder harvested from Georges Bank is subject to a daily possession limit for cod of 1,000 lb (453 kg)/DAS and an overall trip limit of 5,000 lb (2,267 kg)/trip for winter flounder. In this example, the vessel would be required to offload any cod harvested in excess of 1,000 lb (453 kg) (*i.e.*, the vessel may retain up to 1,000 lb (453 kg) of Georges Bank cod, but must offload any additional cod), but may retain on board winter flounder up to the maximum trip limit prior to leaving port and crossing the VMS Demarcation Line to begin a subsequent trip.

(j) *GB winter flounder.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions and fishing in the U.S./Canada Management Area defined in § 648.85(a)(1) is not restricted in the amount of GB winter flounder the vessel may land per trip.

(k) *Other regulated NE. multispecies possession restrictions for some Atlantic herring vessels.* A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit on a declared herring trip, regardless of area fished or gear used, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may possess and land haddock, and up to 100 lb (45 kg), combined, of other regulated NE. multispecies, other than haddock, in accordance with the requirements in § 648.80(d) and (e). Such fish may not be sold for human consumption.

(l) *Ocean pout, windowpane flounder, SNE/MA winter flounder, and Atlantic wolffish.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may not fish for, possess, or land ocean

pout, windowpane flounder, or Atlantic wolffish. In addition, such vessels may not fish for, possess, or land winter flounder caught in or from the SNE/MA winter flounder stock area, as defined in § 648.85(b)(6)(v)(F). Vessels may transit this area with GOM or GB winter flounder on board the vessel, provided that gear is stowed in accordance with the provisions of § 648.23(b).

(m) *Additional possession restrictions*—(1) *Daily landing restriction.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may only land regulated species or ocean pout once in any 24-hr period, based upon the time the vessel lands following the end of the previous trip. For example, if a vessel lands 1,600 lb (725.7 kg) of GOM cod at 6 p.m. on Tuesday, that vessel cannot land any more regulated species or ocean pout until at least 6 p.m. on the following Wednesday.

(2) *Possession limits for vessels fishing in multiple areas.* If a vessel fishes in more than one stock area on the same trip, as defined in § 648.85(b)(6)(v) or § 648.87(b)(1)(ii), the most restrictive trip limit for a species applies for the entire trip.

(n) *Pollock.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may not possess or land more than 1,000 lb (450 kg) of pollock for each DAS or part of a DAS fished, up to 10,000 lb (4,500 kg) per trip.

(o) *Regional Administrator authority to implement possession limits*—(1) *Possession restrictions to prevent exceeding common pool sub-ACLs.* If the Regional Administrator projects that the catch of any NE multispecies stock allocated to common pool vessels pursuant to § 648.90(a)(4) will exceed the pertinent sub-ACL, NMFS may implement or adjust, at any time prior to or during the fishing year, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-ACL in that fishing year.

(2) *Possession restrictions to facilitate harvest of sub-ACLs allocated to the common pool.* If the Regional Administrator projects that the sub-ACL of any stock allocated to the common pool pursuant to § 648.90(a)(4) will not be caught during the fishing year, the Regional Administrator may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to facilitate harvest and enable the total catch to approach, but not exceed, the pertinent sub-ACL allocated to the common pool for that fishing year.

[69 FR 22978, Apr. 27, 2004, as amended at 70 FR 76428, Dec. 27, 2005; 71 FR 46876, Aug. 15, 2006; 71 FR 62193, Oct. 23, 2006; 72 FR 11277, Mar. 12, 2007; 72 FR 73280, Dec. 27, 2007; 74 FR 20556, May 4, 2009; 75 FR 18337, 18373, Apr. 9, 2010; 76 FR 42586, July 19, 2011; 76 FR 56998, Sept. 15, 2011; 77 FR 19142, Mar. 30, 2012; 77 FR 26125, May 2, 2012]

§ 648.87 Sector allocation.

(a) *Procedure for approving/implementing a sector allocation proposal.* (1) Any person may submit a sector allocation proposal for a group of limited access NE multispecies vessels to the Council and request that the sector be implemented through either a biennial adjustment or framework adjustment, as specified in § 648.90(a)(2), as long as it is submitted at least 1 year prior to the date the sector wants to begin operations in accordance with the conditions and restrictions of this section. The sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed sector, in compliance with the National Environmental Policy Act.

(2) Upon receipt of a sector allocation proposal, the Council must decide whether to initiate a management action to implement the sector proposal. Should a biennial adjustment or framework adjustment to authorize a sector allocation proposal be initiated, the Council will follow the framework adjustment provisions of § 648.90(a)(2). Any biennial adjustment or framework adjustment developed to implement a sector allocation proposal must be in

compliance with the general requirements specified in paragraphs (b) and (c) of this section.

(3) *Eligibility*. Any valid limited access NE multispecies permit, including a Handgear A permit and those permits held in confirmation of permit history pursuant to § 648.4(a)(1)(i)(J) as of May 1, 2008, is eligible to join a NE multispecies sector, provided the permit complies with the restrictions specified in this section. Any valid limited access Category A or B monkfish permit may be eligible to join a NE multispecies sector, as described in this section, pursuant to any measures adopted by a future revision to the Monkfish FMP by both the New England and Mid-Atlantic Fishery Management Councils. Vessels that do not join a sector remain subject to the NE multispecies regulations for common pool vessels.

(4) *Minimum size*. To be authorized to operate as a sector under this section, a sector must be comprised of at least three NE multispecies permits issued to at least three different persons, none of whom have any common ownership interests in the permits, vessels, or businesses associated with the permits issued the other two or more persons in that sector. Having an ownership interest in a permit includes, but is not limited to, persons or entities who are shareholders, officers, or partners in a corporation owning a permit; who are partners (general or limited) to a permit owner; who, in any way, partly own a permit; or who derive any financial benefit, or exercises any control over, another permit. As long as at least three persons issued a NE multispecies permit meet these requirements, permit owners may have common ownership interests in other permits, vessels, or businesses associated with such permits.

(b) *General requirements applicable to all approved Sectors*. (1) All sectors approved under the provisions of paragraph (a) of this section must submit the documents specified in paragraphs (a)(1), (b)(2), and (b)(3) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) *TAC allocation*—(A) *Allocated stocks*. Each sector shall be allocated a TAC in the form of an ACE for each NE multispecies stock, with the exception of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder (both the GOM/GB and the SNE/MA stocks), and Atlantic wolffish based upon the cumulative PSCs of vessels/permits participating in each sector during a particular fishing year, as described in paragraph (b)(1)(i)(E) of this section. In the event that a future allocation of SNE/MA winter flounder can be made available pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2), an ACE for this stock will be specified pursuant to paragraph (b)(1)(i)(E)(*1*) of this section.

(B) *Eastern GB stocks*. Each sector allocated ACE for stocks managed under the terms of the U.S./Canada Resource Sharing Understanding in the Eastern U.S./Canada Area, as specified in § 648.85(a), shall be allocated a specific portion of the ACE for such stocks that can only be harvested from the Eastern U.S./Canada Area, as specified in § 648.85(a)(1). The ACE specified for the Eastern U.S./Canada Area portions of these stocks shall be proportional to the sector's allocation of the overall ACL available to all vessels issued a limited access NE multispecies permit for these stocks pursuant to § 648.90(a)(4). For example, if a sector is allocated 10 percent of the GB cod ACL available to all vessels issued a limited access NE multispecies permit, that sector would also be allocated and may harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL available to all vessels issued a limited access NE multispecies permit is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, the Sector would be allocated 100 mt of GB cod, of which no more than 10 mt could be harvested from the Eastern U.S./Canada Area and no more than 90 mt could be harvested from the rest of the GB cod stock area.

(C) *Carry-over*. With the exception of GB yellowtail flounder, a sector may carry over an amount of ACE equal to up to 10 percent of its original ACE allocation for each stock that is unused at the end of one fishing year into the following fishing year. Any unused ACE allocated for Eastern GB stocks pursuant to paragraph (b)(1)(i)(B) of

this section will contribute to the 10-percent carry-over allowance for each stock, as specified in this paragraph (b)(1)(i)(C), but will not increase an individual sector's allocation of Eastern GB stocks during the following year. This carry-over ACE remains effective during the subsequent fishing year even if vessels that contributed to the sector allocation during the previous fishing year are no longer participating in the same sector for the subsequent fishing year.

(D) *Maximum ACE allocation*. There is no maximum amount of ACE that can be allocated to a particular sector during each fishing year.

(E) *Potential sector contribution (PSC)*. For the purposes of allocating a share of the available ACL for each NE multispecies stock to approved sectors pursuant to § 648.90(a)(4), the landings history of all limited access NE multispecies permits shall be evaluated to determine each permit's share of the overall landings for each NE multispecies stock as specified in paragraphs (b)(1)(i)(E)(*1*) and (*2*) of this section. When calculating an individual permit's share of the overall landings for a particular regulated species or ocean pout stock, landed weight shall be converted to live weight to maintain consistency with the way ACLs are calculated pursuant to § 648.90(a)(4) and the way ACEs are allocated to sectors pursuant to this paragraph (b)(1)(i). This calculation shall be performed on July 1 of each year, unless another date is specified by the Regional Administrator, to redistribute the landings history associated with permits that have been voluntarily relinquished or otherwise canceled among all remaining valid limited access NE multispecies permits as of that date during the following fishing year. The PSC calculated pursuant to this paragraph (b)(1)(i)(E) shall remain with the permit indefinitely, but may be permanently reduced or eliminated due to a permit sanction or other enforcement action.

(*1*) *Calculation of PSC for all NE multispecies stocks except GB cod*. Unless otherwise specified in paragraph (b)(1)(i)(E)(*2*) of this section, for each valid limited access NE multispecies permit, including limited access NE multispecies Handgear A permits, landings recorded in the NMFS dealer database of each stock of NE multispecies determined by NMFS to be the landings history associated with that permit while subject to the NE multispecies regulations based on whether the vessel fishing under that permit was issued a limited access NE multispecies permit or subsequently qualified for a limited access NE multispecies permit pursuant to § 648.4(a)(1)(i), including regulated species or ocean pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries, but excluding, for example, landings by scallop vessels operating under a scallop DAS, shall be summed for fishing years 1996 through 2006. This sum shall then be divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join sectors as of May 1, 2008. The resulting figure shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the PSC for each individual valid limited access NE multispecies permit for each regulated species or ocean pout stock allocated to sectors in the NE multispecies fishery for the following fishing year pursuant to this paragraph (b)(1)(i)(E)(*1*).

(*2*) *Calculation of GB cod PSC*. The GB cod PSC shall be calculated as specified in this paragraph (b)(1)(i)(E)(*2*) and shall remain with the permit indefinitely regardless whether the vessel participates in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector, as defined in § 648.87(d)(1) or (2), joins a new sector, or fishes pursuant to the provisions of the common pool.

(*i*) *GB cod PSC for permits committed to participate in the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector*. For each owner of a valid NE multispecies permit, or CPH, that committed to participate in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector as evidenced by a valid authorized signature executed on or before March 1, 2008, on a preliminary roster for either of these sectors, the PSC for GB cod shall be equal to the sum of dealer landings of GB cod for fishing years 1996 through 2001, divided by the

total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period. The PSC for all other regulated species or ocean pout stocks specified for these permits shall be calculated pursuant to paragraph (b)(1)(i)(E)(*1*) of this section. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(*2*)(*i*) shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the GB cod PSC for each permit for the following fishing year.

(*ii*) *GB cod PSC for all other permits.* For each owner of a valid NE multispecies permit or CPH that has not committed to participate in either the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector, as specified in paragraph (b)(1)(i)(E)(*2*)(*i*) of this section, the GB cod PSC for each such permit or CPH shall be based upon the GB cod PSC available after accounting for the GB cod PSC calculated pursuant to paragraph (b)(1)(i)(E)(*2*)(*i*) of this section. To determine the GB cod PSC for each of these permits, the sum of the individual permit's landings of GB cod available in the NMFS dealer database for fishing years 1996 through 2006 shall be divided by the total landings of GB cod during that period by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period, after subtracting the total landings of GB cod by permits that committed to participate in either the GB Cod Hook Sector or GB Cod Fixed Gear Sector as of March 1, 2008. This individual share shall then be multiplied by the available GB cod PSC calculated by subtracting the GB cod PSC allocated pursuant to paragraph (b)(1)(i)(E)(*2*)(*i*) of this section from one. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(*2*)(*ii*) shall then be multiplied by a factor of 1/PSC of remaining permits as of July 1 of each year, unless another date is specified by the Regional Administrator, to calculate the GB cod PSC for each permit.

(ii) *Areas that can be fished.* Vessels in a sector may only fish in a particular stock area, as specified in paragraphs (b)(1)(ii)(A) through (F) of this section, and § 648.85(b)(6)(v), or the Eastern U.S./Canada Area, as specified in § 648.85(a)(1), if the sector has been allocated, or acquires, pursuant to paragraph (b)(1)(viii) of this section, ACE for all stocks allocated to sectors pursuant to paragraph (b)(1)(i)(A) of this section that are caught in that stock area. A sector must project when its ACE for each stock will be exceeded and must ensure that all vessels in the sector cease fishing operations prior to exceeding it. Once a sector has harvested its ACE for a stock, all vessels in that sector must cease fishing operations in that stock area on a sector trip unless and until it acquires additional ACE from another sector pursuant to paragraph (b)(1)(viii) of this section, or as otherwise specified in an approved operations plan pursuant to paragraph (b)(2)(xiv) of this section. For the purposes of this paragraph (b)(1)(ii), an ACE overage means catch of regulated species or ocean pout by vessels participating in a particular sector that exceeds the ACE allocated to that sector, as of the date received or purchased by the dealer, whichever occurs first, after considering all ACE transfer requests ultimately approved by NMFS during the current fishing year, pursuant to paragraph (b)(1)(viii) of this section, unless otherwise specified pursuant to § 648.90(a)(5).

(iii) *Sector AMs.* At the end of the fishing year, NMFS shall evaluate sector catch using VTR, VMS, IVR, and any other available information to determine whether a sector has exceeded any of its ACE allocations based upon the cumulative catch by participating permits/vessels, as identified in the final operations plan approved by the Regional Administrator pursuant to paragraph (c) of this section, and each sector's share of any overage of the overall ACL for any stock caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), if necessary. Should an ACE allocated to a sector be exceeded in a given fishing year, the sector's ACE shall be reduced by the overage on a pound-for-pound basis during the following fishing year, and the sector, each vessel, vessel operator and/or vessel owner participating in the sector may be charged, as a result of said overages, jointly and severally for civil

penalties and permit sanctions pursuant to 15 CFR part 904. If an ACE allocated to a sector is not exceeded in a given fishing year pursuant to this paragraph (b)(1)(iii), the sector's ACE allocation shall not be reduced for the following fishing year as a result of an overage of an ACE by non-compliant sectors or an overage of sub-ACLs allocated to common pool vessels, but may be reduced if the excessive catch of a particular stock by other sub-components of the fishery causes the overall ACL of a particular stock to be exceeded pursuant to § 648.90(a)(5). If declining stock conditions result in a need to reduce fishing mortality, and all sectors and common pool vessels have operated within their ACE or sub-ACL limits, a sector's percentage share shall not be changed, but the amount this share represents may be reduced due to reduced overall ACL for a particular stock. If stock conditions improve, and certain sectors stay within their ACE while other sectors or the common pool exceed their respective ACEs or sub-ACLs, the sectors that stay within their ACEs shall receive a temporary increase in ACE equal to the amount that other sectors or the common pool exceeded their ACE or sub-ACL, divided among such sectors proportional to each sector's share of the ACL available to vessels issued a limited access NE multispecies permit.

(A) *Overage penalty if there is sufficient ACE to cover the overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but has sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of participating vessels during the fishing year following the overage, no overage penalty shall be applied to any member permit/vessel that leaves that sector to fish under the provisions of the common pool or in another sector in the year following the overage. Any impacts to departing member permits/vessels may be specified and addressed by the sector operations plan and associated sector contract.

(B) *Overage penalty if there is insufficient ACE to cover an overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but disbands in the year following the overage, or otherwise does not have sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of permits/vessels participating in that sector during the fishing year following the overage, individual permit holders that participated in the sector during the fishing year in which the overage occurred shall be responsible for reducing their DAS/PSC to account for that overage in the subsequent fishing year, as follows:

(*1*) *PSC reduction.* If a sector disbands following an overage, and the owner of an individual permit joins another sector for the subsequent fishing year, that permit's contribution toward the ACE for the stock for which the overage occurred to the other sector in the subsequent fishing year shall be reduced by an amount equal to the overage divided by the number of permits/vessels participating in the sector during the fishing year in which the overage occurred. For example, if a sector comprised of 10 permits/vessels exceeded its GB cod ACE by 10,000 lb (4,536 kg) during the previous fishing year, but later disbands, each permit/vessel that was in that sector, but then joins another sector during the following fishing year shall have its contribution of GB cod to another sector temporarily reduced by 1,000 lb (453.6 kg) during the subsequent fishing year for the purposes of calculating the available GB cod ACE allocated to another sector during that fishing year.

(*2*) *DAS reduction.* If a sector disbands following an overage and the owner of an individual permit elects to fish under the provisions of the common pool during the subsequent fishing year, that permit/vessel's NE multispecies Category A DAS allocation for the subsequent fishing year shall be temporarily reduced by an amount proportional to the highest percentage overage by that sector of any of the stocks for which an overage occurred. For example, if a sector exceeded its GB cod ACE by 10 percent and its pollock ACE by 15 percent, each permit would receive a 15-percent reduction in its Category A DAS allocation for the subsequent fishing year if fishing under the provisions of the common pool.

(*3*) *Fishing prohibition*. If a sector does not disband following an overage, but otherwise does not have sufficient ACE to cover an overage based upon the PSC of participating permits, that sector's ACE for the stock for which the overage occurred shall be temporarily reduced to zero for the following fishing year, and that sector shall be prohibited from fishing on a sector trip in the stock area associated with the stock for which the ACE was exceeded during the following year, unless and until that sector can acquire sufficient ACE from another sector to cover the remaining overage from the previous fishing year. For example, if a sector comprised of 10 permits/vessels was allocated 10 mt of GB cod ACE, but caught 25 mt during the previous fishing year (i.e., it exceeded its GB cod ACE by 15 mt), each permit/vessel that participating in that sector during the following fishing year would have its GB cod PSC temporarily reduced to zero during the subsequent fishing year, and that sector would not be able to fish on a sector trip in the GB cod stock area until it could acquire at least an additional 5 mt of GB cod ACE from another sector (i.e., 15 mt overage—10 mt ACE for the following year = 5 mt overage remaining).

(C) *ACE buffer*. At the beginning of each fishing year, NMFS shall withhold 20 percent of a sector's ACE for each stock for a period of up to 61 days (i.e., through June 30), unless otherwise specified by NMFS, to allow time to process any ACE transfers submitted at the end of the fishing year pursuant to paragraph (b)(1)(viii) of this section and to determine whether the ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to individual permits/vessels in the current fishing year to accommodate an ACE overage by that sector during the previous fishing year, as specified in paragraph (b)(1)(iii) of this section.

(iv) *Sector enforcement*—(A) *Sector compliance and joint/several liability*. Unless exempted through a letter of authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a sector must also comply with all applicable requirements and conditions of the operations plan specified in paragraph (b)(2) of this section and the letter of authorization issued pursuant to paragraph (c)(2) of this section. Pursuant to 15 CFR part 904, each sector, permit/vessel owner, and vessel operator participating in the sector may be charged jointly and severally for violations of the following sector operations plan requirements, which may result in an assessment of civil penalties and permit sanctions: ACE overages, discarding of legal-sized NE multispecies, and misreporting of catch, including both landings and discards. For the purposes of enforcement, a sector is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to sectors, as specified in this paragraph (b)(1)(iv).

(B) *Commitment to a sector*. A permit/vessel participating in a sector must remain in the sector for the remainder of the fishing year. Such permits/vessels cannot fish under both the sector provisions and the provisions of the common pool during that same fishing year for any reason, including, but not limited to, expulsion from the sector pursuant to enforcement actions or other measures specified in an approved sector operations plan, vessel replacement, or permit/vessel sale to another owner. For example, if a permit/vessel is sold by a sector participant during the fishing year, the new owner must comply with the sector regulations and the conditions of the sector operations plan, sector contract, or any other binding agreements among participating sector vessels for the remainder of the fishing year. If a permit/vessel has been expelled from a sector, the sector must notify NMFS of such an expulsion immediately. Any permit/vessel, vessel operator, or vessel owner removed from a sector during a specific fishing year consistent with sector rules shall not be eligible to fish in another sector or under the NE multispecies regulations for common pool vessels specified in this part for the remainder of that fishing year. For

the purposes of this paragraph, ''permit/vessel'' refers to the fishing and landings history associated with a particular permit/vessel enrolled in a specific sector at the start of the fishing year that was used to calculate the PSC for that permit/vessel and contribute to the ACE for each stock allocated to that specific sector.

(v) *Sector monitoring.* Each sector shall monitor catch by participating sector vessels to ensure that ACEs are not exceeded during the fishing year, as specified in this paragraph (b)(1)(v). The sector shall summarize trips validated by dealer reports; oversee the use of electronic monitoring equipment and review of associated data; maintain a database of VTR, dealer, observer, and electronic monitoring reports; determine all species landings by stock areas; apply discard estimates to landings; deduct catch from ACEs allocated to sectors; and report sector catch on a weekly basis to NMFS, as required in paragraph (b)(1)(vi) of this section. Unless otherwise specified in this paragraph (b)(1)(v), all catches of stocks allocated to sectors by vessels on a sector trip shall be deducted from the sector's ACE for each NE multispecies stock regardless of what the fishery the vessel was participating in when the fish was caught. For the purposes of this paragraph (b)(1)(v), any regulated species or ocean pout caught using gear capable of catching NE multispecies (i.e., gear not listed as exempted gear under this part) would be deducted from a sector's ACE if such catch contributed to the specification of PSC, as described in § 648.87(b)(1)(i)(E), and would not apply to another ACL sub-component pursuant to § 648.90(a)(4). For example, any regulated species or ocean pout landed while fishing for or catching skates or monkfish pursuant to the regulations for those fisheries would be deducted from the sector's ACE for each stock because such regulated species or ocean pout were caught while also operating under a NE multispecies DAS. However, if a sector vessel is issued a limited access General Category Atlantic Sea Scallop permit and fishes for scallops under the provisions specific to that permit, any yellowtail flounder caught by the vessel on such trips would be deducted from the other sub-component of the appropriate stock of yellowtail flounder's ACL specified for the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the sector.

(A) *Discards.* A sector vessel may not discard any legal-sized regulated species or ocean pout allocated to sectors pursuant to paragraph (b)(1)(i) of this section, unless otherwise required pursuant to § 648.86(l). Discards of undersized regulated species or ocean pout by a sector vessel must be reported to NMFS consistent with the reporting requirements specified in paragraph (b)(1)(vi) of this section. Discards shall not be included in the information used to calculate a vessel's PSC, as described in § 648.87(b)(1)(i)(E), but shall be counted against a sector's ACE for each NE multispecies stock allocated to a sector.

(B) *Independent third-party monitoring program.* A sector must comply with any dockside/roving monitoring program specified by NMFS for fishing years 2011 and 2012, pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, including the dockside/roving monitoring operational standards specified in paragraph (b)(5) of this section, and develop and implement an independent third-party dockside/roving monitoring program by fishing year 2013. A sector must also develop, implement, and pay for, to the extent not funded by NMFS, an at-sea or electronic monitoring program by fishing year 2012 (May 1, 2012) consistent with paragraph (b)(1)(v)(B)(*2*) of this section. Both the dockside/roving and at-sea or electronic monitoring program developed by sectors must be approved by NMFS for monitoring landings and utilization of sector ACE, as specified in this paragraph (b)(1)(v)(B). Any service provider providing dockside/roving and at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and any dockside/roving and at-sea or electronic monitoring program proposed by sectors must meet the operational standards specified in paragraphs (b)(5) and (b)(6) of this section, respectively, and be approved by NMFS

in a manner consistent with the Administrative Procedure Act. None of the costs associated with any dockside/roving monitor monitoring requirements shall be paid by the owner or operator of a vessel subject to these requirements during fishing years 2011 and 2012. Starting in fishing year 2013, sectors shall be responsible for paying the costs associated with dockside/roving monitoring coverage, unless otherwise instructed by NMFS.

(*1*) *Dockside/roving monitoring program.* Dockside/roving monitors shall monitor landings of regulated species and ocean pout at every offload for which a trip has been selected to be observed by a dockside/roving monitor, whether directly to a federally permitted dealer or to a truck for transfer to a federally permitted dealer, to verify such landings at the time the landings are weighed by a federally permitted dealer and to certify the landing weights are accurate as reported on the dealer report. Unless otherwise specified in this part, the level of coverage for landings is specified in paragraph (b)(1)(v)(B)(*3*) of this section. To ensure that these levels of coverage are achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip, regardless of how many or the location of offloading events, must be monitored, and a vessel may not offload any of its catch until the dockside/roving monitor arrives. For example, if a trip is selected to be observed by a dockside/roving monitor, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during the offload at each location. All landing events at remote ports that are selected to be observed by a dockside/roving monitor must have a roving monitor present to witness offload activities to the truck, as well as a dockside monitor present at each dealer to certify weigh-out of all landings. Any service provider providing dockside/roving monitoring services pursuant to this paragraph (b)(1)(v)(B)(*1*) must meet the service provider standards specified in paragraph (b)(4) of this section. The details of the dockside/roving monitoring program used by each sector starting in fishing year 2013 pursuant to paragraph (b)(1)(v)(B) of this section must be specified in the sector's operations plan, and must be consistent with the operational standards specified in paragraph (b)(5) of this section. The Regional Administrator shall review the dockside/roving monitoring program and approve/disapprove it as part of the yearly operations plan in a manner consistent with the Administrative Procedure Act. Common pool vessels operating under the provisions of the either a limited access Northeast multispecies Small Vessel Category permit or Handgear A permit, as specified at §§ 648.82(b)(5) and (6), respectively, or an open access Northeast multispecies Handgear B permit, as specified at § 648.88(a), are exempt from the dockside/roving monitoring requirements specified in this paragraph (b)(1)(v)(B)(*1*). Except as provided in this paragraph (b)(1)(v)(B)(*1*), all common pool and sector vessels, along with service providers providing dockside monitoring services, will be subject to the dockside monitoring operational requirements specified at § 648.87(b)(5).

(*2*) *At-sea/electronic monitoring program.* Beginning in fishing year 2012, in addition to the dockside/roving monitoring requirement specified in paragraph (b)(1)(v)(B)(*1*) of this section, an at-sea/electronic monitoring program must be implemented to verify area fished as well as catch and discards by species and gear type. A sector may elect to develop an at-sea/electronic monitoring program before fishing year 2012 and specify the details of such a program in its operations plan. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. No electronic monitoring technology may be used in place of an at-sea monitor unless approved by NMFS as part of the sector's annual operations plan. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board. The at-sea/electronic monitoring program developed and implemented by each sector must

be consistent with the operational standards specified in paragraph (b)(6) of this section, with details of the program specified in the sector's annual operations plan. The Regional Administrator shall review the at-sea/electronic monitoring program and approve/disapprove it as part of the annual operations plan in a manner consistent with the Administrative Procedure Act. The level of coverage for landings by sector vessels is specified in paragraph (b)(1)(v)(B)(*3*) of this section.

(*3*) *Coverage levels*. Except as specified in paragraph (b)(1)(v)(B)(*3*)(*i*), any service provider providing dockside/roving or at-sea or electronic monitoring services required under this paragraph (b)(1)(v)(B)(*3*) must provide coverage that is fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within the common pool or each sector, and by all operations of common pool vessels or vessels operating in each sector throughout the fishing year.

(*i*) *Dockside/roving monitoring*. For fishing years 2011 and 2012, NMFS shall determine the level of coverage for any NMFS-sponsored dockside/roving monitoring program specified pursuant to paragraph (b)(1)(v)(B)(*1*) of this section based on available funding. If 100-percent coverage of all sector and common pool trips is not possible, NMFS shall first provide coverage to trips without an observer or at-sea monitor assigned pursuant to § 648.11(k), or approved electronic monitoring equipment assigned pursuant to paragraph (b)(1)(v)(B) of this section for sector vessels. Starting in fishing year 2013, at least 20 percent of all sector and common pool trips shall be monitored by dockside/roving monitors.

(*ii*) *At-sea/electronic monitoring*. Beginning in fishing year 2012, coverage levels for an at-sea monitoring program shall be specified by NMFS, but shall be less than 100 percent of all sector trips. Such coverage levels must be sufficient to at least meet the coefficient of variation specified in the Standardized Bycatch Reporting Methodology and accurately monitor sector operations. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip.

(*4*) *Hail reports*. For the purposes of the dockside/roving and at-sea monitoring requirements specified in this paragraph (b)(1)(v)(B), sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to service providers offering dockside/roving and at-sea monitoring services pursuant to this paragraph (b)(1)(v)(B). The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the Regional Administrator for any dockside/roving monitoring program required by paragraph (b)(1)(v)(B)(*1*) of this section, or specified in the annual sector operations plan, consistent with paragraphs (b)(5) and (6) of this section.

(*5*) *Notification of service provider change*. If for any reason a sector decides to change approved service providers used to provide dockside/roving or at-sea or electronic monitoring services required in this paragraph (b)(1)(v), the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved service providers in conjunction with the submission of the next weekly sector catch report specified in paragraph (b)(1)(vi)(B) of this section. A sector may employ more than one service provider at any time, provided any service provider employed by a sector meets the standards specified in paragraph (b)(4) of this section.

(vi) *Sector reporting requirements*. In addition to the other reporting/recordkeeping requirements specified in this part, a sector's vessels must comply with the reporting requirements specified in this paragraph (b)(1)(vi).

(A) *VMS declarations and trip-level catch reports*. Prior to each sector trip, a sector vessel must declare into broad stock areas in which the vessel fishes and submit the VTR serial number associated with that trip pursuant to § 648.10(k). The sector vessel must also submit a VMS catch report detailing regulated species and ocean pout catch by broad stock areas when fishing in

multiple stock areas on the same trip, pursuant to § 648.10(k).

(B) *Weekly catch report.* Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector; sector enforcement issues, including any discrepancies noted by dockside/roving monitors between dealers and offloads; summary of offloads witnessed by dockside/roving monitors for that reporting week; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

(C) *Year-end report.* An approved sector must submit an annual year-end report to NMFS and the Council, no later than 60 days after the end of the fishing year, that summarizes the fishing activities of participating permits/vessels, which must include at least the following information: Catch, including landings and discards, of all species by sector vessels; the permit number of each sector vessel that fished for regulated species or ocean pout; the number of vessels that fished for non-regulated species or ocean pout; the method used to estimate discards by sector vessels; the landing port used by sector vessels; enforcement actions; and other relevant information required to evaluate the biological, economic, and social impacts of sectors and their fishing operations consistent with confidentiality requirements of applicable law.

(vii) *Interaction with other fisheries*—(A) *Use of DAS.* A sector vessel must comply with all measures specified for another fishery pursuant to this part, including any requirement to use a NE multispecies DAS. If the regulations of another fishery require the use of a NE multispecies DAS, the DAS allocation and accrual provisions specified in § 648.82(d) and (e), respectively, apply to each trip by a sector vessel, as applicable. For example, if a sector vessel is also issued a limited access monkfish Category C permit and is required to use a NE multispecies DAS concurrent with a monkfish DAS under this part, any NE multispecies DAS used by the sector vessel accrues, as specified in § 648.82(e)(1)(ii) based upon the vessel's NE multispecies DAS allocation calculated pursuant to § 648.82(d)(1)(iv)(B).

(B) *Availability of ACE.* Notwithstanding the requirements in paragraph (b)(1)(vii)(A) of this section, if a sector has not been allocated or does not acquire sufficient ACE available to cover the catch of a particular stock of NE multispecies while participating in another fishery in which such catch would apply to the ACE allocated to a sector, vessels participating in that sector cannot participate in those other fisheries unless NMFS has approved a sector operations plan that ensures that regulated species or ocean pout will not be caught while participating in these other fisheries.

(viii) *ACE transfers.* All or a portion of a sector's ACE for any NE multispecies stock may be transferred to another sector at any time during the fishing year and up to 2 weeks into the following fishing year (i.e., through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. A sector is not required to transfer ACE to another sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(viii)(B) of this section.

(A) *Application to transfer ACE.* ACE may be transferred from one sector to another through written request to the Regional Administrator. This request must include the name of the sectors involved, the amount of each ACE to be transferred, the fishing year in which the ACE transfer applies, and the amount of compensation received for any ACE transferred, as instructed by the Regional Administrator.

(B) *Approval of an ACE transfer request.* NMFS shall approve/disapprove a request to transfer ACE based upon compliance by each sector and its participating vessels with the reporting requirements specified in this part. The Regional Administrator shall inform both sectors in writing whether the ACE transfer request has been approved within 2 weeks of the receipt of the ACE transfer request.

(C) *Duration of transfer.* Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant to this paragraph (b)(1)(viii) is only valid for the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section, unless otherwise instructed by NMFS.

(ix) *Trip limits.* With the exception of stocks listed in § 648.86(1) and the Atlantic halibut trip limit at § 648.86(c), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

(2) *Operations plan and sector contract.* To be approved to operate, each sector must submit an operations plan and preliminary sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. A final roster, sector contract, and list of Federal and state permits held by participating vessels for each sector must be submitted by December 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. The operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is sufficient to assess the impacts of sector operations during the 2-year period and that sector membership, or any other parameter that may affect sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting NEPA document are compromised. Each vessel and vessel operator and/or vessel owner participating in a sector must agree to and comply with all applicable requirements and conditions of the operations plan specified in this paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified in an approved operations plan as administrative only. If a proposed sector does not comply with the requirements of this paragraph (b)(2), NMFS may decline to propose for approval such sector operations plans, even if the Council has approved such sector. At least the following elements must be contained in either the final operations plan or sector contract submitted to NMFS:

(i) A list of all parties, vessels, and vessel owners who will participate in the sector;

(ii) A list of all Federal and state permits held by persons participating in the sector, including an indication for each permit whether it is enrolled and will actively fish in a sector, or will be subject to the provisions of the common pool;

(iii) A contract signed by all sector participants indicating their agreement to abide by the operations plan;

(iv) The name of a designated representative or agent of the sector for service of process;

(v) If applicable, a plan for consolidation or redistribution of ACE detailing the quantity and duration of such consolidation or redistribution within the sector;

(vi) A list of the specific management rules the sector participants will agree to abide by in order to avoid exceeding

the allocated ACE for each stock, including a plan of operations or cessation of operations once the ACEs of one or more stocks are harvested and detailed plans for enforcement of the sector rules;

(vii) A plan that defines the procedures by which members of the sector that do not abide by the rules of the sector will be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector;

(viii) If applicable, a plan of how the ACE allocated to the sector is assigned to each vessel;

(ix) If the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the sector proposal/framework adjustment as specified in paragraph (a)(1) of this section, a supplemental NEPA analysis may be required with the operations plan;

(x) Detailed information about overage penalties or other actions that will be taken if a sector exceeds its ACE for any stock;

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's dockside/roving and at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that sector; identification of the independent third-party service providers employed by the sector to provide dockside/roving and at-sea/electronic monitoring services; the mechanism and timing of any hail reports necessary to coordinate the deployment of dockside/roving and at-sea monitors and electronic monitoring equipment; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

(xii) ACE thresholds that may trigger revisions to sector operations to ensure allocated ACE is not exceeded, and details regarding the sector's plans for notifying NMFS once the specified ACE threshold has been reached;

(xiii) Identification of any potential redirection of effort into other fisheries expected as a result of sector operations, and, if necessary, proposed limitations to eliminate any adverse effects expected from such redirection of effort;

(xiv) If applicable, description of how regulated species and ocean pout will be avoided while participating in other fisheries that have a bycatch of regulated species or ocean pout if the sector does not have sufficient ACE for stocks of regulated species or ocean pout caught as bycatch in those fisheries, as specified in paragraph (b)(1)(vii)(B) of this section; and

(xv) A list of existing regulations that the sector is requesting exemption from during the following fishing year pursuant to paragraph (c)(2) of this section.

(3) *NEPA analysis.* In addition to the documents required by paragraphs (a)(1) and (b)(2) of this section, before NMFS can approve a sector to operate during a particular fishing year, each sector must develop and submit to NMFS, in conjunction with the yearly operations plan and sector contract, an appropriate NEPA analysis assessing the impacts of forming the sector and operating under the measures described in the sector operations plan.

(4) *Independent third-party monitoring provider standards.* Any service provider intending to provide dockside/roving and at-sea/electronic monitoring services described in § 648.82(n)(2) and paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers and associated dockside, roving, and/or at-sea monitors as eligible to provide sector monitoring services specified in this part and can disapprove/decertify service providers and/or individual monitors through notice in writing to individual service providers/monitors if the following criteria are no longer being met:

(i) *Service provider information.* As part of the application for service provider approval/certification, potential service providers must include at least the following information:

(A) Identification of corporate structure, including the names and duties of controlling interests in the company such as owners, board members, authorized agents, and staff; and articles of incorporation, or a partnership agreement, as appropriate;

(B) Contact information for official correspondence and communication with any other office;

(C) A statement, signed under penalty of perjury, from each owner, board member, and officer that they are free from a conflict of interest with fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and will not accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from such parties;

(D) A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider;

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments including, but not limited to, recruiting, hiring, deployment, and personnel administration;

(F) A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer dockside and/or at-sea monitoring services;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover dockside, roving, and at-sea monitors (including during training); vessel owner; and service provider;

(H) Proof of benefits and personnel services provided in accordance with the terms of each monitor's contract or employment status;

(I) Proof that the service provider's dockside, roving, and at-sea monitors have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan describing the provider's response to an emergency with a dockside, roving, and at-sea monitors, including, but not limited to, personal injury, death, harassment, or intimidation; and

(K) Evidence that the company is in good financial standing;

(ii) *Service provider performance requirements.* Dockside/roving and at-sea monitoring service providers must be able to document compliance with the following criteria and requirements:

(A) A service provide must establish and carry out a comprehensive plan to deploy NMFS-certified dockside, roving, and/or at-sea monitors, or other at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, as follows:

(*1*) A service provider must be available to industry 24 hr per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests;

(*2*) A service provider must be able to deploy dockside, roving, and/or at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by sectors, or a subset of ports as part of a contract with a particular sector;

(*3*) A service provider must report dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanism deployments to NMFS and the sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate sector;

(*4*) A service provider must assign dockside, roving, and at-sea monitors and other approved at-sea monitoring

mechanisms without regard to any preference by the sector manager or representatives of vessels other than when the service is needed and the availability of approved/certified monitors and other at-sea monitoring mechanisms;

(*5*) A service provider's dockside, roving, and at-sea monitor assignment must be fair, equitable, representative of fishing activities within each sector, and able to monitor fishing activity throughout the fishing year;

(*6*) For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip and provide such information to the sector manager and NMFS, as appropriate and as required by this section;

(B) The service provider must ensure that dockside, roving, and at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload;

(C) The service provider must report possible dockside, roving, and at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding dockside, roving, or at-sea monitor conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS;

(D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors;

(E) The service provider must submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.;

(F) A service provider may refuse to deploy a dockside, roving, or at-sea monitor or other approved at-sea monitoring mechanism on a requesting fishing vessel for any reason including, but not limited to, the following:

(*1*) If the service provider does not have an available dockside/roving monitor prior to a vessel's intended date/time of landing, or if the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider;

(*2*) If the service provider is not given adequate notice of vessel departure or landing from the sector manager or participating vessels, as specified by the service provider;

(*3*) For the purposes of at-sea monitoring, if the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described in § 600.746; and

(*4*) Failure to pay for previous deployments of dockside, roving, or at-sea monitors, or other approved at-sea monitoring mechanism.

(G) With the exception of a service provider offering reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations, a service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers;

(H) A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS, including:

(*1*) Dockside, roving, and/or at-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals;

(*2*) Incident/non-compliance reports (e.g., failure to offload catch); and

(*3*) Hail reports, landings records, and other associated interactions with vessels and dealers.

(I) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act; and

(J) A service provider must be able to supply dockside and at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

(iii) *Standards for individual dockside/roving monitors.* For an individual to be approved/certified as a dockside or roving monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of a dockside/roving monitor pursuant to standards established by NMFS, such as being certified by a physician to be physically fit to work as a dockside/roving monitor after consideration that a monitor may be required to climb a ladder to inspect fish holds and/or trucks;

(D) Absence of fisheries-related convictions based upon a thorough background check; and

(E) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(iv) *Standards for individual at-sea monitors.* For an individual to be approved/certified as an at-sea monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of an at-sea monitor on board fishing vessels, pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as an at-sea monitor after consideration of at least the following work-related issues:

(*1*) Susceptibility to chronic motion sickness;

(*2*) Ability to live in confined quarters;

(*3*) Ability to tolerate stress;

(*4*) Ability to lift and carry heavy objects up to 50 lb (22.7 kg);

(*5*) Ability to drag heavy objects up to 200 lb (90.7 kg); and

(*6*) Ability to climb a ladder.

(D) A current Red Cross (or equivalent) CPR/first aid certification;

(E) Absence of fisheries-related convictions, based upon a thorough background check; and

(F) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(5) *Dockside monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any dockside monitoring program developed by NMFS pursuant to paragraph (b)(1)(v)(B)(*1*) of this section must meet the following operational standards to be approved by NMFS:

(i) *Vessel requirements*—(A) *Reporting/recordkeeping requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of independent dockside and roving monitors pursuant to § 648.82(n)(2)(iv) and paragraph (b)(1)(v) of this section, the operator of a vessel fishing under the provisions of the common pool or on a sector trip must comply with the following requirements:

(*1*) *Trip-start hail report.* The vessel operator must submit a trip-start hail report prior to departing port at the beginning of each trip notifying the sector manager and/or dockside/roving monitor service provider of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; and an estimate of the date and time of arrival to port. Trip-start hail reports by vessels operating less than 6 hr or

within 6 hr of port must also include estimated date and time of offload. If the vessel operator does not receive confirmation of the receipt of the trip-start hail report from the dockside/roving monitor provider, the operator must contact the service provider to confirm the trip-start hail report via an independent back-up system developed by the service provider.

(*2*) *Trip-end hail report*. Prior to returning to port upon the completion of a fishing trip, the vessel operator must submit a trip-end hail report notifying the dockside/roving monitor service provider of the vessel permit number; trip ID submitted pursuant to paragraph (b)(5)(i)(A)(*1*) of this section; intended offloading location(s), including the dock/dealer, port/harbor, and state for the first dealer/facility where the vessel intends to offload catch and the port/harbor, and state for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; estimated total amount of regulated species on board (in pounds, landed weight); and estimated total amount of all other species retained (in pounds, landed weight), including species managed by other FMPs, on board. The trip-end hail report must be submitted at least 6 hr in advance of landing for all trips at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-end hail reports must be submitted within sufficient time to allow the deployment of the dockside/roving monitor to the offloading site, as specified by the dockside/roving monitoring service provider in consultation with NMFS Office of Law Enforcement. These reports may be in the form of an email to the dockside/roving monitor service provider or another means of communication specified by the service provider.

(B) *Copies of trip documents*. The operator of a sector vessel that is issued a waiver from the dockside/roving monitoring requirements specified in paragraph (b)(1)(v)(B) of this section for a particular trip must provide copies of all VTRs and dealer receipts associated with that trip to the sector or designated third party contractor, as appropriate, within 24 hr of offloading.

(C) *Vessel offloads*. A vessel may not offload any fish from a trip that was selected to be observed by a dockside/roving monitor until the dockside/roving monitor(s) assigned to that trip is present, as specified in paragraph (b)(5)(ii)(A) of this section.

(ii) *Dockside/roving monitor service provider requirements*—(A) *Confirmation of vessel hail reports*. Upon receipt of a trip-start or trip-end hail reports pursuant to paragraphs (b)(5)(i)(A)(*1*) and (*2*) of this section, the service provider shall immediately send confirmation that the trip-start or trip-end hail report was received to the vessel. A service provider must establish an independent back-up system to the primary hail report system (e.g., a phone number if the primary hail report system is based upon email) to ensure receipt of such trip-start or trip-end hail reports. In confirming the receipt of a trip-end hail report, the service provider will inform the vessel operator that the offload(s) associated with that trip will be monitored by a dockside/roving monitor or that the vessel is issued a dockside/roving monitor waiver for that trip. If a dockside/roving monitor is assigned to observe a trip's offloads, but cannot meet the vessel as scheduled, the service provider must inform the vessel, the sector, and NMFS Office of Law Enforcement, as appropriate, as soon as possible, to specify the time when the dockside/roving monitor will arrive, or issue the vessel a waiver for that particular trip. The service provider or sector manager must also provide NMFS Office of Law Enforcement with the information contained in the trip-start and trip-end hail reports, including whether the vessel has been assigned a dockside/roving monitor for that trip, at the same time that the confirmation is sent to the vessel.

(B) *Documentation of offloads*—(*1*) *Offloads directly to a dealer*. Upon the completion of the offload, the dockside/roving monitor shall retain a copy of all VTRs associated with the trip, including all information submitted (i.e., no blocked cells) provided by the sector vessel; record whether the dealer scales were certified by an appropriate state agency; observe and record whether ice and box weights are tared by the dealer

before catch is added, or record the estimated weight of ice and the box from the dealer; record the weight of catch offloaded by species (and market category, if culled); determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; sign the dealer receipt associated with the offload for each trip (i.e., dealer/weighout slip or other form of documentation of the amount of catch offloaded by the dealer), or have the dealer sign the dockside/roving monitor report, as appropriate; provide data summarizing the offloads of each trip, including copies of the VTR(s), dockside/roving monitor report, and dealer receipt(s), if separate from the dockside/roving monitor report, to the sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator.

(*2*) *Offloads to a truck*. A roving monitor observing offloads into a truck shall retain copies of all VTRs filled out for that trip with all information submitted (*i.e.*, no blocked cells) provided by the sector vessel; if there are no scales at the offload site, record the number of totes of each species and the captain's estimate of the weight in each tote; if there are scales at the offload site, record whether the scales were certified by an appropriate state agency and observe and record whether ice and box weights are tared before catch is added, or record the estimated weight of ice and the box; determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; record all offloaded catch by species in a report, unless the driver creates such a report that the roving monitor may use which shall be signed by the roving monitor; document that each tote is labeled with the appropriate identifying information including, but not limited to, the serial number of the first VTR page filled out for that trip or another trip ID specified by NMFS, the roving monitor's name, tote number, and species; provide data summarizing the offloads of each trip, including copies of the VTR(s) and roving monitor report to the sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator. The roving monitor must submit copies of the VTR(s); driver manifest(s), if separate from the roving monitor's report; and the roving monitor's report to the sector manager or third-party service provider, as appropriate. The tote tagging requirements specified in this paragraph (b)(5)(ii)(B)(*2*), are not required, provided the following three requirements are met: The roving monitor that observed the offload at the dock will also be the dockside monitor at the truck offload to the dealer; the roving monitor will follow the truck, in line of sight, from the remote offload to the dealer offload where the weighing occurs; and, the truck is loaded with only the catch from the one trip being monitored.

(C) *Record retention*. The dockside/roving monitor service provider shall retain an electronic record of each offload observed and make electronic and other records that document an offload available to NMFS upon request.

(D) *Safe-harbor provision*. The dockside/roving monitor service provider must work with the sector and NMFS Office of Law Enforcement to establish an acceptable process for safe-harbor situations where a vessel is unable to follow normal dockside/roving monitor protocols outlined in paragraph (b)(5) of this section due to an emergency situation.

(E) *Inspection of fish holds and other areas of a vessel*. Except to the extent authorized by a sector to inspect fish holds and other areas of such sector's members' vessels in which fish are stored, dockside/roving monitors assigned to observe the offloading of fish shall not inspect fish holds or any other areas of a vessel in which fish are stored unless first required by the Regional Administrator. Prior to any

such requirement becoming effective, the Regional Administrator shall notify affected permit holders and monitoring providers by letter or other appropriate means, and shall provide instructions and guidelines deemed necessary to carry out such inspections.

(iii) *Adjustment to operational standards.* The dockside/roving monitor operational standards specified in paragraph (b)(5) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(6) *At-sea/electronic monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B)(*2*) of this section must meet the following operational standards to be approved by NMFS:

(i) *Gear.* Each at-sea monitor must be provided with all of the equipment specified by the Northeast Fisheries At-sea Monitoring Program. A list of such equipment is available from the Northeast Fisheries Science Center upon request. At-sea/electronic monitoring service providers are responsible for the cost of providing such gear to at-sea monitors to the extent not funded by NMFS. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (b)(4)(i)(I) of this section.

(ii) *Vessel selection protocol.* An at-sea/electronic monitoring program service provider must develop a formal vessel-selection protocol to deploy at-sea monitors and electronic monitoring equipment in a statistically random manner consistent with the coverage levels required pursuant to paragraph (b)(1)(v)(B)(*3*) of this section. This protocol must include a method to allow for waivers in specific circumstances, including how waivers would be requested, assessed, and recorded.

(iii) *Reporting/recordkeeping requirements*—(A) *Vessel requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(*2*) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(6)(iii)(B)(*1*) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(B) *At-sea/electronic monitoring service provider requirements*—(*1*) *Confirmation of pre-trip notification.* Upon receipt of a pre-trip notification pursuant to paragraph (b)(6)(iii)(A) of this section, the service provider shall inform the vessel operator whether the vessel will be monitored by an at-sea observer or electronic monitoring equipment for that trip, or will be issued an at-sea/electronic monitoring waiver for that trip based upon the vessel selection protocol specified in paragraph (b)(6)(ii) of this section.

(*2*) *At-sea/electronic monitoring report.* A report detailing area fished and the amount of each species kept and discarded shall be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 48 hr of the completion of the trip, as instructed by the Regional Administrator. The data elements to be collected and the format for submission

shall be specified by NMFS and distributed to all approved at-sea/electronic monitoring service providers and sectors. At-sea/electronic monitoring data shall not be accepted until such data pass automated NMFS data quality checks.

(iv) *Safety hazards*—(A) *Vessel requirements*. The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (b)(6)(iii)(B)(*1*) of this section prior to leaving port. A vessel cannot begin a trip if it has failed a review of safety issues pursuant to paragraph (b)(6)(iv)(B) of this section, until the identified safety deficiency has been resolved pursuant to § 600.746(i).

(B) *At-sea/electronic monitoring service provider requirements*. An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(6)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

(v) *Adjustment to operational standards*. The at-sea/electronic monitoring operational standards specified in paragraph (b)(6) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(c) *Approval of a sector and granting of exemptions by the Regional Administrator*. (1) Once the Regional Administrator has made a preliminary determination that the documents submitted pursuant to paragraphs (a)(1), (b)(2), and (b)(3) of this section appear to comply with the requirements of this section, NMFS may consult with the Council and approve or disapprove sector operations consistent with the Administrative Procedure Act and other applicable law.

(2) If a sector is approved, the Regional Administrator shall issue a letter of authorization to each vessel operator and/or vessel owner participating in the sector. The letter of authorization shall authorize participation in the sector operations and may exempt participating vessels from any Federal fishing regulation applicable to NE multispecies vessels, except those specified in paragraphs (c)(2)(i) and (ii) of this section, in order to allow vessels to fish in accordance with an approved operations plan, provided such exemptions are consistent with the goals and objectives of the FMP. The letter of authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the operations plan and the sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(i) *Regulations that may not be exempted for sector participants*. The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: NE multispecies year-round closure areas; permitting restrictions (e.g., vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMs specified at § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program specified in paragraph (b)(5)(i) of this section are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. This list may be modified through a framework adjustment, as specified in § 648.90.

(ii) *Universal sector exemptions*. All sector vessels are exempt from the following Federal fishing regulations under this part:

(A) Trip limits on NE multispecies stocks for which a sector receives an allocation of ACE pursuant to paragraph (b)(1)(i) of this section (i.e., all stocks except Atlantic halibut, ocean pout, windowpane flounder, SNE/MA winter flounder, and Atlantic wolffish);

(B) The GOM Rolling Closure Areas and the GB Seasonal Closed Area specified in § 648.81(f)(1) and (g), respectively, provided sector vessels comply with the sector-specific GOM Rolling

Closure Areas specified in § 648.81(f)(2)(vi);

(C) NE multispecies DAS restrictions other than those required to comply with effort controls in other fisheries, as specified in §§ 648.92 and 648.322; and

(D) The minimum codend mesh size restrictions for trawl gear specified in § 648.80(a)(4)(i) when using a haddock separator trawl defined in § 648.85(a)(3)(iii) or the Ruhle trawl defined in § 648.85(b)(6)(iv)(J)(*3*) within the GB RMA, as defined in § 648.80(a)(2), provided sector vessels use a codend with 6-inch (15.2-cm) minimum mesh.

(3) The Regional Administrator may withdraw approval of a sector, after consultation with the Council, at any time, if it is determined that sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a sector may only be done in a manner consistent with the Administrative Procedure Act and other applicable law.

(d) *Approved sector allocation proposals*. Eligible NE multispecies vessels, as specified in paragraph (a)(3) of this section, may participate in the sectors identified in paragraphs (d)(1) through (19) of this section, provided the operations plan is approved by the Regional Administrator in accordance with paragraph (c) of this section and each participating vessel and vessel operator and/or vessel owner complies with the requirements of the operations plan, the requirements and conditions specified in the letter of authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section. All operational aspects of these sectors shall be specified pursuant to the operations plan and sector contract, as required by this section.

(1) *GB Cod Hook Sector*.

(2) *GB Cod Fixed Gear Sector*.

(3) *Sustainable Harvest Sector*.

(4) *Port Clyde Community Groundfish Sector*.

(5) *Northeast Fishery Sector I*.

(6) *Northeast Fishery Sector II*.

(7) *Northeast Fishery Sector III*.

(8) *Northeast Fishery Sector IV*.

(9) *Northeast Fishery Sector V*.

(10) *Northeast Fishery Sector VI*.

(11) *Northeast Fishery Sector VII*.

(12) *Northeast Fishery Sector VIII*.

(13) *Northeast Fishery Sector IX*.

(14) *Northeast Fishery Sector X*.

(15) *Northeast Fishery Sector XI*.

(16) *Northeast Fishery Sector XII*.

(17) *Northeast Fishery Sector XIII*.

(18) *Tristate Sector*.

(19) *Northeast Coastal Communities Sector*.

(20) *State of Maine Permit Banking Sector*.

(21) *State of Rhode Island Permit Bank Sector*.

(22) *State of New Hampshire Permit Bank Sector*.

(23) *State of Massachusetts Permit Bank Sector*.

(24) *Sustainable Harvest Sector III*.

(e) *State-operated permit bank*. A state-operated permit bank must meet and is subject to the following requirements and conditions:

(1) The state-operated permit bank must be initially established using a Federal grant award from NOAA through a valid Memorandum of Agreement (MOA) with NMFS and the state must maintain and comply with such MOA. The MOA must contain and the state must comply with at least the following requirements and conditions:

(i) The state may not associate a state-operated permit bank permit with a vessel engaged in any fishing or other on-the-water activities;

(ii) The state must establish the minimum eligibility criteria to determine whether a sector and its associated vessels are qualified to receive either ACE or DAS from the state-operated permit bank;

(iii) The state must identify a program contact person for the state agency administering the state-operated permit bank;

(iv) The state must provide to NMFS a list of all permits held by the state under the aegis of the state-operated permit bank, and declare which permits will be used in the coming fishing year for exclusively DAS leasing to common pool vessels and which permits are to be used exclusively for transferring ACE to sectors (including the leasing of DAS to sector vessels for

the purpose of complying with the requirements of other FMPs); and

(v) The state must prepare and submit an annual performance report to NMFS, and that said performance report must include, at a minimum, the following elements:

(A) A comprehensive listing of all permits held by the state-operated permit bank, identifying whether a permit was used for ACE transfers to sectors (including DAS leases to the sector members) or DAS leases to common pool vessels, the total amount of ACE, by stock, and DAS available to the state-operated permit bank for transfers and leases to sectors and common-pool vessels;

(B) A comprehensive listing of all sectors to which ACE was transferred from the state-operated permit bank, including the amount, by stock, of ACE transferred to each sector, including a list of all vessels that harvested the ACE transferred to the sector and the amounts harvested;

(C) A comprehensive listing of all sector vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each sector vessel; and

(D) A comprehensive listing of all common pool vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each common pool vessel.

(2) *Eligibility*. If a state is issued a permit that meets sector eligibility requirements, as defined in paragraph (a)(3) of this section, such permit may be held by a state-operated permit bank.

(3) *Allocation and utilization of ACE*—(i) *Allocation of ACE*. The amount of ACE allocated to a state-operated permit bank shall be derived from the permits appropriately declared by the state to be ''ACE permits,'' pursuant to paragraph (e)(1)(i)(v) of this section, for the fishing year and allocated on a stock-by-stock basis pursuant to paragraph (b)(1)(i) of this section.

(ii) *Acquiring ACE*. Except as provided in this paragraph, a state-operated permit bank may not acquire ACE for a fishing year through a transfer from a sector. If ACE is transferred to a sector from a state-operated permit bank, NMFS may authorize the return of the unused portion of such ACE (up to the total originally transferred) to the state-operated permit bank upon written agreement by both parties. The state-operated permit bank may then redistribute the available ACE to another qualifying sector during that fishing year.

(iii) *Transferring ACE*. Subject to the terms and conditions of the state-operated permit bank's MOAs with NMFS, as well as ACE transfer restrictions described in paragraph (b)(1)(viii) of this section, a state-operated permit bank may transfer ACE, on a stock-by-stock basis, to other state-operated permit banks.

(4) *Allocation and utilization of days-at-sea*—(i) *Allocation of DAS*. The number of DAS available for a state-operated permit bank to provide to sector or common pool vessels shall be the accumulated NE Multispecies Category A DAS assigned to the fishing vessel permits held by the state and appropriately declared by the state pursuant to paragraph (e)(1)(v) of this section to be either ''ACE permits'' or ''common pool permits'' for that fishing year, consistent with the terms of the state's permit bank MOA.

(ii) *Acquiring DAS*. A state-operated permit bank may not acquire DAS through a lease from a vessel permit (including permits held by other state-operated permit banks), as described in § 684.82(k). If a vessel leases DAS from a state-operated permit bank, NMFS may authorize the return of the unused portion of such DAS to the state-operated permit bank upon written agreement by both parties, provided none of the DAS had been used. The state-operated permit bank may then redistribute the available DAS to another vessel during the same fishing year.

(5) *Annual report*. A state-operated permit bank shall report to the Council annually on the performance of the state-operated permit bank. Such reports shall include at a minimum and to the extent that the information does not conflict with any regulations regarding the protection of personal and/or proprietary information, all elements listed in paragraph (e)(1)(v) of this section.

(6) *Use of additional funds*. If additional funds from any source become available to a state-operated permit bank, the state-operated permit bank may not allocate or transfer any ACE that may be associated with any new permit purchased with those funds, until the state-operated permit bank provides the Council the opportunity to review the implications of the expanded state-operated permit bank to the goals and objectives of the NE Multispecies FMP.

(7) *Violation of the terms and conditions applicable to a state-operated permit bank*. If a state or state-operated permit bank violates or fails to comply with any of the requirements and conditions specified in this section or in the MOA referenced in paragraph (e)(1) of this section, the state or state-operated permit bank is subject to the actions and penalties specified in § 648.4(n) or the MOA.

[75 FR 18338, 18374, Apr. 9, 2010, as amended at 76 FR 23072, Apr. 25, 2011; 76 FR 42586, July 19, 2011; 77 FR 16497, Mar. 23, 2012; 77 FR 26125, May 2, 2012]

§ 648.88 Multispecies open access permit restrictions.

(a) *Handgear permit*. A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (90.7 kg) of cod, and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (2), respectively, is adjusted by NMFS, the cod trip limit specified in this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)). For example, if the GOM cod trip limit specified at § 648.86(b)(1) doubled, then the cod trip limit for the Handgear B category fishing in the GOM Regulated Mesh Area would also double to 150 lb (68 kg).

(2) *Restrictions:* (i) The vessel may not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board;

(ii) The vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year; and

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(iv) *Declaration*. To fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator declaring an intent to fish south of the GOM Regulated Mesh Area, and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. Such a vessel may transit the GOM Regulated Mesh Area, provided that their gear is stowed in accordance with the provisions at § 648.23(b).

(b) *Charter/party permit*. A vessel that has been issued a valid open access NE multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop NE multispecies possession limit permit*. With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under § 648.86, and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(ii).

(d) *Non-regulated NE multispecies permit.* A vessel issued a valid open access non-regulated NE multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other non-regulated NE multispecies, unless otherwise restricted by § 648.86. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

[69 FR 22983, Apr. 27, 2004, as amended at 69 FR 63481, Nov. 2, 2004; 71 FR 62195, Oct. 23, 2006; 75 FR 18348, Apr. 9, 2010; 76 FR 23075, Apr. 25, 2011; 77 FR 19143, Mar. 30, 2012]

§ 648.89 Recreational and charter/party vessel restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter/party vessels permitted under this part and not fishing under the DAS program or under the restrictions and conditions of an approved sector operations plan, as specified in § 648.87(c), and recreational fishing vessels in the EEZ, are prohibited from fishing with more than one line per angler, and must stow all other fishing gear on board the vessel as specified in § 648.23(b).

(b) *Recreational minimum fish sizes*—(1) *Minimum fish sizes.* Unless further restricted under paragraph (b)(5) of this section, persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program or under the restrictions and conditions of an approved sector operations plan, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL), as follows:

Species	Size (inches)
Cod	22 (55.9 cm)
Haddock	18 (45.7 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	41 (104.1 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(1) of this section may not possess cod smaller than 24 inches (63.7 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

(4) Fish fillets, or parts of fish, must have at least 2 square inches (5.1 square cm) of skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. The skin must be contiguous and must allow ready identification of the fish species.

(5) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(1) of this section may not possess cod smaller than 19 inches (48.26 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

(c) *Possession restrictions*—(1) *Recreational fishing vessels.* (i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day in, or harvested from, the EEZ.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by recreational fishing vessels in or from the EEZ with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(v) *Seasonal GOM cod possession prohibition.* Persons aboard private recreational fishing vessels fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1) may not fish for or possess any cod from November 1 through

April 15. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

(vi) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 9 cod per day in, or harvested from, the EEZ.

(2) *Charter/party vessels*. Charter/party vessels fishing any part of a trip in the GOM Regulated Mesh Area, as defined in § 648.80(a)(1), are subject to the following possession limit restrictions:

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified in paragraph (c)(2)(v) of this section, each person on a charter/party vessel may possess no more than 10 cod per day.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by charter/party vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limits on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(v) *Seasonal GOM cod possession prohibition*. Persons aboard charter/party fishing vessels permitted under this part and not fishing under the NE multispecies DAS program or on a sector trip that are fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1) may not fish for, possess, or land any cod from November 1 through April 15. Charter/party vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

(vi) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 9 cod per day in, or harvested from, the EEZ.

(3) *Atlantic halibut*. Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

(4) *Accounting of daily trip limit*. For the purposes of determining the per day trip limit for cod for recreational fishing vessels and party/charter vessels, any trip in excess of 15 hours and covering 2 consecutive calendar days will be considered more than 1 day. Similarly, any trip in excess of 39 hours and covering 3 consecutive calendar days will be considered more than 2 days and, so on, in a similar fashion.

(5) [Reserved]

(6) *Atlantic wolffish*. Persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels in or possessing fish from the EEZ may not possess Atlantic wolffish.

(7) *SNE/MA winter flounder*. Persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels fishing in the SNE/MA winter flounder stock area, as defined in § 648.85(b)(6)(v)(F), may not fish for, possess, or land winter flounder. Private recreational vessels in possession of winter flounder caught outside of the SNE/MA winter flounder may transit this area, provided all bait and hooks are removed from all fishing rods, and any winter flounder on board has been stored.

(8) *Windowpane flounder*. Persons aboard charter/party vessels permitted

under this part and not fishing under the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels in or possessing fish from the EEZ, may not possess windowpane flounder.

(9) *Ocean pout.* Persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels in or possessing fish from the EEZ may not possess ocean pout.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught in or landed from the EEZ by recreational, charter, or party vessels permitted under this part not fishing under a DAS, on a sector trip, or under a Handgear A permit, Handgear B permit, or Small Vessel Category C permit.

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area*—(1) *GOM Closed Areas.* Unless otherwise specified in this paragraph (e)(1), a vessel fishing under charter/party regulations may not fish in the GOM closed areas specified at § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a valid letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The conditions and restrictions of the letter of authorization must be complied with for a minimum of 3 months if the vessel fishes or intends to fish in the seasonal GOM closure areas; or for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel fishes or intends to fish in the year-round GOM closure areas. A vessel fishing under charter/party regulations may not fish in the GOM Cod Spawning Protection Area specified at § 648.81(n)(1) during the time period specified in that paragraph, unless the vessel complies with the requirements specified at § 648.81(n)(2)(iii).

(2) *Nantucket Lightship Closed Area.* A vessel fishing under charter/party regulations may not fish in the Nantucket Lightship Closed Area specified in § 648.81(c)(1) unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(c)(2)(iii) and paragraph (e)(3) of this section.

(3) *Letters of authorization.* To obtain either of the letters of authorization specified in paragraphs (e)(1) and (2) of this section, a vessel owner must request a letter from the Northeast Regional Office of NMFS, either in writing or by phone (see Table 1 to 50 CFR 600.502). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

(ii) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught;

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the GOM charter/party closed area exemption only, the vessel may not fish on a sector trip, under a NE multispecies DAS, or under the provisions of the NE multispecies Small Vessel Category or Handgear A or Handgear B permit categories, as specified at § 648.82, during the period of participation.

(f) *Recreational fishery AM*—(1) *Catch evaluation.* As soon as recreational catch data are available for the entire previous fishing year, the Regional Administrator will evaluate whether recreational catches exceed any of the sub-ACLs specified for the recreational fishery pursuant to § 648.90(a)(4). When evaluating recreational catch, the components of recreational catch that are used shall be the same as those used in the most recent assessment for that particular stock. To determine if the regulated species or ocean pout sub-ACL specified for the recreational

fishery was exceeded, the Regional Administrator shall compare the 3-year average of recreational catch to the 3-year average of the recreational sub-ACL for each stock, as follows:

(i) For fishing year 2010, recreational catch shall be compared to the recreational sub-ACL for that stock for fishing year 2010.

(ii) For fishing year 2011, the average recreational catch for fishing years 2010 and 2011 shall be compared to the average recreational sub-ACLs for that stock during fishing years 2010 and 2012.

(iii) Starting in fishing year 2012, the 3-year average recreational catch shall be compared to the 3-year average of the recreational sub-ACLs for that stock.

(2) *Measure adjustment*. If it is determined that any recreational sub-ACL was exceeded, as specified in paragraph (f)(1) of this section, the Regional Administrator, after consultation with the New England Fishery Management Council, shall develop measures necessary to prevent the recreational fishery from exceeding the appropriate sub-ACL in future years. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the FEDERAL REGISTER no later than January when possible. Separate AMs shall be developed for the private and charter/party components of the recreational fishery.

[69 FR 22984, Apr. 27, 2004, as amended at 71 FR 62196, Oct. 23, 2006; 72 FR 73281, Dec. 27, 2007; 75 FR 18348, Apr. 9, 2010; 76 FR 23076, Apr. 25, 2011; 76 FR 42587, July 19, 2011; 77 FR 25630, May 1, 2012; 77 FR 26125, May 2, 2012]

EFFECTIVE DATE NOTE: At 77 FR 25630, May 1, 2012, § 648.89 was amended by removing the reference in paragraph (b)(1) to ''paragraph (b)(3)'' and adding ''paragraph (b)(5)'' in its place, by suspending paragraphs (b)(3), (c)(1)(i) and (2)(i) and by adding paragraphs (b)(5), (c)(1)(vi) and (c)(2)(vi), effective May 1, 2012, through Oct. 29, 2012.

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

For the NE multispecies framework specification process described in this section, the regulated species and ocean pout biennial review is considered a separate process from the small-mesh species annual review, as described in paragraphs (a)(2) and (b)(1), respectively, of this section. In addition, the process for specifying ABCs and associated ACLs for regulated species and ocean pout, as described in paragraph (a)(4) of this section, is considered a separate process from the small-mesh species ABC and ACL process described in paragraph (b)(2) of this section.

(a) *NE multispecies*. For the purpose of this paragraph (a), the term ''NE multispecies fishery'' is defined as common pool vessels, sector vessels, and private recreational and charter/party vessels, as defined in this part; the term ''NE multispecies commercial fishery'' is defined as vessels issued a limited access NE multispecies permit, or an open access NE multispecies Handgear B permit; and the term ''NE multispecies recreational fishery'' is defined as private recreational vessels and charter or party boats, as further defined in this part.

(1) *NE Multispecies annual SAFE Report*. The NE Multispecies Plan Development Team (PDT) shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the NE multispecies fishery. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE multispecies complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) *Biennial review*. (i) The NE multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most

current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop ACLs for the upcoming fishing year(s) as described in paragraph (a)(4) of this section and develop options for consideration by the Council if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or other measures necessary to rebuild overfished stocks and achieve the FMP goals and objectives.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS allocations, DAS use, sector operations, and other measures of fishing effort; survey results; stock status; current estimates of fishing mortality and overfishing levels; social and economic impacts; enforcement issues; and any other relevant information.

(iii) Based on this review, the PDT shall recommend ACLs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identifying and distributing ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; describing and identifying EFH; fishing gear management measures to protect EFH; and designating habitat areas of particular concern within EFH. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs, area management boundaries, and adoption of area-specific management measures; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures; sector reporting requirements; state-operated permit bank administrative provisions; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; and any other measures currently included in the FMP.

(iv) The Council shall review the ACLs recommended by the PDT and all of the options developed by the PDT and other relevant information; consider public comment; and develop a recommendation to meet the FMP objectives pertaining to regulated species or ocean pout that is consistent with applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent

with applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(2)(vii) of this section, provided the option meets the FMP objectives and is consistent with applicable law.

(v) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the FEDERAL REGISTER as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the FEDERAL REGISTER, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used or regulated species or ocean pout landed by a vessel on or after May 1 will be counted against any DAS or sector ACE allocation the vessel or sector ultimately receives for that year, as appropriate.

(vii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the FEDERAL REGISTER on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the FEDERAL REGISTER.

(3) *Review in 2008 for the 2009 fishing year*. In addition to the biennial review specified in paragraph (a)(2) of this section, the PDT shall meet to conduct a review of the groundfish fishery by September 2008 for the purposes of determining the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer-reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in the FMP will be evaluated during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination will be made as to whether the FMP biomass targets appear to be appropriate, or whether they should be increased or decreased, in conformance with the best scientific information available.

(4) *Process for setting ABCs and ACLs*—(i) *ABC/ACL recommendations*. As described in this paragraph (a)(4), with the exception of stocks managed by the Understanding, the PDT shall develop recommendations for setting an ABC, ACL, and OFL for each NE multispecies stock for each of the next 3 years as part of the biennial review process

specified in paragraph (a)(2) of this section. ACLs can also be specified based upon updated information in the annual SAFE report, as described in paragraph (a)(1) of this section, and other available information as part of a specification package, as described in paragraph (a)(6) of this section. For NE multispecies stocks or stock components managed under both the NE Multispecies FMP and the Understanding, the PDT shall develop recommendations for ABCs, ACLs, and OFLs for the pertinent stock or stock components annually, as described in this paragraph (a)(4) and § 648.85(a)(2).

(ii) *Timing*. The PDT recommendations for setting ABCs and ACLs shall be provided to the SSC prior to the September Council meeting, to the extent possible. The Council shall consider the ABC recommendations of the SSC and the ACL recommendations of the PDT (and TMGC) and shall make a decision on those recommendations prior to December 1, to the extent possible. Once the Council has approved its recommended ACLs, they shall be submitted to NMFS prior to December 1, to the extent possible for approval and implementation. If the Council is submitting a management action as part of the biennial adjustment process, the ACLs can be included in that document along with any necessary analysis required by applicable law. After receipt of the Council recommendation for ACLs, either as part of a new management action or as part of a specification package, as described in paragraph (a)(5) of this section, NMFS shall review the Council's decision and, if consistent with applicable law, implement the ACL in a manner consistent with the Administrative Procedure Act.

(iii) *ABC/ACL distribution*. The ABCs/ACLs adopted by the Council for each regulated species or ocean pout stock pursuant to this paragraph (a)(4) shall be subdivided among the various sub-components of the fishery, as specified in paragraphs (a)(4)(iii)(A) through (E) of this section. For transboundary stocks managed by the Understanding, pursuant to § 648.85(a), the distribution of ABC/ACLs described in paragraphs (a)(4)(iii)(A) through (E) of this section shall be based upon the catch available to U.S. fishermen. The Council may revise its recommendations for the distribution of ABCs and ACLs among these and other sub-components through the process to specify ABCs and ACLs, as described in this paragraph (a)(4).

(A) *Regulated species or ocean pout catch by vessels outside of the FMP*. The catch of regulated species or ocean pout that is expected to be harvested by vessels operating in state waters that have not been issued a Federal NE multispecies permit and are not subject to the regulations specified in this part shall be deducted from the ABC/ACL of each regulated species or ocean pout stock pursuant to the process for specifying ABCs and ACLs, as described in this paragraph (a)(4).

(B) *Regulated species or ocean pout catch by exempted fisheries*. Regulated species or ocean pout catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3) shall be deducted from the ABC/ACL of each regulated species or ocean pout stock, pursuant to the process to specify ABCs and ACLs described in this paragraph (a)(4). The catch of these non-specified sub-components of the ACL shall be monitored using data collected pursuant to this part. If catch from such fisheries exceeds the amount specified in this paragraph (a)(4)(iii)(B), AMs shall be developed to prevent the overall ACL for each stock from being exceeded, pursuant to the framework adjustment process specified in this section.

(C) *Yellowtail flounder catch by the Atlantic sea scallop fishery*. Yellowtail flounder catch in the Atlantic sea scallop fishery, as defined in subpart D, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in this paragraph (a)(4)(iii)(C), or subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be

specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section. Based on information available, NMFS shall re-estimate the expected scallop fishery catch of GB yellowtail flounder for the current fishing year by January 15. If NMFS determines that the scallop fishery will catch less than 90 percent of its GB yellowtail flounder sub-ACL, the Regional Administrator may reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop fishery sub-ACL. The revised groundfish fishery sub-ACL shall be distributed to the common pool and sectors based on the process specified in paragraph (a)(4)(E)(*1*) of this section.

(D) *Haddock catch by the Atlantic herring fishery*. One percent each of the GOM haddock and GB haddock ABC (U.S. share only) shall be allocated to the Atlantic herring fishery, pursuant to the restrictions in §§ 648.85(d) and 648.86(a)(3), and pursuant to the process for specifying ABCs and ACLs described in paragraph (a)(4) of this section. An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(E) *Regulated species or ocean pout catch by the NE multispecies commercial and recreational fisheries*. Unless otherwise specified in the ACL recommendations developed pursuant to paragraph (a)(4)(i)(B) of this section, after all of the deductions and considerations specified in paragraphs (a)(4)(iii)(A) through (D) of this section, the remaining ABC/ACL for each regulated species or ocean pout stock shall be allocated to the NE multispecies commercial and recreational fisheries, pursuant to this paragraph (a)(4)(iii)(E).

(*1*) *Recreational allocation*. Unless otherwise specified in paragraph (a)(5) of this section, recreational catches shall be compared to the ACLs allocated pursuant to this paragraph (a)(4)(iii)(E)(*1*) for the purposes of determining whether adjustments to recreational measures are necessary, pursuant to the recreational fishery AMs specified in § 648.89(f).

(*i*) *Stocks allocated*. Unless otherwise specified in this paragraph (a)(4)(iii)(E)(*1*), the ABCs/ACLs for GOM cod and GOM haddock available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section shall be divided between commercial and recreational components of the fishery, based upon the average proportional catch of each component for each stock during fishing years 2001 through 2006.

(*ii*) *Process for determining if a recreational allocation is necessary*. A recreational allocation may not be made if it is determined that, based upon available information, the ACLs for these stocks are not being fully harvested by the NE multispecies fishery, or if the recreational harvest, after accounting for state waters catch pursuant to paragraph (a)(4)(iii)(A) of this section, is less than 5 percent of the overall catch for a particular stock of regulated species or ocean pout.

(*2*) *Commercial allocation*. Unless otherwise specified in this paragraph (a)(4)(iii)(E)(*2*), the ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(E)(*1*) of this section, shall be divided between vessels operating under approved sector operations plans, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels participating in sectors calculated pursuant to § 648.87(b)(1)(i)(E). For fishing years 2010 and 2011, the ABC/ACL of each regulated species or ocean pout stocks not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (*i.e.*, Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) that is available to the commercial NE multispecies fishery shall be allocated entirely to the common pool. Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(E)(*2*) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs

specified in § 648.82(n), or whether sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

(*3*) *Revisions to commercial and recreational allocations.* Distribution of the ACL for each stock available to the NE multispecies fishery between and among commercial and recreational components of the fishery may be implemented through a framework adjustment pursuant to this section. Any changes to the distribution of ACLs to the NE multispecies fishery shall not affect the implementation of AMs based upon the distribution in effect at the time of the overage that triggered the AM.

(iv) *ACL monitoring*—(A) *Landings.* For the purposes of monitoring the catch of regulated species or ocean pout towards the harvest of ACLs and other, non-specified sub-components of the ACLs specified in paragraph (a)(4) of this section, the reporting requirements specified in this part, including dealer reports, VTRs, VMS catch reports, sector catch reports, and other available information shall be used to identify and apportion regulated species or ocean pout landings by stock area.

(B) *Discards.* Unless otherwise specified in this paragraph (a)(4)(iv)(B), regulated species or ocean pout discards shall be monitored through the use of VTRs, observer data, VMS catch reports, and other available information, as specified in this part. Regulated species or ocean pout discards by vessels on a sector trip shall be monitored pursuant to paragraph (b)(1)(v)(A) of this section.

(v) *Adjustments to ACLs.* The Council may elect to revise the ACL for any regulated species or ocean pout stock in the second fishing year following a biennial review to account for any overages of an ACL in year one that may result in overfishing for a particular stock. Any adjustments to the ACLs in year two will be implemented pursuant to the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section.

(5) *AMs.* Except as specified in paragraphs (a)(4)(iii)(A) and (D) of this section, if any of the ACLs specified in paragraph (a)(4) of this section are exceeded based upon available catch information, the AMs specified in paragraphs (a)(5)(i) and (ii) of this section shall take effect in the following fishing year, or as soon as practicable, thereafter, once catch data for all affected fisheries are available, as applicable.

(i) *AMs for the NE multispecies commercial and recreational fisheries.* If the catch of regulated species or ocean pout by a sub-component of the NE multispecies fishery (i.e., common pool vessels, sector vessels, or private recreational and charter/party vessels) exceeds the amount allocated to each sub-component, as specified in paragraph (a)(4)(iii)(E) of this section, then the applicable AM for that sub-component of the fishery shall take effect, pursuant to paragraphs (a)(5)(i)(A) through (C) of this section. In determining the applicability of AMs specified for a sub-component of the NE multispecies fishery in paragraphs (a)(5)(i)(A) through (C) of this section, the Regional Administrator shall consider available information regarding the catch of regulated species and ocean pout by each sub-component of the NE multispecies fishery, plus each sub-component's share of any overage of the overall ACL for a particular stock caused by excessive catch by vessels outside of the FMP, exempted fisheries, or the Atlantic sea scallop fishery, as specified in this paragraph (a)(5), as appropriate.

(A) *Excessive catch by common pool vessels.* If the catch of regulated species and ocean pout by common pool vessels exceeds the amount of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(E)(*2*) of this section, then the AMs described in § 648.82(n) shall take effect. Pursuant to the distribution of ABCs/ACLs specified in paragraph (a)(4)(iii)(E)(*2*) of this section, for the purposes of this paragraph (a)(5)(i)(A), the catch of each regulated species or ocean pout stock not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) during fishing years 2010 and 2011 shall be added to the catch of such stocks by common pool vessels to determine whether the differential DAS counting AM described in § 648.82(n)(1)

shall take effect. If such catch does not exceed the portion of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(E)(*2*) of this section, then no AMs shall take effect for common pool vessels.

(B) *Excessive catch by sector vessels.* If the catch of regulated species and ocean pout by sector vessels exceeds the amount of the ACL specified for sector vessels pursuant to paragraph (a)(4)(iii)(E)(*2*) of this section, then the AMs described in § 648.87(b)(1)(iii) shall take effect. For the purposes of this paragraph (a)(5)(i)(B), the catch of regulated species and ocean pout for each sector approved pursuant to § 648.87 shall be based upon the catch of vessels participating in each approved sector. If such catch does not exceed the portion of the ACL specified for an individual sector pursuant to paragraph (a)(4)(iii)(E)(*2*) of this section, then no AMs shall take effect for that sector.

(C) *Excessive catch by the NE multispecies recreational fishery.* If the catch of regulated species and ocean pout by private recreational and charter/party vessels exceeds the amount of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(E)(*1*) of this section, then the AMs described in § 648.89(f) shall take effect. If such catch does not exceed the portion of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(E)(*1*) of this section, then no AMs shall take effect for the recreational fishery.

(D) *AMs for both stocks of windowpane flounder, ocean pout, and Atlantic halibut.* At the end of each fishing year, NMFS shall determine if the overall ACL for northern windowpane flounder, southern windowpane flounder, ocean pout, or Atlantic halibut was exceeded. If the overall ACL for any of these stocks is exceeded, NMFS shall implement the appropriate AM, as specified in this paragraph (a)(5)(i)(D), in the second fishing year after the fishing year in which the overage occurred, consistent with the Administrative Procedure Act. For example, if NMFS determined the overall ACL for northern windowpane flounder was exceeded in fishing year 2012, the applicable AM would be implemented for fishing year 2014.

(*1*) *Windowpane flounder and ocean pout.* If NMFS determines the overall ACL for either stock of windowpane flounder or ocean pout is exceeded, as described in this paragraph (a)(5)(i)(D)(*1*), by any amount between the management uncertainty buffer and up to 20 percent, the applicable small AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in these areas may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.81(n)(3)(i)(A); or any other gear approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for either stock of windowpane flounder or ocean pout is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other subcomponents of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. latitude	W. longitude
NWS1	41°10′	67°40′
NWS2	41°10′	67°20′
NWS3	41°00′	67°20′
NWS4	41°00′	67°00′
NWS5	40°50′	67°00′
NWS6	40°50′	67°40′
NWS1	41°10′	67°40′

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA

Point	N. latitude	W. longitude
NWL1	42°10′	67°40′
NWL2	42°10′	67°20′
NWL3	41°00′	67°20′
NWL4	41°00′	67°00′
NWL5	40°50′	67°00′
NWL6	40°50′	67°40′
NWL1	42°10′	67°40′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. latitude	W. longitude
SWS1	41°10′	71°30′
SWS2	41°10′	71°20′
SWS3	40°50′	71°20′
SWS4	40°50′	71°30′
SWS1	41°10′	71°30′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 1

Point	N. latitude	W. longitude
SWL1	41°10′	71°50′
SWL2	41°10′	71°10′
SWL3	41°00′	71°10′
SWL4	41°00′	71°20′
SWL5	40°50′	71°20′
SWL6	40°50′	71°50′
SWL1	41°10′	71°50′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 2

Point	N. latitude	W. longitude
SWL7	(1)	73°30′
SWL8	40°30′	73°30′
SWL9	40°30′	73°50′
SWL10	40°20′	73°50′
SWL11	40°20′	(2)
SWL12	(3)	73°58.5′
SWL13	(4)	73°58.5′
SWL14	40°32.6′ (5)	73°56.4′ (5)
SWL7	(1)	73°30′

[1] The southern-most coastline of Long Island, NY at 73°30′ W. longitude.

[2] The eastern-most coastline of NJ at 40°20′ N. latitude, then northward along the NJ coastline to point SWL12.

[3] The northern-most coastline of NJ at 73°58.5′ W. longitude.

[4] The southern-most coastline of Long Island, NY at 73°58.5′ W. longitude.

[5] The approximate location of the southwest corner of the Rockaway Peninsula, Queens, NY, then eastward along the southern-most coastline of Long Island, NY (excluding South Oyster Bay), back to point SWL7.

(*2*) *Atlantic halibut*. If NMFS determines the overall ACL is exceeded for Atlantic halibut, any vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, an open access NE multispecies Category K permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, may not fish for, possess, or land Atlantic halibut for the fishing year in which the AM is implemented as specified in paragraph (a)(5)(i)(D) of this section.

(E) *AMs for SNE/MA winter flounder and Atlantic wolffish*. A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, an open access NE multispecies charter/party permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may not fish for, possess, or land SNE/MA winter flounder, as specified in § 648.86(l), as a proactive AM to prevent the overall ACL for these stocks from being exceeded.

(ii) *AMs if the overall ACL for a regulated species or ocean pout stock is exceeded*. If the catch of any stock of regulated species or ocean pout by vessels fishing outside of the NE multispecies fishery; vessels fishing in state waters outside of the FMP; or vessels fishing in exempted fisheries, as defined in this part; or the catch of yellowtail flounder by the Atlantic sea scallop fishery exceeds the sub-component of the ACL for that stock specified for such fisheries pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, and the overall ACL for that stock is exceeded, then the amount of the overage of the overall ACL for that stock due to catch from vessels fishing outside of the NE multispecies fishery shall be distributed among components of the NE multispecies fishery based upon each component's share of that stock's ACL available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section. Each component's share of the ACL overage for a particular stock would be then added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum of catch of that stock for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If the total catch of that stock by any component of the NE multispecies fishery exceeds the amount of the ACL specified for that component of the NE

multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section, then the AMs specified in paragraphs (a)(5)(i)(A) through (C) of this section shall take effect, as applicable. If the catch of any stock of regulated species or ocean pout by vessels outside of the FMP exceeds the sub-component of the ACL for that stock specified pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, but the overall ACL for that stock is not exceeded, even after consideration of the catch of that stock by other sub-components of the fishery, then the AMs specified in this paragraph (a)(5)(ii) shall not take effect.

(iii) *AMs if the incidental catch cap for the Atlantic herring fishery is exceeded.* At the end of the NE. multispecies fishing year, NMFS shall evaluate Atlantic herring fishery catch using VTR, VMS, IVR, observer data, and any other available information to determine whether a haddock incidental catch cap has been exceeded based upon the cumulative catch of vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3. If the catch of haddock by all vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, exceeds the amount of the incidental catch cap specified in § 648.85(d) of this section, then the appropriate incidental catch cap shall be reduced by the overage on a pound-for-pound basis during the following fishing year. Any overage reductions shall be announced by the Regional Administrator in the FEDERAL REGISTER, accordance with the Administrative Procedure Act, prior to the start of the next NE. multispecies fishing year after which the overage occurred, if possible, or as soon as possible thereafter if the overage is not determined until after the end of the NE. multispecies fishing year in which the overage occurred.

(iv) *AMs if the sub-ACL for the Atlantic sea scallop fishery is exceeded.* At the end of the scallop fishing year, NMFS shall evaluate Atlantic sea scallop fishery catch to determine whether a scallop fishery sub-ACL has been exceeded. On January 15, or when information is available to make an accurate projection, NMFS will also determine whether the overall ACL for each stock allocated to the scallop fishery has been exceeded. When evaluating whether the overall ACL has been exceeded, NMFS will add the maximum carryover available to sectors, as specified at § 648.87(b)(1)(i)(C), to the estimate of total catch for the pertinent stock. If catch by scallop vessels exceeds the pertinent sub-ACL specified in paragraph (a)(4)(iii)(C) of this section by 50 percent or more, or if scallop catch exceeds the scallop fishery sub-ACL and the overall ACL for that stock is also exceeded, then the applicable scallop fishery AM shall take effect, as specified in § 648.64 of the Atlantic sea scallop regulations.

(6) *Specifications process*—(i) *PDT recommendations.* Unless otherwise developed pursuant to the biennial review process specified in paragraph (a)(2) of this section, the PDT shall develop recommendations for setting ACLs for each regulated species or ocean pout, including ACLs for stocks managed by the Understanding; revising rebuilding programs and associated management measures; or modifying AMs for consideration by the Council's Groundfish Oversight Committee based upon the SAFE report prepared pursuant to paragraph (a)(1) of this section. If the Council determines, based on information provided by the PDT or other stock-related information, that the ACLs should be adjusted between biennial reviews, it can do so through the same process outlined in this section during the interim year.

(ii) *Guidelines.* As the basis for its recommendations under paragraph (a)(5)(i) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information.

(iii) *Groundfish Oversight Committee recommendations.* Based on the PDT's

recommendations and any public comment received, the Groundfish Oversight Committee shall recommend to the Council appropriate specifications a period of at least 1 year. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate specifications to NMFS. NMFS shall review the recommendations and publish proposed specifications in a manner consistent with the Administrative Procedure Act. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated.

(iv) *Analysis.* Any specifications package developed pursuant to this paragraph (a)(5) shall be supported by the appropriate NEPA analysis, which shall be made available for public comment.

(b) *Small-mesh multispecies*—(1) *Three-year specifications process, annual review, and Stock Assessment and Fishery Evaluation.* The Council will specify on at least a 3-year basis the OFL, ABC, ACLs, and TALs for each small-mesh multispecies stock in accordance with the following process.

(i) At least every 3 years, based on the annual review, described below in paragraph (b)(3) of this section, and/or the SAFE Report described in paragraph (b)(4) of this section, recommendations for ABC from the Scientific and Statistical Committee (SSC), and any other relevant information, the Small-Mesh Multispecies PDT will recommend to the Whiting Oversight Committee and Council specifications including the OFL, ABC, ACL and TAL for each small-mesh multispecies stock the following specifications for a period of at least 3 years. The Small-Mesh Multispecies PDT and the Council will follow the process in paragraph (b)(2) of this section for setting these specifications.

(ii) The Small-Mesh Multispecies PDT, after reviewing the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

(iii) Taking into account the annual review and/or SAFE Report described in paragraph (b)(2) of this section, the advice of the SSC, and any other relevant information, the Small-Mesh Multispecies PDT may also recommend to the Whiting Oversight Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of small-mesh multispecies. These adjustments may be included in the Council's specifications for the small-mesh multispecies fishery.

(iv) *Council recommendation.* (A) The Council will review the recommendations of the Small-Mesh Multispecies PDT, Whiting Oversight Committee, and SSC, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded.

(B) The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will consider the recommendations and publish a rule in the FEDERAL REGISTER proposing specifications and associated measures, consistent with the Administrative Procedure Act.

(C) The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the FEDERAL REGISTER differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws.

(D) If the final specifications are not published in the FEDERAL REGISTER for the start of the fishing year, the previous year's specifications will remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(2) *Process for specifying ABCs, ACLs and TALs.* The Small-Mesh Multispecies PDT will calculate the OFL and

ABC values for each small-mesh multispecies stock based on the control rules established in the FMP. These calculations will be reviewed by the SSC, guided by terms of reference developed by the Council. The ACLs and TALs will be calculated based on the SSC's approved ABCs, as specified in paragraphs (a)(2)(i)(A) through (C), and (a)(2)(ii)(A) through (C) of this section.

(i) *Red hake*—(A) *ABCs*. The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of red hake. The red hake ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFL.

(B) *ACLs*. The red hake ACLs are equal to 95 percent of the corresponding ABCs.

(C) *TALs*. The red hake TALs are equal to the ACLs minus a discard estimate based on the most recent 3 years of data. The red hake TALs are then reduced by 3 percent to account for red hake landings that occur in state waters.

(ii) *Silver and Offshore Hake*—(A) *ABCs*. The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of silver hake. The ABC for the southern stock of silver hake will be increased by 4 percent to account for catch of offshore hake. The combined silver hake and offshore hake ABC in the southern area will be the southern whiting ABC. The silver hake and whiting ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFLs.

(B) *ACLs*. The northern silver hake and southern whiting ACLs are equal to 95 percent of the ABCs.

(C) *TALs*. The northern silver hake and southern whiting TALs are equal to the northern silver hake and southern whiting ACLs minus a discard estimate based on the most recent 3 years of data. The northern silver hake and southern whiting TALs are then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(3) *Annual Review*. (i) The Small-Mesh Multispecies PDT will meet at least once annually to review the status of the stock and the fishery and the adequacy of the 3-year specifications. Based on such review, the PDT will provide a report to the Council on any changes or new information about the small-mesh multispecies stocks and/or fishery, and it will recommend whether the specifications for the upcoming year(s), established pursuant to paragraph (b)(1) of this section, need to be modified. At a minimum, this review should include a review of at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of small-mesh multispecies; and any other relevant information.

(ii) If new and/or additional information becomes available, the Small-Mesh Multispecies PDT will consider it during this annual review. Based on this review, the Small-Mesh Multispecies PDT will provide guidance to the Whiting Oversight Committee and the Council regarding the need to adjust measures for the small-mesh multispecies fishery to better achieve the FMP's objectives. After considering this guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the process specified in paragraph (c) of this section, or through an amendment to the FMP.

(4) *SAFE Report*. (i) The Small-Mesh Multispecies PDT will prepare a SAFE Report at least every 3 years. Based on the SAFE Report, the Small-Mesh Multispecies PDT will develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The SAFE Report will be the primary vehicle for the presentation of

all updated biological and socio-economic information regarding the small-mesh multispecies fishery. The SAFE Report will provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(ii) In any year in which a SAFE Report is not completed by the Small-Mesh Multispecies PDT, the annual review process described in paragraph (a) of this section will be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

(5) *Accountability measures for the small-mesh multispecies fishery*—(i) *In-season adjustment of possession limits.* If the Regional Administrator projects that 90 percent of a stock area TAL, as defined in § 648.90(b)(3), has been landed, the Regional Administrator shall reduce the possession limit of that stock to the incidental level, as specified in § 648.86(d)(4), for the remainder of the fishing year through notice consistent with the Administrative Procedure Act, unless such a reduction in the possession limit would be expected to prevent the TAL from being reached.

(ii) *Post-season adjustment for an overage.* If NMFS determines that a small-mesh multispecies ACL was exceeded in a given fishing year, the exact amount of the landings overage will be deducted, as soon as is practicable, from a subsequent single fishing year's ACL for that stock, through notification consistent with the Administrative Procedure Act.

(c) *Within season management action for NE multispecies, including small-mesh NE multispecies.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets that form the basis for selecting specific management measures.

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifer in the hook-gear fishery, sector requirements, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area.

(ii) *Adjustment process for whiting DAS.* The Council may develop recommendations for a whiting DAS effort reduction program through the framework process outlined in paragraph (c)

of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10, in accordance with the procedures specified in § 648.55 (d) and (e).

(3) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule, consistent with the Administrative Procedure Act. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule, based on the factors specified in paragraph (c)(3) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER, consistent with the Administrative Procedure Act.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If the Regional Administrator does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(d) *Flexible Area Action System.* (1) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies, shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Administrator to initiate a fact finding investigation to verify the situation and publish notification in the FEDERAL REGISTER requesting public comments in accordance with the procedures therefore in Amendment 3 to the NE Multispecies FMP.

(2) After examining the facts, the Regional Administrator shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(3) The NEFMC shall prepare an economic impact analysis of the potential

management options under consideration within the deadlines specified in Amendment 3.

(4) Copies of the analysis and reports prepared by the Regional Administrator and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Administrator.

(5) By the deadline set in Amendment 3 the Regional Administrator shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall accept the Committee's recommendation and implement it through notification in the FEDERAL REGISTER and by notice sent to all vessel owners holding multispecies permits. The Regional Administrator shall also use other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(6) Once implemented, the Regional Administrator shall monitor the affected area to determine if the action is still warranted. If the Regional Administrator determines that the circumstances under which the action was taken, based on the Regional Administrator's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the FEDERAL REGISTER.

(7) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Administrator may determine that facts warrant a delayed effective date.

(e) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

[69 FR 22984, Apr. 27, 2004, as amended at 70 FR 76429, Dec. 27, 2005; 73 FR 4754, Jan. 28, 2008; 75 FR 18349, Apr. 9, 2010; 76 FR 23076, Apr. 25, 2011; 76 FR 42587, July 19, 2011; 76 FR 56999, Sept. 15, 2011; 76 FR 81848, Dec. 29, 2011; 77 FR 16948, Mar. 23, 2012; 77 FR 19143, Mar. 30, 2012; 77 FR 26125, May 2, 2012]

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, possessing or landing monkfish must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited:

(a) *Northern Fishery Management Area (NFMA)—Area definition.* The NFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at the intersection of 70° W. longitude and the south-facing shoreline of Cape Cod, MA (point A), then southward along 70° W. longitude to 41° N. latitude, then eastward to the U.S.-Canada maritime boundary, then in a northerly direction along the U.S.-Canada maritime boundary until it intersects the Maine shoreline, and then following the coastline in a southerly direction until it intersects with point A.

(b) *Southern Fishery Management Area (SFMA)—Area definition.* The SFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at point A, then in a southerly direction to the NC-SC border, then due east to the 200–mile limit, then in a northerly direction along the 200–mile limit to the U.S.-Canada maritime boundary, then in a northwesterly direction along the U.S.-Canada maritime boundary to 41° N. latitude, and then westward to 70° W. longitude, and finally north to the shoreline at Cape Cod, MA (point A).

(c) *Gear restrictions*—(1) *Minimum mesh size*—(i) *Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(ii) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch

(25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified under § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i) of the Northeast multispecies regulations, depending upon and consistent with the NE multispecies regulated mesh area being fished.

(ii) *Trawl nets while on a monkfish and NE multispecies DAS*. Vessels issued a Category C, D, G, or H limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS are subject to the minimum mesh size allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i), depending upon, and consistent with, the NE multispecies regulated mesh area being fished, unless otherwise specified in this paragraph (c)(1)(ii). Trawl vessels participating in the Offshore Fishery Program, as described in § 648.95, and that have been issued a Category F monkfish limited access permit, are subject to the minimum mesh size specified in paragraph (c)(1)(i) of this section.

(iii) *Gillnets while on a monkfish DAS*. The minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 10–inch (25.4–cm) diamond mesh, unless otherwise provided for under § 648.92(b)(1)(iii)(B).

(iv) *Authorized gear while on a monkfish and scallop DAS*. Vessels issued a Category C, D, G, or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(i) of this section.

(2) *Other gear restrictions*. (i) A vessel may not fish with dredges or have dredges on board while fishing under a monkfish DAS.

(ii) All other non-conforming gear must be stowed as specified in § 648.23(b).

(iii) The mesh size restrictions in paragraph (c)(1) of this section do not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 ft^2 (0.81 m^2)).

(3) *SFMA trawl roller gear restriction*. The roller gear diameter on any vessel on a monkfish DAS in the SFMA may not exceed 6 inches (15.2 cm) in diameter.

[64 FR 54747, Oct. 7, 1999, as amended at 65 FR 37917, June 19, 2000; 67 FR 50323, Aug. 1, 2002; 70 FR 21942, Apr. 28, 2005; 72 FR 53949, Sept. 21, 2007]

§ 648.92 Effort-control program for monkfish limited access vessels.

(a) *General*. A vessel issued a limited access monkfish permit may not fish for, possess, retain, or land monkfish, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, except as otherwise provided in this part.

(1) *End of year carryover*. With the exception of a vessel that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carryover year, a limited access monkfish vessel that has unused monkfish DAS on the last day of April of any year may carry over a maximum of 4 unused monkfish DAS into the next fishing year. A vessel whose DAS have been sanctioned through enforcement proceedings shall be credited with unused DAS based on its DAS allocation minus any DAS that have been sanctioned.

(2) [Reserved]

(b) *Monkfish DAS program—permit categories and allocations*—(1) *Limited access monkfish permit holders*—(i) *General provision*. Limited access monkfish permit holders shall be allocated 40 monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless otherwise restricted by paragraph (b)(1)(ii) of this section or modified by § 648.96(b)(3), or unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Limited access NE multispecies and limited access sea scallop permit holders who also possess a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish

DAS utilized, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

(ii) *DAS restrictions for vessels fishing in the SFMA.* Limited access monkfish vessels may only use 28 of their 31 monkfish DAS allocation in the SFMA. All limited access monkfish vessels fishing in the SFMA must declare that they are fishing in this area through the vessel call-in system or VMS prior to the start of every trip. In addition, if a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS shall presume that any monkfish DAS used were fished in the SFMA.

(iii) *DAS declaration provision for vessels fishing in the NFMA with a VMS unit.* Any limited access NE multispecies vessel fishing on a sector trip or under a NE multispecies Category A DAS in the NFMA, and issued an LOA as specified in § 648.94(f), may change its DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip after leaving port, but prior to crossing the VMS demarcation line upon its return to port or leaving the NFMA, if the vessel exceeds the incidental catch limit specified under § 648.94(c).

(A) Vessels that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS during the course of a trip remain subject to the NE multispecies DAS usage requirements (i.e., use a NE multispecies Category A DAS in conjunction with the monkfish DAS) described in paragraph (b)(2)(i) of this section.

(B) Gillnet vessels that change their DAS declaration in accordance with this paragraph (b)(1)(iii) are not subject to the gillnet minimum mesh size restrictions found at § 648.91(c)(1)(iii), but are subject to the smaller NE multispecies minimum mesh requirements for gillnet vessels found under § 648.80 based upon the NE Multispecies Regulated Mesh Area in which the vessel is fishing.

(iv) *Offshore Fishery Program DAS allocation.* A vessel issued a Category F permit, as described in § 648.95, shall be allocated a prorated number of monkfish DAS as specified in § 648.95(g)(2).

(v) *Research DAS set-aside.* A total of 500 DAS shall be set aside and made available for cooperative research programs as described in paragraph (c) of this section. These DAS shall be deducted from the total number of DAS allocated to all monkfish limited access permit holders, as specified under paragraph (b)(1)(i) of this section. A per vessel deduction shall be determined as follows: Allocated DAS minus the quotient of 500 DAS divided by the total number of limited access permits issued in the previous fishing year. For example, if the DAS allocation equals 31 DAS and there were 750 limited access monkfish permits issued during FY 2006, the number of DAS allocated to each vessel during FY 2007 would be 31 DAS minus 0.7 (500 DAS divided by 750 permits), or 30.3 DAS.

(2) *Category C, D, F, G, or H limited access monkfish permit holders.* (i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 20, and the vessel

fished 20 of its 31 monkfish DAS, 20 NE multispecies Category A DAS would also be used. However, after all 20 NE multispecies Category A DAS are used, the vessel may utilize its remaining 11 monkfish DAS to fish for monkfish, without a NE multispecies DAS being used. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B Regular DAS under the NE Multispecies Regular B DAS Program, as specified under § 648.85(b)(6), in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

(ii) *Category C, D, F, G, or H vessels that lease NE multispecies DAS.* (A) A monkfish Category C, D, F, G, or H vessel that has ''monkfish-only'' DAS, as specified in paragraph (b)(2)(i) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), is required to fish its available ''monkfish-only'' DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C, D, F, G, or H vessel that leases DAS to another vessel(s), pursuant to § 648.82(k), must forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining NE multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 31 unused monkfish DAS and 35 allocated NE multispecies DAS, leased 10 of its NE multispecies DAS to another vessel, the lessor would forfeit 6 of its monkfish DAS (10–(35 NE multispecies DAS–31 monkfish DAS) = 6).

(3) *Accrual of DAS.* Same as § 648.53(f).

(4) *DAS credits*—(i) *Good Samaritan credit.* A limited access vessels fishing under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(ii) *Canceled trip DAS credit.* A limited access vessel operating under the DAS program and that end a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements.

(A) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(B) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancelation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(C) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancelation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(D) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (b)(4)(ii)(B) and (C) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and

time notification requirements specified under paragraphs (b)(4)(ii)(B) and (C) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(E) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(F) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year and may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (a)(1) of this section.

(5) [Reserved]

(6) *Declaring monkfish DAS.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the monkfish DAS program using the notification requirements specified in § 648.10.

(7) *Adjustments in annual monkfish DAS allocations.* Adjustments in annual monkfish DAS allocations, if required to meet fishing mortality goals, may be implemented pursuant to the framework adjustment procedures of § 648.96.

(8) *Gillnet restrictions*—(i) *Number and size of nets*—(A) *Category A and B vessels.* A vessel issued a monkfish limited access Category A or B permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 160 gillnets. Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

(B) *Category C, D, F, G, and H vessels that possess a limited access NE multispecies permit.* A vessel issued a valid monkfish limited access Category C, D, F, G, or H permit that possesses a valid limited access NE multispecies permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 150 gillnets. A vessel issued a NE multispecies limited access permit and a limited access monkfish permit, and fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 150 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

(ii) *Tagging requirements.* Beginning May 1, 2000, all gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS must have one monkfish tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags must be obtained as described in § 648.4. A vessel operator must account for all net tags upon request by an authorized officer.

(iii) *Lost tags.* A vessel owner or operator must report lost, destroyed, or missing tag numbers by letter or fax to the Regional Administrator within 24 hours after tags have been discovered lost, destroyed, or missing.

(iv) *Replacement tags.* A vessel owner or operator seeking replacement of lost, destroyed, or missing tags must request replacement tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received before the tags will be re-issued.

(v) *Method of counting DAS.* A vessel fishing with gillnet gear under a monkfish DAS shall accrue 15 hours monkfish DAS for all trips less than or equal to 15 hours in duration. Such vessels shall accrue monkfish DAS based on actual time at sea for trips greater than 15 hours in duration. A vessel fishing with gillnet gear under only a monkfish DAS is not required to remove gillnet gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the requirements and conditions of paragraphs (b)(8)(i)–(v) of this section. A vessel fishing with gillnet gear under a joint monkfish and NE multispecies DAS, as required under § 648.92(b)(2)(i), that is declared as a trip gillnet vessel under the NE Multispecies FMP, must remove its gillnet gear from the water prior to calling out of the DAS program, as specified at § 648.82(j)(2).

(9) *Category G and H limited access permit holders.* (i) Vessels issued monkfish limited access Category G or H permits

may only fish under a monkfish DAS in the area south of 38°40′ N. lat.

(ii) Vessels issued valid limited access monkfish Category G or H permit that also possess a limited access NE multispecies or limited access scallop permit are subject to the same provisions as Category C or D vessels, respectively, unless otherwise stated under this subpart F.

(10) *DAS Adjustment for Trip Limit Overage.* Any limited access monkfish vessel, required to or voluntarily using a VMS, fishing on a monkfish DAS may land up to the equivalent of one additional day's worth of its trip limit (i.e., amount of monkfish authorized per DAS) than would otherwise be authorized, provided the vessel, vessel owner, or vessel operator notifies the Regional Administrator of the overage via VMS prior to crossing the VMS demarcation line. If the vessel is not required to be, or is not equipped with an operable VMS, the vessel, vessel operator, or owner must notify the Regional Administrator via the call-in system at least 1-hr prior to landing. The monkfish DAS charged to the vessel will then be increased to equal a full 24-hr period plus 1 minute to account for the trip limit overage. For example, if a vessel has the equivalent of two monkfish DAS trip limits (based on its permit category) on board, but has only been declared into the monkfish DAS program for 15 hr, the vessel, vessel owner, or vessel operator may land fish equal to the two DAS trip limits only if the Regional Administrator of the overage is notified via VMS or the call-in system as described above. In this case, the monkfish DAS charged to the vessel would be adjusted from 15 hr to 24 hr and 1 minute.

(c) *Monkfish Research*—(1) *DAS Set-Aside Program.* (i) NMFS shall publish a Request for Proposals (RFP) in the FEDERAL REGISTER consistent with procedures and requirements established by the NOAA Grants Office to solicit proposals for the upcoming fishing year that are based on research priorities identified by the Councils.

(ii) NMFS shall convene a review panel that may include members of the Councils' Monkfish Oversight Committee, the Council's Research Steering Committee, and other subject matter experts, to review proposals submitted in response to the RFP.

(A) Each panel member shall recommend which research proposals should be authorized to utilize the research DAS set aside in accordance with paragraph (b)(1)(iv) of this section, based on the selection criteria described in the RFP.

(B) NMFS and the NOAA Grants Office shall consider each panel member's recommendation, and NOAA shall provide final approval of the projects, and notify applicants of the grant award through written notification to the project proponent. The Regional Administrator may exempt selected vessel(s) from regulations specified in each of the respective FMPs through the exempted fishing permit (EFP) process specified under § 600.745(b)(2).

(iii) The grant awards approved under the RFPs shall be for the upcoming fishing year. Proposals to fund research that would start prior to the fishing year are not eligible for consideration. Multi-year grant awards may be approved under an RFP for an upcoming fishing year, so long as the research DAS available under subsequent RFPs are adjusted to account for the approval of multi-year awards.

(iv) Research projects shall be conducted in accordance with provisions approved and provided in an EFP issued by the Regional Administrator, as authorized under § 600.745(b)(2).

(v) If the Regional Administrator determines that the annual allocation of research DAS will not be used in its entirety once all of the grant awards have been approved, the Regional Administrator shall reallocate the unallocated research DAS as exempted DAS to be authorized as described in paragraph (c)(2) of this section, and provide notice of the reallocation of DAS in the FEDERAL REGISTER. Any allocated research DAS that are not used during the fishing year for which they are granted may be carried over into the next fishing year. Any unallocated research DAS may not be carried over into the next fishing year.

(vi) For proposals that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(2) *DAS Exemption Program.* (i) Vessels that seek to conduct monkfish research within the current fishing year, and that were not selected in the RFP process during the previous fishing year, may seek exemptions from monkfish DAS for the purpose of conducting exempted fishing activities, as authorized at § 600.745(b), under the following conditions and restrictions:

(A) The request for a monkfish DAS exemption must be submitted along with a complete application for an EFP to the Regional Administrator. The requirements for submitting a complete EFP application are provided in § 600.745(b)(2);

(B) Exempted DAS must be available for usage. Exempted DAS shall only be made available by the Regional Administrator if it is determined that the annual set-aside of research DAS will not be used in its entirety, as described in paragraph (c)(1)(v) of this section. If exempted DAS are not available for usage, the applicant may continue to seek an exemption from monkfish DAS, but may be required to conduct an analysis of the impacts associated with the monkfish DAS exemption request before issuance of the EFP application will be considered; and

(C) For EFP applications that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(ii) Monkfish DAS exemption requests shall be reviewed and approved by the Regional Administrator in the order in which they are received.

[64 FR 54748, Oct. 7, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.92, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 648.93 Monkfish minimum fish sizes.

(a) *General provisions.* (1) All monkfish caught by vessels issued a valid Federal monkfish permit must meet the minimum fish size requirements established in this section.

MINIMUM FISH SIZES
(Total Length/Tail Length)

Total Length	Tail Length
17 inches (43.2 cm)	11 inches (27.9 cm)

(2) The minimum fish size applies to the whole fish (total length) or to the tail of a fish (tail length) at the time of landing. Fish or parts of fish, with the exception of cheeks and livers, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed. Monkfish tails are measured from the anterior portion of the fourth cephalic dorsal spine to the end of the caudal fin. Any tissue anterior to the fourth dorsal spine is ignored. If the fourth dorsal spine or the tail is not intact, the minimum size is measured between the most anterior vertebra and the most posterior portion of the tail.

(b) *Minimum fish size.* The minimum fish size for all vessels is 17 inches (43.2 cm) total length or 11 inches (27.9 cm) tail length.

[64 FR 54749, Oct. 7, 1999, as amended at 68 FR 22329, Apr. 28, 2003; 70 FR 21944, Apr. 28, 2005]

§ 648.94 Monkfish possession and landing restrictions.

(a) *General.* Monkfish may be possessed or landed either as tails only, tails with associated heads possessed separately, or in whole form (head on and gutted), or any combination of the three provided the weight of monkfish heads on board does not exceed 1.91 times the weight of monkfish tails on board. When any combination of tails, and whole fish are possessed or landed, the possession or landing limit shall be based on tail weight where all whole

monkfish (head on and gutted) are converted to tail weight using the conversion factor of 2.91. For example, whole weight is converted to tail weight by dividing the whole weight by 2.91. Conversely, tail weight is converted to whole weight by multiplying the tail weight by 2.91. If heads only are possessed in combination with tails, the possession or landing limit for monkfish heads may not exceed 1.91 times the tail weight of fish on board, excluding any whole monkfish. The allowed amount of head weight is determined by multiplying the tail weight by 1.91. For example a vessel possessing 100 lb (45 kg) of tail weight may possess an additional 191 lb (87 kg) of monkfish heads (100 × 1.91 = 191). A vessel may not possess heads only without possessing the equivalent weight of tails allowed by using the conversion factor.

(b) *Vessels issued limited access monkfish permits*—(1) *Vessels fishing under the monkfish DAS program in the NFMA*—(i) *Category A and C vessels.* Limited access monkfish Category A and C vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 1,250 lb (567 kg) tail weight or 3,638 lb (1,650 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Category B and D vessels.* Limited access monkfish Category B and D vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 kg) whole weight of monkfish (gutted) per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(2) *Vessels fishing under the monkfish DAS program in the SFMA*—(i) *Category A, C, and G vessels.* Limited access monkfish Category A, C, and G vessels that fish under a monkfish DAS in the SFMA may land up to 550 lb (249 kg) tail weight or 1,601 lb (726 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Category B, D, and H vessels.* Limited access monkfish Category B, D, and H vessels that fish under a monkfish DAS in the SFMA may land up to 450 lb (204 kg) tail weight or 1,310 lb (594 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg)) of tail only weight landed, the vessel may land up to 1.91 lb (0.87) of monkfish heads only, as described in paragraph (a) of this section.

(iii) *Category F vessels.* Vessels issued a Category F permit are subject to the possession and landing restrictions specified at § 648.95(g)(1).

(iv) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(2)(i) through (iii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(3) *Category C, D, F, G, and H vessels fishing under the multispecies DAS program*—(i) *NFMA.* Limited access monkfish Category C, D, F, G, or H vessels that are fishing under a NE multispecies DAS, and not a monkfish DAS, exclusively in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section. Category C, D, F, G, and H vessels participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA*—(A) *Category C, D, and F vessels.* Limited access monkfish Category C, D, or F vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not a monkfish DAS, may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg)

whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip. Category C, D, and F vessels participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(B) *Category G and H vessels.* Limited access monkfish Category G and H vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not under a monkfish DAS, are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. Category G and H vessels participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

(4) *Category C, D, F, G, or H vessels fishing under the scallop DAS program.* A Category C, D, F, G, or H vessel fishing under a scallop DAS may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(5) *Category C, D, F, G, or H scallop vessels declared into the monkfish DAS program without a dredge on board, or not under the net exemption provision.* Category C, D, G, or H vessels that have declared into the monkfish DAS program and that do not fish with or have a dredge on board, or that are not fishing with a net under the net exemption provision specified in § 648.51(f), are subject to the same landing limits as specified in paragraphs (b)(1) and (b)(2) of this section, or the landing limit specified in § 648.95(g)(1), if issued a Category F permit. Such vessels are also subject to provisions applicable to Category A and B vessels fishing only under a monkfish DAS, consistent with the provisions of this part.

(6) *Vessels not fishing under a NE multispecies, scallop, or monkfish DAS.* The possession limits for all limited access monkfish vessels when not fishing under a NE multispecies, scallop, or monkfish DAS are the same as those possession limits applicable to a vessel issued a monkfish incidental catch permit specified under paragraphs (c)(3) through (c)(8) of this section.

(c) *Vessels issued a monkfish incidental catch permit*— (1) *Vessels fishing under a NE multispecies DAS*—(i) *NFMA.* Vessels issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, fishing under a NE multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *SFMA.* If any portion of the trip by a vessel issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category G or H permit, is fished under a NE multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads

only, as described in paragraph (a) of this section.

(2) *Scallop vessels fishing under a scallop DAS.* A scallop vessel issued a monkfish incidental catch (Category E) permit fishing under a scallop DAS may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(3) *Vessels fishing with large mesh and not fishing under a DAS* —(i) A vessel issued a valid monkfish incidental catch limit (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs with mesh no smaller than specified at §§ 648.80(a)(3)(i) and (a)(4)(i), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at § 648.80(b)(2)(i), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA under a Skate Bait Letter of Authorization, as authorized under § 648.322(c), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iv) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE or MA RMAs west of the MA Exemption Area boundary with mesh no smaller than specified at § 648.108(a)(1) while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, up to a maximum of 450 lb (204 kg) tail weight or 1,310 lb (594 kg) whole weight of monkfish per trip, unless that vessel is fishing under a Skate Bait Letter of Authorization in the SNE RMA. Such a vessel is subject to the incidental catch limit specified under paragraph (c)(3)(iii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91.

For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(4) *Vessels fishing with small mesh and not fishing under a DAS.* A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land only up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(5) *Small vessels.* A vessel issued a limited access NE multispecies small vessel category permit and a valid monkfish incidental catch (Category E) permit that is less than 30 ft (9.1 m) in length and that elects not to fish under the NE multispecies DAS program, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail only weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb of monkfish heads only, as described in paragraph (a) of this section.

(6) *Vessels fishing with handgear.* A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(7) *Vessels fishing with surfclam or ocean quahog dredge gear.* A vessel issued a valid monkfish incidental catch (Category E) permit and a valid surfclam or ocean quahog permit, while fishing exclusively with a hydraulic clam dredge or mahogany quahog dredge, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(8) *Scallop vessels not fishing under a scallop DAS with dredge gear*—(i) *General provisions.* A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a valid General Category sea scallop permit or a limited access sea scallop vessel not fishing under a scallop DAS, while fishing exclusively with scallop dredge gear as specified in § 648.51(b), may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip, unless otherwise specified in paragraph (c)(8)(ii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Limited access scallop vessels fishing in Sea Scallop Access Areas.* A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a limited access sea scallop permit while fishing exclusively with scallop dredge gear as specified in § 648.51(b), and fishing in one of the established Sea Scallop Access Areas specified under § 648.59, may possess, retain, and land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per day or partial day fished within the boundaries of the Sea Scallop Access Area. Time within the applicable access area, for purposes of determining the incidental catch limit, will be determined through the vessel's VMS unit. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(d) *Monkfish liver landing restrictions.* (1) A vessel authorized to land monkfish under this part may possess or land monkfish livers up to 25 percent of the tail-weight of monkfish, or up to 10 percent of the whole weight of monkfish, per trip, except as provided under paragraph (d)(2) of this section.

(2) If a vessel possesses or lands both monkfish tails and whole monkfish, the vessel may land monkfish livers up to 10 percent of the whole weight of monkfish per trip using the following weight ratio: (0.10) × [(tail weight × 2.91) + (whole fish × 1)].

(e) *Transiting.* A vessel that has declared into the NFMA for the purpose of fishing for monkfish under the less restrictive measures of the NFMA, may transit the SFMA provided that the vessel does not harvest or possess monkfish, or any other fish, from the SFMA, and the vessel's gear is properly stowed and not available for immediate use in accordance with the regulations specified under § 648.23(b).

(f) *Area declaration requirement for a vessel fishing exclusively in the NFMA.* A vessel intending to fish for, or fishing for, possessing or landing monkfish under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish exclusively in the NFMA for the entire trip. In addition, a vessel fishing under a monkfish DAS must declare its intent to fish in the NFMA through the vessel's VMS unit. A vessel that is not required to and does not possess a VMS unit, such as a vessel that declares DAS through the call-in system, must declare its intent to fish in the NFMA by obtaining a letter of authorization from the Regional Administrator, for a period of not less than 7 days. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in paragraph (e) of this section, and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

(g) *Other landing restrictions.* Vessels are subject to any other applicable landing restrictions of this part.

[64 FR 54749, Oct. 7, 1999, as amended at 65 FR 11480, Mar. 3, 2000; 65 FR 37917, June 19, 2000; 68 FR 22330, Apr. 28, 2003; 69 FR 18293, Apr. 7, 2004; 69 FR 22988, Apr. 27, 2004; 70 FR 21944, 22244, Apr. 28, 2005; 71 FR 23874, Apr. 25, 2006; 72 FR 20959, Apr. 27, 2007; 72 FR 53942, Sept. 21, 2007; 72 FR 53950, Sept. 21, 2007; 73 FR 22835, Apr. 28, 2008; 76 FR 30272, May 25, 2011; 76 FR 66195, Oct. 26, 2011; 76 FR 60649, Sept. 29, 2011]

§ 648.95 Offshore Fishery Program in the SFMA.

(a) *General.* Any vessel issued a valid monkfish limited access permit is eligible to apply for a Category F permit in order to fish in the Offshore Fishery Program in the SFMA.

(1) A vessel issued a Category F permit is subject to the specific provisions and conditions of this section while fishing on a monkfish DAS.

(2) When not fishing on a monkfish DAS, a Category F vessel may fish under the regulations applicable to the monkfish incidental catch (Category E) permit, specified under paragraph § 648.94(c). When fishing on a NE multispecies DAS in the NFMA, a Category F vessel that also possesses a NE

multispecies limited access permit is subject to the possession limits applicable to vessels issued an incidental catch permit as described in § 648.94(c)(1)(i).

(3) Limited access Category C or D vessels that apply for and are issued a Category F permit remain subject to the provisions specific to Category C and D vessels, unless otherwise specified under this subpart F.

(b) *Declaration*. To fish in the Offshore Fishery Program, a vessel must obtain a monkfish limited access Category F permit and fish under this permit for the entire fishing year, subject to the conditions and restrictions specified under this part. The owner of a vessel, or authorized representative, may change the vessel's limited access monkfish permit category within 45 days of the effective date of the vessel's permit, provided the vessel has not fished under the monkfish DAS program during that fishing year. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel's permit category will remain unchanged for the duration of the fishing year.

(c) *Offshore Fishery Program Area*. The Offshore Fishery Program Area is bounded on the south by 38°00′ N. lat., and on the north, west, and east by the area coordinates specified in § 648.23(a).

(d) *Season*. October 1 through April 30 each year.

(e) *Restrictions*. (1) Except for the transit provisions provided for in paragraph (f) of this section, a vessel issued a valid Category F permit may only fish for, possess, and land monkfish in or from the Offshore Fishery Program Area while on a monkfish DAS.

(2) A vessel enrolled in the Offshore Fishery Program is restricted to fishing under its monkfish DAS during the season in paragraph (d) of this section.

(3) A vessel issued a Category F permit that is fishing on a monkfish DAS is subject to the minimum mesh size requirements applicable to limited access monkfish Category A and B vessels, as specified under § 648.91(c)(1)(i) and (c)(1)(iii), as well as the other gear requirements specified in paragraphs (c)(2) and (c)(3).

(4) A vessel issued a Category F permit must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10 during the entire season established under paragraph (d) of this section. Unless otherwise required to maintain an operational VMS unit under the VMS notification requirements specified at § 648.10(b), a vessel issued a Category F permit may turn off its VMS unit outside of that season.

(f) *Transiting*. A vessel issued a Category F permit and fishing under a monkfish DAS that is transiting to or from the Offshore Fishery Program Area, described in paragraph (c)(1) of this section, shall have all gear stowed and not available for immediate use in accordance with the gear stowage provisions specified under § 648.23(b).

(g) *Monkfish possession limits and DAS allocations*. (1) A vessel issued a Category F permit may land up to 1,600 lb (726 kg) tail weight or 5,312 lb (2,409 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail weight and whole weight based on the conversion factor of 3.32).

(2) The monkfish DAS allocation for vessels issued a Category F permit shall be equal to the trip limit applicable to the vessel's monkfish limited access permit category divided by the fixed daily possession limit specified in paragraph (g)(1) of this section, and then multiplied by the DAS allocation for limited access monkfish vessels not issued Category F permits, specified under § 648.92(b)(1). For example, if a vessel has a limited access monkfish Category C permit, and the applicable trip limit is 800 lb (363 kg) for this category, and the vessel has an annual allocation of 40 monkfish DAS, then the monkfish DAS allocated to that vessel when issued a Category F permit would be 20 monkfish DAS (800 lb divided by 1,600 lb, multiplied by 40 monkfish DAS equals 20 DAS). Any carryover monkfish DAS will be included in the calculation of monkfish DAS for Category F vessels.

(3) Vessels issued a Category F permit that are fishing under a NE multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(h) *DAS usage by NE multispecies or sea scallop limited access permit holders*. A vessel issued a Category F permit that also has been issued either a NE multispecies or sea scallop limited access permit, and is fishing on a monkfish DAS, is subject to the DAS usage requirements specified in § 648.92(b)(2).

[70 FR 21945, Apr. 28, 2005, as amended at 72 FR 20960, Apr. 27, 2007; 72 FR 53942, Sept. 21, 2007; 74 FR 20557, May 4, 2009]

§ 648.96 FMP review, specification, and framework adjustment process.

(a) *Annual review and adjustment process*. The NEFMC and MAFMC, the Monkfish Plan Development Team (PDT), and the Monkfish Advisory Panel shall monitor the status of the monkfish fishery and resource.

(1) *Monkfish annual SAFE Report*. The PDT shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the monkfish fishery. The SAFE Report shall be the primary vehicle for the presentation of updated biological and socio-economic information regarding the monkfish fishery. The SAFE report shall provide source data for any adjustments to the management measures that may be needed for the Councils to meet the goals and objectives of the FMP.

(2) *Annual review*. The PDT shall meet at least annually to conduct a review of the monkfish fishery in relation to the goals and objectives specified in the Monkfish FMP, including a review of catch relative to the annual catch targets (ACTs) for each management area. They shall review available data pertaining to discards and landings; DAS and other measures of fishing effort; stock status and fishing mortality rate information, if available; enforcement of and compliance with management measures; and any other relevant information. Based on this review, the PDT shall provide guidance to the NEFMC and MAFMC regarding the need to adjust management measures to better achieve the FMP's goals and objectives. After considering the PDT's guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the annual framework adjustment process specified in paragraph (a)(3) of this section, the in-season framework adjustment process specified in paragraph (b) of this section, or through an amendment to the FMP.

(3) *Annual framework adjustment procedures*. (i) If necessary based on the annual review, the Councils may develop adjustments to management measures to achieve the annual catch target (ACT) for the upcoming fishing year, and may develop other management options to better achieve the goals and objectives of the Monkfish FMP, which may include a preferred option. The Councils must demonstrate through analysis and documentation that any options they develop are expected to meet the goals and objectives of the Monkfish FMP. Additionally, if necessary based on the recommendation of the NEFMC's Scientific and Statistical Committee (SSC), the Councils may recommend measures to revise the ABCs and ACLs for the upcoming fishing year(s) as described in paragraph (c) of this section.

(ii) The range of options developed by the Councils may include any of the management measures in the Monkfish FMP, including, but not limited to: ACTs; closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; changes to the Monkfish Research Set-Aside Program; and other frameworkable measures included in §§ 648.55 and 648.90.

(iii) The Councils shall review the options analyzed by the PDT and other relevant information, consider public comment, and submit a recommendation to the Regional Administrator that meets the Monkfish FMP's objectives, consistent with other applicable law. The Councils' recommendation to

the Regional Administrator shall include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Councils. Management adjustments made to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(A) The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options analyzed by the PDT and any other relevant information, consider public comment, and make a recommendation to the Councils.

(B) If the Councils submit a recommendation that is consistent with other applicable law but does not meet the Monkfish FMP's goals and objectives, the Regional Administrator may adopt any option developed by the Councils and analyzed by the PDT that has not been rejected by either Council, provided such option meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils and that meets the Monkfish FMP's goals and objectives.

(iv) If the Councils submit, on or before December 1, a recommendation to the Regional Administrator after one meeting with each Council, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the FEDERAL REGISTER as a proposed rule, or as otherwise authorized under the Administrative Procedure Act. The Councils may instead submit their recommendation on or before February 1, if they choose to follow the framework process outlined in paragraph (b) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs with the Councils' recommendation the recommended management measures may be published as a proposed rule or a final rule, in accordance with the Administrative Procedure Act. If the effective date of a final rule to implement the recommended measures falls after the start of the fishing year, fishing may continue under the existing regulations, but any DAS used by a vessel on or after the start of a fishing year shall be counted against any DAS allocation the vessel ultimately receives for that fishing year.

(v) Following publication of a proposed rule and after receiving public comment, if the Regional Administrator concurs in the Councils' recommendation, a final rule, if possible, shall be published in the FEDERAL REGISTER prior to the start of the next fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the goals and objectives of the Monkfish FMP, the Regional Administrator may implement through rulemaking in accordance with the Administrative Procedure Act one of the options reviewed and not rejected by either Council, provided the option meets the goals and objectives of the Monkfish FMP, and is consistent with other applicable law.

(b) *Within-season management action*. At any time, the Councils or the Joint Monkfish Oversight Committee (subject to the approval of the Councils' Chairmen) may initiate action to add or adjust management measures if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP.

(1) *In-season Framework adjustment procedures*. (i) Framework adjustments shall require at least one initial meeting of the Joint Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two final Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings. Framework adjustments and amendments to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(ii) Recommended adjustments to management measures must come from the categories specified under

paragraph (a)(3)(i) of this section, including specification of ABC and ACLs, if necessary.

(2) *Councils' recommendation*. After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Adjustments for gear conflicts*. The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(g) and (h).

(4) *Action by NMFS*. (i) If the Regional Administrator approves the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3)(i) of this section, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in so doing, shall publish only the final rule. Submission of the recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the FEDERAL REGISTER.

(ii) If the Regional Administrator concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the FEDERAL REGISTER.

(iii) If the Regional Administrator does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(c) *Process for setting ABCs and ACLs*. (1) The Councils or the PDT may develop options for setting ABC, ACL, and OFL for each monkfish stock, as necessary, as part of the annual review and adjustment process specified in paragraph (a) of this section, or as otherwise deemed necessary following the in-season adjustment process specified in paragraph (b) of this section. These options shall be submitted to the SSC for consideration. The Councils or the PDT may recommend to the SSC that ABC, ACL, and OFL are specified for each monkfish stock for multiple years as determined necessary to best align management with the stock assessment process for this fishery.

(i) *ABC recommendation*. The Councils or the PDT shall calculate ABC values for each monkfish stock based on the ABC control rule established in the FMP. These calculations shall be reviewed by the SSC, guided by terms of reference developed by the Councils. The SSC shall either concur with these ABC calculations, or provide alternative recommendations for each stock and describe the elements of scientific uncertainty used to develop its recommendations. If the SSC concurs with the ABC calculations, the revised ABC values are automatically updated and no action by the Councils is necessary.

If the SSC provides an alternative recommendation for calculating the ABC than that currently specified in the FMP, the Councils would need to need to take action through the annual or in-season framework adjustment process specified in paragraphs (a) and (b) of this section, respectively, to implement the SSC's recommendation. The SSC may also consider other related issues specified in the terms of reference developed by the Councils, including, but not limited to, OFLs, ACLs, and management uncertainty.

(ii) *ACL recommendations*. The Councils shall establish ACLs for each management area that are equivalent to the ABCs calculated using the control rule established in the FMP, and reviewed and recommended by the SSC.

(iii) *Timing*. If determined necessary under the annual review process, the Councils shall develop and approve any recommendations for ABCs and ACLs prior to December 31, to the extent possible. Once the Councils have approved the recommended ABCs and ACLs, only if they require adjustments to the ACTs described in paragraph (d) shall they be submitted to NMFS as part of an annual framework adjustment or in-season framework adjustment, as described in paragraphs (a) and (b) of this section, along with any necessary analysis required by applicable law. After receipt of the Councils' recommendation for ACLs, NMFS shall review the Councils' decision and, if consistent with applicable law, implement the ACLs in accordance with the Administrative Procedure Act.

(d) *Accountability Measures (AMs)*. (1) *Specification of ACTs*. Through the annual review process described in paragraph (a) of this section, or as otherwise determined necessary, the Councils shall specify ACTs for each management area that are set sufficiently below the ACL to account for management uncertainty and prevent the ACL from being exceeded. The ACTs established for each management area shall be the basis for setting management measures (DAS and trip limits), after accounting for incidental catch in non-directed fisheries and discards in all fisheries.

(2) *ACL overages and adjustments*— (i) *Council action*. The Councils shall revise the ACT for a monkfish stock if it is determined that the ACL was exceeded in any given year, based upon, but not limited to, available landings and discard information. The amount of an ACL overage shall be deducted from the ACT for the corresponding monkfish stock on a pound-for-pound basis. The revised ACT and corresponding management measures (DAS and trip limits) shall be implemented through either the annual or in-season framework adjustment process, specified in paragraphs (a) and (b) of this section, in the second fishing year following the fishing year in which the ACL overage occurred.

(ii) *NMFS action*. If the Councils fail to take appropriate action to correct an ACL overage consistent with paragraph (d)(1)(i) of this section, the Regional Administrator shall implement the required adjustment, as described in paragraph (d)(2)(i) of this section, including the specification of DAS and trip limits using a formulaic approach developed by the PDT, in accordance with the Administrative Procedure Act and other applicable law. Notification of the proposed ACL revision and DAS and/or trip limit adjustments shall be published in the FEDERAL REGISTER no later than January 1, if possible, for implementation on May 1 of the second fishing year following the fishing year in which the ACL overage occurred.

(e) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[76 FR 30274, May 25, 2011, as amended at 76 FR 81849, Dec. 29, 2011]

§ 648.97 Closed areas.

(a) *Oceanographer Canyon Closed Area*. No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Oceanographer Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

OCEANOGRAPHER CANYON CLOSED AREA

Point	N. Lat.	W. Long.
(1) OC1	40°10′	68°12′
(2) OC2	40°24′	68°09′
(3) OC3	40°24′	68°08′
(4) OC4	40°10′	67°59′
(5) OC1	40°10′	68°12′

(b) *Lydonia Canyon Closed Area*. No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Lydonia Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

LYNDONIA CANYON CLOSED AREA

Point	N. Lat.	W. Long.
(1) LC1	40°16′	67°34′
(2) LC2	40°16′	67°42′
(3) LC3	40°20′	67°43′
(4) LC4	40°27′	67°40′
(5) LC5	40° 27′	67°38′
(6) LC1	40°16′	67°34′

[70 FR 21946, Apr. 28, 2005]

Subpart G—Management Measures for the Summer Flounder Fisheries

§ 648.100 Summer flounder Annual Catch Limit (ACL).

(a) The Summer Flounder Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational summer flounder fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations*. The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

(2) *Periodicity*. The summer flounder commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The Summer Flounder Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Summer Flounder Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the summer flounder stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded but may be conducted in conjunction with such reviews.

[76 FR 60626, Sept. 29, 2011]

§ 648.101 Summer flounder Annual Catch Target (ACT).

(a) The Summer Flounder Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the summer flounder specification process. The Summer Flounder Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Summer Flounder Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The Summer Flounder Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.100(b)(1) through (3).

[76 FR 60626, Sept. 29, 2011]

§ 648.102 Summer flounder specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Summer Flounder Monitoring Committee shall recommend to the MAFMC, through the specifications process, for use in conjunction with each ACL and ACT, a sector-specific research set-aside, estimates of sector-related discards, recreational harvest limit, and commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The measures to be considered by the Summer Flounder Monitoring Committee are:

(1) Research quota set from a range of 0 to 3 percent of the allowable landings level for both the commercial and recreational sectors.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Restrictions on gear other than otter trawls.

(5) Adjustments to the exempted area boundary and season specified in § 648.108(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data reviewed by Summer Flounder Monitoring Committee during the specification process, to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(6) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the recreational harvest limit, set after reductions for research quota.

(7) Recreational minimum fish size.

(8) Recreational season.

(9) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons set after reductions for research quota.

(10) [Reserved]

(11) Modification of existing AM measures and ACT control rules utilized by the Summer Flounder Monitoring Committee.

(b) *Specification fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary that are projected to ensure the sector-specific ACLs for an upcoming fishing year or years will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC.

(c) After such review, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER to implement a coastwide commercial quota, a recreational harvest limit, research set-aside, adjustments to ACL or ACT resulting from AMs, and additional management measures for the commercial fishery. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER.

(1) *Distribution of annual commercial quota.* (i) The annual commercial quota will be distributed to the states, based upon the following percentages; state followed by percent share in parenthesis: Maine (0.04756); New Hampshire (0.00046); Massachusetts (6.82046); Rhode Island (15.68298); Connecticut (2.25708); New York (7.64699); New Jersey (16.72499); Delaware (0.01779); Maryland (2.03910); Virginia (21.31676); North Carolina (27.44584).

(ii) [Reserved]

(2) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder

may request approval from the Regional Administrator to transfer part or its entire annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(i) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(A) The transfer or combination would preclude the overall annual quota from being fully harvested;

(B) The transfer addresses an unforeseen variation or contingency in the fishery; and

(C) The transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

(ii) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made;

(iii) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(iv) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d)(1)(i) of this section.

(d) *Recreational specification measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC and ASMFC measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational summer flounder fishery to the recreational harvest limit, or

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (*i.e.*, multi-state conservation equivalency regions), may implement different combinations of minimum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of recreational landing estimates by mode or area for that state is less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER as soon as possible to implement the overall percent adjustment in recreational landings required for the fishing year, and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The ASMFC will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures.

(iii) The ASMFC may allow states assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the state can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted state proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a notice in the FEDERAL REGISTER to notify the public.

(iv) After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement either the state specific conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(e) *Research quota*. See § 648.22(g).

[76 FR 60626, Sept. 29, 2011, as amended at 76 FR 81849, Dec. 29, 2011]

§ 648.103 Summer flounder accountability measures.

(a) *Commercial sector EEZ closure*. The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if he/she determines that the inaction of one or more states will cause the commercial sector ACL to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the sector ACL to be exceeded.

(b) *State commercial landing quotas*. The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

(1) *Commercial ACL overage evaluation*. The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment*. All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any landings in excess of the commercial quota in any state, inclusive of any state-to-state transfers, will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas, irrespective of whether the commercial sector ACL is exceeded. The overage deduction will be based on landings for the current year through October 31 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the

appropriate quota allocation. The Regional Administrator will publish notification in the FEDERAL REGISTER announcing such restoration.

(c) *Recreational landings sector closure*. The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the FEDERAL REGISTER advising that, effective on a specific date, the summer flounder recreational fishery in the EEZ shall be closed for remainder of the calendar year.

(1) *Recreational ACL overage evaluation*. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(2) *Recreational landing overage repayment*. If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded the RHL, the exact poundage of the landings overage will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.

(d) *Non-landing accountability measures, by sector*. In the event that a sector ACL has been exceeded and the overage has not been accommodated through landing-based AMs, then the exact amount by which the sector ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year sector ACL.

(e) *State/Federal disconnect AM*. If the total catch, allowable landing, commercial quotas and/or RHL measures adopted by the ASMFC Summer Flounder Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur on Federal permit holders.

[76 FR 60628, Sept. 29, 2011]

§ 648.104 Summer flounder minimum fish sizes.

(a) *Moratorium (commercial) permitted vessels*. The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

(b) *Party/charter permitted vessels and recreational fishery participants*. Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 18.5 inches (46.99 cm) TL for all vessels that do not qualify for a moratorium permit under § 648.4(a)(3), and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if all state requirements are met.

[76 FR 60629, Sept. 29, 2011]

§ 648.105 Summer flounder recreational fishing season.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3), and fishermen subject to the possession limit, may fish for summer flounder from May 1 through September 30. This time period may be adjusted pursuant to the procedures in § 648.102.

[76 FR 60629, Sept. 29, 2011]

§ 648.106 Summer flounder possession restrictions.

(a) *Party/charter and recreational possession limits*. Unless otherwise specified pursuant to § 648.107, no person shall possess more than two summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102.

(b) If whole summer flounder are processed into fillets, the number of fillets will be converted to whole summer flounder at the place of landing by dividing the fillet number by two. If summer flounder are filleted into single (butterfly) fillets, each fillet is deemed to be from one whole summer flounder.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

(d) *Commercially permitted vessel possession limits*. Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.108(e), may not retain 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, unless the vessel possesses a valid summer flounder small-mesh exemption LOA and is fishing in the exemption area as specified in § 648.108(b). Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in^3 (2.5 ft^3 or 70.79 cm^3).

[76 FR 60629, Sept. 29, 2011]

§ 648.107 Conservation equivalent measures for the summer flounder party/charter and recreational fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2012 are the conservation equivalent of the minimum fish size, season, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

(1) Federally permitted party and charter vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting summer flounder in or from the EEZ and subject to the recreational fishing measures of this part, landing summer flounder in a state whose fishery management measures are determined by the Regional Administrator to be conservation equivalent shall not be subject to the more restrictive Federal measures, pursuant to

the provisions of § 648.4(b). Those vessels shall be subject to the recreational fishing measures implemented by the state in which they land.

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the minimum size, season, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season—May 1 through September 30; minimum size—20.0 inches (50.80 cm); and possession limit—two fish.

[76 FR 60629, Sept. 29, 2011, as amended at 77 FR 30431, May 23, 2012]

§ 648.108 Summer flounder gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

(2) Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(b) *Exemptions.* Unless otherwise restricted by this part, the minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit, a Summer Flounder Small-Mesh Exemption Area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0′ W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). Vessels fishing under the LOA shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.108(e), so that it is not ''available for immediate use'' outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the FEDERAL REGISTER terminating the exemption for the remainder of the exemption season.

(i) *Requirements.* (A) A vessel fishing in the Summer Flounder Small-Mesh Exemption Area under this exemption must have on board a valid LOA issued by the Regional Administrator.

(B) The vessel must be in enrolled in the exemption program for a minimum of 7 days.

(ii) [Reserved]

(2) Vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other nets or netting with mesh smaller than 5.5 inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm).

(ii) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.3 cm).

(iii) The mesh decreases in size throughout the body of the net to 2 inches (5 cm) or smaller towards the terminus of the net.

(3) The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the FEDERAL REGISTER terminating the exemption for the remainder of the calendar year.

(c) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (c), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined paragraph (c) of this section, if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in paragraph (a) of this section.

(d) *Mesh obstruction or constriction.* (1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (c) of this section, that obstructs the meshes of the net in any manner.

(2) No person on any vessel may possess or fish with a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(e) *Stowage of nets.* Otter trawl vessels retaining 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, and subject to the minimum mesh size requirement of paragraph (a)(1) of this section may not have ''available for immediate use'' any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not ''available for immediate use.''

(f) The minimum net mesh requirement may apply to any portion of the net. The minimum mesh size and the portion of the net regulated by the minimum mesh size may be adjusted pursuant to the procedures in § 648.102.

[76 FR 60629, Sept. 29, 2011]

§ 648.109 Sea turtle conservation.

Sea turtle regulations are found at 50 CFR parts 222 and 223.

[76 FR 60630, Sept. 29, 2011]

§ 648.110 Summer flounder framework adjustments to management measures.

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Summer Flounder, Scup, and Black Sea Bass FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP.

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The

MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limit; specification quota setting process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation*. After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action*. If the MAFMC's recommendation includes adjustments or additions to management measures and, if after reviewing the MAFMC's recommendation and supporting information:

(i) NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the MAFMC recommendation, the measures will be published as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

[76 FR 60630, Sept. 29, 2011, as amended at 76 FR 1849, Dec.29, 2011]

Subpart H—Management Measures for the Scup Fishery

SOURCE: 61 FR 43426, Aug. 23, 1996, unless otherwise noted.

§ 648.120 Scup Annual Catch Limit (ACL).

(a) The Scup Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations*. The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass FMP.

(2) *Periodicity*. The scup commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The Scup Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Scup Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not as frequently exceeded.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the scup stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded but may be conducted in conjunction with such reviews.

[76 FR 60631, Sept. 29, 2011]

§ 648.121 Scup Annual Catch Target (ACT).

(a) The Scup Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the scup specification process. The Scup Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Scup Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The Scup Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.120(b)(1) through (3).

[76 FR 60631, Sept. 29, 2011]

§ 648.122 Scup specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures*. The Scup Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the ASMFC through the specifications process, for use in conjunction with each ACL and ACT, a sector specific research set-aside, estimates of sector-related discards, recreational harvest limit, and commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The measures to be considered by the Scup Monitoring Committee are as follows:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate.

(2) The commercial quota for each of the three periods specified in paragraph (c)(1) of this section for research quota.

(3) Possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II. The possession limit is the maximum quantity of scup that is allowed to be landed within a 24–hour period (calendar day).

(4) Percent of landings attained at which the landing limit for the Winter I period will be reduced.

(5) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (c)(5) of this section.

(6) Minimum mesh size.

(7) Recreational possession limit set from a range of 0 to 50 scup to achieve the recreational harvest limit, set after the reduction for research quota.

(8) Recreational minimum fish size.

(9) Recreational season.

(10) Restrictions on gear.

(11) Season and area closures in the commercial fishery.

(12) Total allowable landings on an annual basis for a period not to exceed 3 years.

(13) [Reserved]

(14) Modification of existing AM measures and ACT control rules utilized by the Scup Monitoring Committee.

(b) *Specification of fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified ACLs will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II, the percentage of landings attained during the Winter I fishery at which the possession limits will be reduced, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to ensure that the sector ACL will not be exceeded, he or she will publish a proposed rule in the FEDERAL REGISTER to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement annual measures.

(c) *Distribution of commercial quota.* (1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January–April	45.11
Summer—May–October	38.95
Winter II—November–December	15.94

(2) The commercial quotas for each period will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(d) *Winter I and II commercial quota adjustment procedures.* The Regional Administrator will monitor the harvest of commercial quota for the Winter I period based on dealer reports, state data, and other available information and shall determine the total amount of scup landed during the Winter I period. In any year that the Regional Administrator determines that the landings of scup during Winter I are less than the Winter I quota for that year, he/she shall increase, through publication of a notification in the FEDERAL REGISTER, provided such rule complies with the requirements of the Administrative Procedure Act, the Winter II quota for that year by the amount of

the Winter I under-harvest. The Regional Administrator shall also adjust, through publication of a notification in the FEDERAL REGISTER, the Winter II possession limits consistent with the amount of the quota increase, based on the possession limits established through the annual specifications-setting process.

(e) *Research quota.* See § 648.21(g).

[76 FR 60631, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011]

§ 648.123 Scup accountability measures.

(a) *Commercial sector period closures.* The Regional Administrator will monitor the harvest of commercial quota for each quota period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the FEDERAL REGISTER advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment by quota period.* (i) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (a)(2)(iv) of this section, and irrespective of whether the commercial sector ACL is exceeded. Any current year landings in excess of the commercial quota in any quota period will be deducted from that quota period's annual quota in the following year as prescribed in paragraphs (a)(2)(ii) through (iii) of this section:

(ii) For the Winter I and Summer quota periods, landings in excess of the allocation will be deducted from the appropriate quota period for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through October 31 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the period quotas for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the FEDERAL REGISTER announcing the restoration.

(iii) For the Winter II quota period, landings in excess of the allocation will be deducted from the Winter II period for the following year through notification in the FEDERAL REGISTER during July of the following year. The overage deduction will be based on landings information available for the Winter II period as of June 30 of the following year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the FEDERAL REGISTER announcing the restoration.

(iv) During a fishing year in which the Winter I quota period is closed prior to April 15, a state may apply to the Regional Administrator for authorization to count scup landed for sale in that state from April 15 through April 30 by state-only permitted vessels fishing exclusively in waters under the jurisdiction of that state against the Summer period quota. Requests to the Regional Administrator to count scup landings in a state from April 15 through April 30 against the Summer period quota must be made by letter signed by the principal state official

with marine fishery management responsibility and expertise, or his/her designee, and must be received by the Regional Administrator no later than April 15. Within 10 working days following receipt of the letter, the Regional Administrator shall notify the appropriate state official of the disposition of the request.

(b) *Recreational landings sector closure*. The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the FEDERAL REGISTER advising that, effective on a specific date, the scup recreational fishery in the EEZ shall be closed for remainder of the calendar year.

(1) *Recreational ACL overage evaluation*. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(2) *Recreational landing overage repayment*. If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded RHL, the exact amount of the landings overage in pounds will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.

(c) *Non-landing accountability measures, by sector*. In the event that a sector ACL has been exceeded and the overage has not been accommodated through landing-based AMs, then the exact amount by which the sector ACL was exceeded will be deducted, as soon as practicable, from a subsequent single fishing year applicable sector ACL through the specification process.

(d) *State/Federal disconnect AM*. If the total catch, allowable landing, commercial quotas and/or RHL measures adopted by the ASMFC Scup Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur on Federal permit holders.

[76 FR 60632, Sept. 29, 2011]

§ 648.124 Scup commercial season and commercial fishery area restrictions.

(a) *Southern Gear Restricted Area*—(1) *Restrictions*. From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. lat.	W. long.
SGA1	39°20′	72°53′
SGA2	39°20′	72°28′

SOUTHERN GEAR RESTRICTED AREA—Continued

Point	N. lat.	W. long.
SGA3	38°00′	73°58′
SGA4	37°00′	74°43′
SGA5	36°30′	74°43′
SGA6	36°30′	75°03′
SGA7	37°00′	75°03′
SGA8	38°00′	74°23′
SGA1	39°20′	72°53′

(2) *Non-exempt species*. Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (a)(1) of this section apply only to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: Longfin squid; black sea bass; and silver hake (whiting).

(b) *Northern Gear Restricted Area 1*—(1) *Restrictions*. From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area 1 that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section must fish with nets of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Northern Gear Restricted Area 1 is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA 1

Point	N. lat.	W. long.
NGA1	41°00′	71°00′
NGA2	41°00′	71°30′
NGA3	40°00′	72°40′
NGA4	40°00′	72°05′
NGA1	41°00′	71°00′

(2) *Non-exempt species*. Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (b)(1) of this section apply only to vessels in the Northern Gear Restricted Area 1 that are fishing for, or in possession of, the following non-exempt species: Longfin squid squid; black sea bass; and silver hake (whiting).

(c) *Transiting*. Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(d) [Reserved]

(e) *Addition or deletion of exemptions*. The MAFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.130(a), additions or deletions to exemptions for fisheries other than scup. A fishery may be restricted or exempted by area, gear, season, or other means determined to be appropriate to reduce bycatch of scup.

(f) *Exempted experimental fishing*. The Regional Administrator may issue an exempted experimental fishing permit (EFP) under the provisions of § 600.745(b), consistent with paragraph (d)(2) of this section, to allow any vessel participating in a scup discard mitigation research project to engage in any of the following activities: Fish in the applicable gear restriction area; use fishing gear that does not conform to the regulations; possess non-exempt species specified in paragraphs (a)(2) and (b)(2) of this section; or engage in any other activity necessary to project operations for which an exemption from regulatory provision is required. Vessels issued an EFP must comply with all conditions and restrictions specified in the EFP.

(1) A vessel participating in an exempted experimental fishery in the Scup Gear Restriction Area(s) must carry an EFP authorizing the activity and any required Federal fishery permit on board.

(2) The Regional Administrator may not issue an EFP unless s/he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(i) Have a detrimental effect on the scup resource and fishery;

(ii) Cause the quotas for any species of fish for any quota period to be exceeded;

(iii) Create significant enforcement problems; or

(iv) Have a detrimental effect on the scup discard mitigation research project.

[76 FR 60633, Sept. 29, 2011, as amended at 77 FR 16480, Mar. 21, 2012]

§ 648.125 Scup gear restrictions.

(a) *Trawl vessel gear restrictions*—(1) *Minimum mesh size*. No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. Scup on board these vessels must be stowed separately and kept readily available for inspection. Measurement of nets will conform with § 648.80(f).

(2) *Mesh-size measurement*. Mesh sizes will be measured according to the procedure specified in § 648.104(a)(2).

(3) *Net modification*. The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.124 and paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net. However, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3 inches (7.2 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater that 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes are not considered part of the top of the regulated portion of a trawl net.

(4) *Mesh obstruction or constriction*. (i) The owner or operator of a fishing vessel subject to the minimum mesh restrictions in § 648.124 and in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs or constricts the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.124 and in paragraph (a)(1) of this section may not use a net capable of catching scup if the bars entering or exiting the knots twist around each other.

(5) *Stowage of nets*. The owner or operator of an otter trawl vessel retaining 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.126, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that is stowed in conformance with one of the methods specified in § 648.23(b), and that can be shown not to have been in recent use, is considered to be not available for immediate use.

(6) *Roller gear*. The owner or operator of an otter trawl vessel issued a moratorium permit pursuant to § 648.4(a)(6) shall not use roller rig trawl gear equipped with rollers greater than 18 inches (45.7 cm) in diameter.

(7) *Procedures for changes*. The minimum net mesh and the threshold catch level at which it is required set forth in paragraph (a)(1) of this section, and the maximum roller diameter set

forth in paragraph (a)(6) of this section, may be changed following the procedures in § 648.122.

(b) *Pot and trap gear restrictions.* Owners or operators of vessels subject to this part must fish with scup pots or traps that comply with the following:

(1) *Degradable hinges.* A scup pot or trap must have degradable hinges and fasteners made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(iv) The use of a single non-degradable retention device designed to prevent loss of the ghost panel after the degradable materials have failed is permitted provided the device does not impair the egress design function of the ghost panel by obstructing the opening or by preventing the panel from opening at such time that the degradable fasteners have completely deteriorated.

(2) *Escape vents.* (i) All scup pots or traps that have a circular escape vent with a minimum of 3.1 inches (7.9 cm) in diameter, or a square escape vent with a minimum of 2.25 inches (5.7 cm) for each side, or an equivalent rectangular escape vent.

(ii) The minimum escape vent size set forth in paragraph (b)(2)(i) of this section may be revised following the procedures in § 648.122.

(3) *Pot and trap identification.* Pots or traps used in fishing for scup must be marked with a code of identification that may be the number assigned by the Regional Administrator and/or the identification marking as required by the vessel's home port state.

[76 FR 60634, Sept. 29, 2011]

§ 648.126 Scup minimum fish sizes.

(a) *Moratorium (commercially) permitted vessels.* The minimum size for scup is 9 inches (22.9 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(6). If such a vessel is also issued a charter and party boat permit and is carrying passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat, then the minimum size specified in paragraph (b) of this section applies.

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum size for scup is 10.5 inches (26.67 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

(c) The minimum size applies to whole fish or any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in § 648.122.

[76 FR 60635, Sept. 29, 2011]

§ 648.127 Scup recreational fishing season.

Fishermen and vessels that are not eligible for a moratorium permit under § 648.4(a)(6) may possess scup year-round, subject to the possession limit specified in § 648.128(a). The recreational fishing season may be adjusted pursuant to the procedures in § 648.122.

[77 FR 30431, May 23, 2012]

§ 648.128 Scup possession restrictions.

(a) *Party/Charter and recreational possession limits.* No person shall possess more than 20 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122.

(b) If whole scup are processed into fillets, an authorized officer will convert the number of fillets to whole scup at the place of landing by dividing fillet number by 2. If scup are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole scup.

(c) Scup harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of scup on board by the number of persons aboard other than the captain and crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Scup and scup parts harvested by a vessel with a moratorium or charter or party boat scup permit, or in or from the EEZ north of 35°15.3′ N. lat., may not be landed with the skin removed.

[76 FR 60635, Sept. 29, 2011, as amended at 77 FR 30431, May 23, 2012]

§ 648.129 Protection of threatened and endangered sea turtles.

This section supplements existing regulations issued to regulate incidental take of sea turtles under authority of the Endangered Species Act under 50 CFR parts 222 and 223. In addition to the measures required under those parts, NMFS will investigate the extent of sea turtle takes in flynet gear and, if deemed appropriate, may develop and certify a Turtle Excluder Device for that gear.

[76 FR 60635, Sept. 29, 2011]

§ 648.130 Scup framework adjustments to management measures.

(a) *Within season management action.* See § 648.110(a).

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rules; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear restricted areas; gear requirements or prohibitions; permitting restrictions; recreational possession limits; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limits; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research.

(2) *MAFMC recommendation.* See § 648.110(a)(2)(i) through (iv).

(3) *NMFS action.* See § 648.110(a)(3)(i) through (iii).

(4) *Emergency actions.* See § 648.110(a)(4).

(b) [Reserved]

[76 FR 60635, Sept. 29, 2011]

Subpart I—Management Measures for the Black Sea Bass Fishery

SOURCE: 61 FR 58467, Nov. 15, 1996, unless otherwise noted.

§ 648.140 Black sea bass Annual Catch Limit (ACL).

(a) The Black Sea Bass Monitoring Committee shall recommend to the

MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations*. The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan.

(2) *Periodicity*. The black sea bass commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The Black Sea Bass Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Black Sea Bass Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the black sea bass stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded but may be conducted in conjunction with such reviews.

[76 FR 60636, Sept. 29, 2011]

§ 648.141 Black sea bass Annual Catch Target (ACT).

(a) The Black Sea Bass Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the black sea bass specification process. The Black Sea Bass Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Black Sea Bass Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review*. The Black Sea Bass Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.140(b)(1)–(3).

[76 FR 60636, Sept. 29, 2011]

§ 648.142 Black sea bass specifications.

(a) *Commercial quota, recreational landing limit, research set-aside, and other specification measures*. The Black Sea Bass Monitoring Committee will recommend to the Demersal Species Committee of the MAFMC and the ASMFC, through the specification process, for use in conjunction with the ACL and ACT, sector-specific research set-asides, estimates of the sector-related discards, a recreational harvest limit, a commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming year or years will not be exceeded. The following measures are to be consisted by the Black Sea Bass Monitoring Committee:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed.

(2) A commercial quota, allocated annually.

(3) A commercial possession limit for all moratorium vessels, with the provision that these quantities be the maximum allowed to be landed within a 24-hour period (calendar day).

(4) Commercial minimum fish size.

(5) Minimum mesh size in the codend or throughout the net and the catch

threshold that will require compliance with the minimum mesh requirement.

(6) Escape vent size.

(7) A recreational possession limit set after the reduction for research quota.

(8) Recreational minimum fish size.

(9) Recreational season.

(10) Restrictions on gear other than otter trawls and pots or traps.

(11) Total allowable landings on an annual basis for a period not to exceed 3 years.

(12) [Reserved]

(13) Modification of the existing AM measures and ACT control rules utilized by the Black Sea Bass Monitoring Committee.

(b) *Specification fishing measures.* The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the MAFMC with respect to the measures necessary to assure that the ACLs are not exceeded. The MAFMC shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator with respect to the measures necessary to assure that sector ACLs are not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the final rule. The Regional Administrator will review these recommendations and any recommendations of the ASMFC. After such review, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER to implement a commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to assure that the recreational sector ACL is not exceeded, he or she will publish a proposed rule in the FEDERAL REGISTER to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to ensure that recreational sector ACL is not exceeded.

(c) *Distribution of annual commercial quota.* The black sea bass commercial quota will be allocated on a coastwide basis.

(d) *Research quota.* See § 648.21(g).

[76 FR 60636, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011]

§ 648.143 Black sea bass Accountability Measures.

(a) *Commercial sector fishery closure.* The Regional Administrator will monitor the harvest of commercial quota based on dealer reports, state data, and other available information. All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3′ N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters, will be counted against the quota by the state in which it is landed, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC. The Regional Administrator will determine the date on which the annual coastwide quota will have been harvested; beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3′ N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the FEDERAL REGISTER advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3′ N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead

discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment*. Landings in excess of the annual coastwide quota will be deducted from the quota allocation for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30, and landings for the previous calendar year were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the FEDERAL REGISTER announcing the restoration.

(b) *Recreational landings sector closure*. The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the FEDERAL REGISTER advising that, effective on a specific date, the black sea bass recreational fishery in the EEZ shall be closed for remainder of the calendar year.

(1) *Recreational ACL overage evaluation*. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs and, for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(2) *Recreational landing overage repayment*. If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded the recreational harvest limit, the exact amount of the landings overage (in pounds) will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.

(c) *Non-landing accountability measures, by sector*. In the event that a sector ACL has been exceeded and the overage has not been accommodated through landings-based AMs, then the exact amount of the overage in pounds by which the sector ACL was exceeded will be deducted, as soon as possible, from a subsequent single fishing year applicable sector ACL.

(d) *State/Federal disconnect AM*. If the total catch, allowable landings, commercial quotas, and/or recreational harvest limit measures adopted by the ASMFC Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur to Federal permit holders.

[76 FR 60636, Sept. 29, 2011]

§ 648.144 Black sea bass gear restrictions.

(a) *Trawl gear restrictions*—(1) *General*. (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 500 lb (226.8 kg) or more of black sea bass from January 1 through March 31, or 100 lb (45.4 kg) or more of black sea bass from April 1 through December 31, must fish with nets that have a minimum mesh size of 4.5-inch (11.43-cm) diamond mesh applied throughout the codend for at least 75 continuous

meshes forward of the terminus of the net, or for codends with less than 75 meshes, the entire net must have a minimum mesh size of 4.5-inch (11.43-cm) diamond mesh throughout.

(ii) Mesh sizes shall be measured pursuant to the procedure specified in § 648.104(a)(2).

(2) *Net modifications*. No vessel subject to this part shall use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net except that one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.6 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

(3) *Mesh obstruction or constriction*. (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(2) of this section, that obstructs the meshes of the net in any manner, or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum established pursuant to paragraph (a)(1)(i) of this section.

(ii) No person on any vessel may possess or fish with a net capable of catching black sea bass in which the bars entering or exiting the knots twist around each other.

(4) *Stowage of nets*. Otter trawl vessels subject to the minimum mesh-size requirement of paragraph (a)(1)(i) of this section may not have ''available for immediate use'' any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use, is considered to be not ''available for immediate use.''

(5) *Roller gear*. Rollers used in roller rig or rock hopper trawl gear shall be no larger than 18 inches (45.7 cm) in diameter.

(b) *Pot and trap gear restrictions*—(1) *Gear marking*. The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel's USCG documentation number or state registration number.

(2) All black sea bass traps or pots must have two escape vents placed in lower corners of the parlor portion of the pot or trap that each comply with one of the following minimum size requirements: 1.375 inches by 5.75 inches (3.49 cm by 14.61 cm); a circular vent of 2.5 inches (6.4 cm) in diameter; or a square vent with sides of 2 inches (5.1 cm), inside measure; however, black sea bass traps constructed of wooden laths instead may have escape vents constructed by leaving spaces of at least 1.375 inches (3.49 cm) between two sets of laths in the parlor portion of the trap. These dimensions for escape vents and lath spacing may be adjusted pursuant to the procedures in § 648.140.

(3) *Ghost panel*. (i) Black sea bass traps or pots must contain a ghost panel affixed to the trap or pot with degradable fasteners and hinges. The opening to be covered by the ghost panel must measure at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm). The ghost panel must be affixed to the pot or trap with hinges and fasteners made of one of the following degradable materials:

(A) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller; or

(B) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(C) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(ii) The use of a single non-degradable retention device designed to prevent loss of the ghost panel after the degradable materials have failed is permitted, provided the device does not impair the egress design function of the ghost panel by obstructing the opening or by preventing the panel from opening at such time that the degradable fasteners have completely deteriorated.

[76 FR 60637, Sept. 29, 2011]

§ 648.145 Black sea bass possession limit.

(a) From January 1 through February 28, no person shall possess more than 15 black sea bass in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. From May 19 through October 14, and from November 1 through December 31, no person shall possess more than 25 black sea bass in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 15 black sea bass from January 1 through February 29, or more than 25 black sea bass from May 19 through October 14 and from November 1 through December 31. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142.

(b) If whole black sea bass are processed into fillets, an authorized officer will convert the number of fillets to whole black sea bass at the place of landing by dividing fillet number by two. If black sea bass are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole black sea bass.

(c) Black sea bass harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of black sea bass on board by the number of persons aboard, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

(d) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4(a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements specified in § 648.144(a) and that are not stowed in accordance with § 648.144(a)(4) may not retain more than 500 lb (226.8 kg) of black sea bass from January 1 through March 31, or more than 100 lb (45.4 kg) of black sea bass from April 1 through December 31. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100-lb (45.4-kg) tote.

[76 FR 60638, Sept. 29, 2011, as amended at 77 FR 30431, May 23, 2012]

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may possess black sea bass from January 1 through February 28, May 19 through October 14, and November 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

[77 FR 30431, May 23, 2012]

§ 648.147 Black sea bass minimum fish sizes.

(a) *Moratorium (commercially) permitted vessels.* The minimum size for black sea bass is 11 inches (27.94 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) that fish for, possess, land or retain black sea bass in or from U.S. waters of

the western Atlantic Ocean from 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canadian border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.142.

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum fish size for black sea bass is 12.5 inches (31.75 cm) TL for all vessels that do not qualify for a moratorium permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members.

(c) The minimum size in this section applies to the whole fish or any part of a fish found in possession (e.g., fillets), except that party or charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if skin remains on the fillet and all other state requirements are met.

[76 FR 60638, Sept. 29, 2011]

§ 648.148 Special management zones.

The recipient of a U.S. Army Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the MAFMC as a special management zone (SMZ). The MAFMC may prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the artificial reef or fish attraction device or other habitat modification within the SMZ. The establishment of an SMZ will be effected by a regulatory amendment, pursuant to the following procedure:

(a) A SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Northeast Region, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report, considering the following criteria:

(1) Fairness and equity;

(2) Promotion of conservation;

(3) Avoidance of excessive shares;

(4) Consistency with the objectives of Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law;

(5) The natural bottom in and surrounding potential SMZs; and

(6) Impacts on historical uses.

(b) The MAFMC Chairman may schedule meetings of MAFMC's industry advisors and/or the SSC to review the report and associated documents and to advise the MAFMC. The MAFMC Chairman may also schedule public hearings.

(c) The MAFMC, following review of the SMZ monitoring teams's report, supporting data, public comments, and other relevant information, may recommend to the Regional Administrator that a SMZ be approved. Such a recommendation will be accompanied by all relevant background information.

(d) The Regional Administrator will review the MAFMC's recommendation. If the Regional Administrator concurs in the recommendation, he or she will publish a proposed rule in the FEDERAL REGISTER in accordance with the recommendations. If the Regional Administrator rejects the MAFMC's recommendation, he or she shall advise the MAFMC in writing of the basis for the rejection.

(e) The proposed rule to establish a SMZ shall afford a reasonable period for public comment. Following a review of public comments and any information or data not previously available, the Regional Administrator will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the record and consistent with the Magnuson-Stevens Act and other applicable law.

[76 FR 60638, Sept. 29, 2011]

§ 648.149 Black sea bass framework adjustments to management measures.

(a) *Within season management action.* See § 648.110(a).

(1) *Adjustment process.* See § 648.110(a)(1).

(2) *MAFMC recommendation.* See § 648.110(a)(2)(i) through (iv).

(3) *Regional Administrator action.* See § 648.110(a)(3)(i) through (iii).

(4) *Emergency actions.* See § 648.110(a)(4).

(b) [Reserved]

[76 FR 60639, Sept. 29, 2011]

Subpart J—Management Measures for the Atlantic Bluefish Fishery

SOURCE: 65 FR 45852, July 26, 2000, unless otherwise noted.

§ 648.160 Bluefish Annual Catch Limit (ACL).

(a) The Bluefish Monitoring Committee shall recommend to the MAFMC an ACL for the bluefish fishery, which shall be equal to the ABC recommended by the SSC.

(1) *Periodicity.* The bluefish fishery ACL may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(2) [Reserved]

(b) *Performance review.* The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to the ACL at least every 5 years.

(1) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Bluefish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure the ACL is not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following the determination that the bluefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

[76 FR 60639, Sept. 29, 2011]

§ 648.161 Bluefish Annual Catch Targets (ACTs).

(a) The Bluefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the bluefish specification process. The Bluefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* The sum of the commercial and recreational sector-specific ACTs shall be less than or equal to the fishery level ACL. The Bluefish Monitoring Committee shall recommend any reduction in catch necessary to address management uncertainty, consistent with paragraph (a) of this section. A total of 83 percent of the fishery-level ACT will be allocated to the recreational fishery. A total of 17 percent of the fishery-level ACT will be allocated to the commercial fishery.

(2) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review.* The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.160(b)(1) through (3).

[76 FR 60639, Sept. 29, 2011]

§ 648.162 Bluefish specifications.

(a) *Recommended measures.* Based on the annual review and requests for research quota as described in paragraph (h) of this section, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the MAFMC and the ASMFC the following measures to ensure that the ACL specified by the process outlined in § 648.160(a) will not be exceeded:

(1) A fishery-level ACT;

(2) Research quota set from a range of 0 to 3 percent of TALs;

(3) Commercial minimum fish size;

(4) Minimum mesh size;

(5) Recreational possession limit set from a range of 0 to 20 bluefish;

(6) Recreational minimum fish size;

(7) Recreational season;

(8) Restrictions on gear other than otter trawls and gill nets;

(9) [Reserved]

(10) Modification of existing AM measures and ACT control rules utilized by the Bluefish Monitoring Committee.

(b) *TAL*—(1) *Recreational harvest limit.* If research quota is specified as described in paragraph (g) of this section, the recreational harvest limit will be based on the TAL remaining after the deduction of the research quota.

(2) *Commercial quota.* If 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL. If research quota is specified as described in paragraph (g) of this section, the commercial quota will be based on the TAL remaining after the deduction of the research quota.

(c) *Annual fishing measures.* The MAFMC's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the MAFMC measures necessary to ensure that the ACL will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to ensure that the applicable ACL will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER as soon as practicable, to implement an ACL, ACTs, research quota, a coastwide commercial quota, individual state commercial quotas, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries to ensure that the ACL will not be exceeded. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER.

(d) *Distribution of annual commercial quota.*—(1) The annual commercial quota will be distributed to the states, based upon the following percentages; state each followed by its allocation in parentheses: ME (0.6685); NH (0.4145); MA (6.7167); RI (6.8081); CT (1.2663); NY (10.3851); NJ (14.8162) DE (1.8782); MD (3.0018); VA (11.8795); NC (32.0608); SC (0.0352); GA (0.0095); and FL (10.0597). Note: The sum of all state allocations does not add to 100 because of rounding.

(2) [Reserved]

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for bluefish may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for bluefish must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested;

(ii) The transfer addresses an unforeseen variation or contingency in the fishery; and

(iii) The transfer is consistent with the objectives of the Bluefish FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the previous request or when notification of the approval of the transfer or combination has been published in the FEDERAL REGISTER.

(f) Based upon any changes in the landings data available from the states for the base years 1981–89, the ASMFC and the MAFMC may recommend to the Regional Administrator that the states' shares specified in paragraph (d)(1) of this section be revised. The MAFMC's and the ASMFC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the ASMFC and the MAFMC. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the changes in allocation.

(g) *Research quota*. See § 648.21(g).

[76 FR 60639, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011]

§ 648.163 Bluefish Accountability Measures (AMs).

(a) *ACL overage evaluation*. The ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded.

(b) *Commercial sector EEZ closure*. NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if the Regional Administrator determines that the inaction of one or more states will cause the ACL specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the ACL to be exceeded.

(c) *State commercial landing quotas*. The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

(1) *Commercial landings overage repayment*. All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year, irrespective of whether the fishery-level ACL is exceeded. If a state has increased or reduced quota through the transfer process described in § 648.162, then any overage will be measured against that state's final adjusted quota.

(2) If there is a quota overage at the end of the fishing year among states involved in the combination of quotas, the overage will be deducted from the following year's quota for each of the states involved in the combined quota, irrespective of whether the fishery-level ACL is exceeded. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in § 648.162(d)(1).

(d) *Recreational landings AM when the ACL is exceeded and no sector-to-sector*

transfer of allowable landings has occurred. If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the exact amount, in pounds, by which the ACL was exceeded will be deducted, as soon as possible, from a subsequent single fishing year recreational ACT.

(e) *AM for when the ACL is exceeded and a sector-to-sector transfer of allowable landings has occurred*. If the fishery-level ACL is exceeded and landings from the recreational fishery and/or the commercial fishery are determined to have caused the overage, and a transfer between the commercial and recreational sector has occurred for the fishing year, as outlined in § 648.162(b)(2), then the amount transferred between the recreational and commercial sectors may be reduced by the ACL overage amount (pound-for-pound repayment) in a subsequent, single fishing year if the Bluefish Monitoring Committee determines that the ACL overage was the result of too liberal a landings transfer between the two sectors.

(f) *Non-landing AMs*. In the event that the ACL has been exceeded and the overage has not been accommodated through the AM measures in paragraphs (a) through (d) of this section, then the exact amount, in pounds, by which the ACL was exceeded shall be deducted, as soon as possible, from a subsequent, single fishing year ACL.

(g) *State/Federal disconnect AM*. If the total catch, allowable landings, commercial quotas, and/or recreational harvest limit measures adopted by the ASMFC Bluefish Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur to Federal permit holders.

[76 FR 60640, Sept. 29, 2011]

§ 648.164 Bluefish possession restrictions.

(a) No person shall possess more than 15 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

[76 FR 60641, Sept. 29, 2011]

§ 648.165 Bluefish minimum fish sizes.

If the MAFMC determines through its annual review or framework adjustment process that minimum fish sizes are necessary to ensure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in § 648.162(c) or 648.167.

[76 FR 60641, Sept. 29, 2011]

§ 648.166 Bluefish gear restrictions.

If the MAFMC determines through its annual review or framework adjustment process that gear restrictions are necessary to ensure that the ACL is not exceeded, or to attain other FMP objectives, such measures, subject to the gear other than trawls and gillnets restrictions in § 648.162 regarding specifications, will be enacted through the

procedure specified in § 648.162(c) or 648.167.

[76 FR 60641, Sept. 29, 2011]

§ 648.167 Bluefish framework adjustment to management measures.

(a) *Within-season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Bluefish FMP.

(1) *Adjustment process.* After a management action has been initiated, the MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second MAFMC meeting. The MAFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational season; closed areas; commercial season; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, the MAFMC must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the MAFMC's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Action by NMFS.* If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the MAFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the MAFMC's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take

emergency action under section 305(e) of the Magnuson-Stevens Act.

[76 FR 60641, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011]

Subpart K—Management Measures for the Atlantic Herring Fishery

SOURCE: 72 FR 11277, Mar. 12, 2007, unless otherwise noted.

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limit (ACL), Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), U.S. at-sea processing (USAP), border transfer (BT), the sub-ACL for each management area, including seasonal periods as specified at § 648.201(d) and modifications to sub-ACLs as specified at § 648.201(f), and the amount to be set aside for the RSA (from 0 to 3 percent of the sub-ACL from any management area). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

(1) The PDT shall meet with the Commission's PRT to review the status of the stock and the fishery and prepare a Stock Assessment and Fishery Evaluation (SAFE) report at least every 3 years. The Herring PDT will meet at least once during interim years to review the status of the stock relative to the overfishing definition if information is available to do so. When conducting a 3-year review and preparing a SAFE Report, the PDT/PRT will recommend to the Council/Commission any necessary adjustments to the specifications for the upcoming 3 years.

(2) If the Council determines, based on information provided by the PDT/PRT or other stock-related information, that the specifications should be adjusted during the 3-year time period, it can do so through the same process outlined in this section during one or both of the interim years.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is usually the fishing rate supporting maximum sustainable yield (F_{MSY}). Catch that exceeds this amount would result in overfishing.

(2) ABC must be equal to or less than the OFL. The Council's Scientific and Statistical Committee (SSC) shall recommend ABC to the Council. Scientific uncertainty, including, but not limited to, uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, shall be considered when setting ABC. If the stock is not overfished and overfishing is not occurring, then ABC may be based on F_{MSY} or its proxy, recent catch, or any other factor the SSC determines appropriate. If the stock is overfished, then ABC may be based on the rebuilding fishing mortality rate for the stock (F_{REB}), or any other factor the SSC determines appropriate.

(3) ACL must be equal to or less than the ABC. Management uncertainty, which includes, but is not limited to, expected catch of herring in the New

Brunswick weir fishery and the uncertainty around discard estimates of herring caught in Federal and state waters, shall be considered when setting the ACL. Catch in excess of the ACL shall trigger accountability measures (AMs), as described at § 648.201(a).

(4) OY may not exceed OFL (*i.e.*, MSY) and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors. OY may equal DAH.

(5) DAH is comprised of DAP and BT.

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications for a 3-year period. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate 3-year specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission, and publish notification in the FEDERAL REGISTER proposing 3-year specifications. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in paragraph (b) of this section.

(d) NMFS shall make a final determination concerning the specifications for Atlantic herring. Notification of the final specifications and responses to public comments shall be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section. The previous year's specifications shall remain effective until they are revised through the specification process.

(e) *In-season adjustments*. The specifications and sub-ACLs established pursuant to this section may be adjusted by NMFS to achieve conservation and management objectives, after consulting with the Council, during the fishing year in accordance with the Administrative Procedure Act (APA). Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(f) *Management areas*. The specifications process establishes sub-ACLs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(1) *Management Area 1 (Gulf of Maine)*: All U.S. waters of the Gulf of Maine (GOM) north of a line extending from a point at 70°00′ W. long. and 41°39′ N. to 42°53′14″ N. lat., 67° 44′35″ W. long., thence northerly along the Hague Line to the U.S.-Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

Point	N. lat.	W. long.
1	41°58′	70° 00′
2	42°38′	70° 00′
3	42°53′	69° 40′
4	43°12′	69° 00′
5	43°40′	68° 00′
6	43°58′	67° 22′(the U.S.–Canada Maritime Boundary)

(2) *Management Area 2 (South Coastal Area)*: All waters west of 70° 00′ W . long., south of 41°39′ N. lat., to include state and Federal waters adjacent to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.

(3) *Management Area 3 (Georges Bank)*: All U.S. waters east of 70°00′ W. long. and southeast of the line that runs from a point at 70°00′ W. long. and 41°39′ N. lat., northeasterly to the Hague Line at 42°53′14″ N. lat., 67°44′35″ W. long.

(g) All aspects of AMs, as described at § 648.201(a), can be modified through the specifications process.

[72 FR 11277, Mar. 12, 2007, as amended at 73 FR 4757, Jan. 28, 2008; 76 FR 11379, Mar. 2, 2011; 76 FR 81850, Dec. 29, 2011]

§ 648.201 AMs and harvest controls.

(a) *AMs*. (1) *Management area closure*. If NMFS projects that catch will reach 95 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A sub-ACL allocated to the first seasonal period as set forth in paragraph (d) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip in such an area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(2) If NMFS determines that the GOM and/or GB incidental catch cap for haddock in § 648.85(d) has been caught, a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), may not fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the applicable AM Area. Upon determination that a haddock incidental catch cap has been reached, the haddock possession limit shall be reduced to 0 lb (0 kg) for any vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

(3) *ACL overage deduction*. If NMFS determines that total catch exceeded any ACL or sub-ACL for a fishing year, then the amount of the overage shall be subtracted from that ACL or sub-ACL for the fishing year following total catch determination. NMFS shall make such determinations and implement any changes to ACLs or sub-ACLs, in accordance with the APA, through notification in the FEDERAL REGISTER, prior to the start of the fishing year, if possible, during which the reduction would occur.

(b) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(c) A vessel may land in an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with >2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(d) The sub-ACL for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal sub-ACLs for Area 1A, including the specification of the seasonal periods, shall be set through the annual specification process described in § 648.200.

(e) Up to 500 mt of the Area 1A sub-ACL shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44° 36.2 N. Lat. and 67° 16.8 W. long (Cutler,

Maine). This set-aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the sub-ACL allocation for Area 1A.

(f) If NMFS determines that the New Brunswick weir fishery landed less than 9,000 mt through October 15, NMFS shall allocate an additional 3,000 mt to the Area 1A sub-ACL in November, in accordance with the APA.

[76 FR 11380, Mar. 2, 2011, as amended at 76 FR 56999, Sept. 15, 2011]

§ 648.202 Season and area restrictions.

(a) *Purse Seine/Fixed Gear Only Area.* Vessels fishing for Atlantic herring may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A limited access herring vessel with midwater trawl gear on board may transit Area 1A from June 1–September 30, provided such midwater trawl gear is stowed pursuant to § 648.23(b). Vessels may use any authorized gear type to harvest herring in Area 1A from October 1 – May 31.

(b) [Reserved]

§ 648.203 Gear restrictions.

(a) Midwater trawl gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), and in the Nantucket Lightship Area as described in § 648.81(c)(1), provided it complies with the midwater trawl gear exemption requirements specified under the NE multispecies regulations at § 648.80(d), including issuance of a Letter of Authorization.

(b) Purse seine gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), provided it complies with the purse seine exemption requirements specified under the NE multispecies requirements at § 648.80(e), including issuance of a Letter of Authorization.

§ 648.204 Possession restrictions.

(a) A vessel must be issued and possess a valid limited access herring permit to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area in the EEZ, provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(1) A vessel issued an All Areas Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(2) A vessel issued only an Areas 2 and 3 Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3 as defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201. Such a vessel may fish in Area 1 only if issued an open access herring permit or a Limited Access Incidental Catch Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Limited Access Incidental Catch Herring Permit may fish for, possess, or land up to 55,000 lb (25 mt) of Atlantic herring in any calendar day, and is limited to one landing of herring per calendar day, from any management area defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area.

(4) A vessel issued an open access herring permit may fish for, possess, or land up to 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip, and is limited to one landing of herring per calendar day, provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(5) A vessel issued a herring permit may possess herring roe provided that the carcasses of the herring from which it came are not discarded at sea.

(b) Both vessels involved in a pair trawl operation must be issued valid herring permits to fish for, possess, or land Atlantic herring harvested from any management area. Both vessels

must be issued the herring permit appropriate for the amount of herring jointly possessed by both of the vessels participating in the pair trawl operation.

[72 FR 11277, Mar. 12, 2007, as amended at 76 FR 11380, Mar. 2, 2011]

§ 648.205 VMS requirements.

The owner or operator of any limited access herring vessel with the exception of fixed gear fishermen must install and operate a VMS unit consistent with the requirements of § 648.9. The VMS unit must be installed on board, and must be operable before the vessel may begin fishing. Atlantic herring carrier vessels are not required to have VMS. At least 1 hr prior to leaving port, the owner or authorized representative of a herring vessel that is required to use VMS as specified in this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the herring fishery. VMS codes and instructions are available from the Regional Administrator upon request.

§ 648.206 Framework provisions.

(a) *Framework adjustment process*. In response to the triennial review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic Herring FMP, or to address gear conflicts as defined under § 600.10 of this chapter.

(1) *Adjustment process*. After a management action has been initiated, the Council shall develop and analyze appropriate management measures over the span of at least two Council meetings. The Council may delegate authority to the Herring Oversight Committee to conduct an initial review of the options being considered. The Oversight Committee shall review the options and relevant information, consider public comment, and make a recommendation to the Council.

(2) After the first framework meeting, the Council may refer the issue back to the Herring Oversight Committee for further consideration, make adjustments to the measures that were proposed, or approve of the measures and begin developing the necessary documents to support the framework adjustments. If the Council approves the proposed framework adjustments, the Council shall identify, at this meeting, a preferred alternative and/or identify the possible alternatives.

(3) A framework document shall be prepared that discusses and shows the impacts of the alternatives. It shall be available to the public prior to the second or final framework meeting.

(4) After developing management actions and receiving public testimony, the Council shall make a recommendation to NMFS. The Council's recommendation must include supporting rationale and, if changes to the management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(5) If the Council's recommendation to NMFS includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information NMFS may:

(i) Concur with the Council's recommended management measures and

determine that the recommended management measures should be published as a final rule in the FEDERAL REGISTER based on the factors specified in paragraphs (c)(4)(i)-(iv) of this section.

(ii) Concur with the Council's recommendation and determine that the recommended management measures should be first published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Council's recommendation, the measures shall be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the Council shall be notified in writing of the reasons for the non-concurrence.

(b) Possible framework adjustment measures. Measures that may be changed or implemented through framework action include:

(1) Management area boundaries or additional management areas;

(2) Size, timing, or location of new or existing spawning area closures;

(3) Closed areas other than spawning closures;

(4) Restrictions in the amount of fishing time;

(5) A days-at-sea system;

(6) Adjustments to specifications;

(7) Adjustments to the Canadian catch deducted when determining specifications;

(8) Distribution of the ACL;

(9) Gear restrictions (such as mesh size, etc.) or requirements (such as bycatch-reduction devices, etc.);

(10) Vessel size or horsepower restrictions;

(11) Closed seasons;

(12) Minimum fish size;

(13) Trip limits;

(14) Seasonal, area, or industry sector quotas;

(15) Measures to describe and identify essential fish habitat (EFH), fishing gear management measures to protect EFH, and designation of habitat areas of particular concern within EFH;

(16) Measures to facilitate aquaculture, such as minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other measures included in the FMP;

(17) Changes to the overfishing definition;

(18) Vessel monitoring system requirements;

(19) Limits or restrictions on the harvest of herring for specific uses;

(20) Quota monitoring tools, such as vessel, operator, or dealer reporting requirements;

(21) Permit and vessel upgrading restrictions;

(22) Implementation of measures to reduce gear conflicts, such as mandatory monitoring of a radio channel by fishing vessels, gear location reporting by fixed gear fishermen, mandatory plotting of gear by mobile fishermen, standards of operation when conflict occurs, fixed gear marking or setting practices; gear restrictions for certain areas, vessel monitoring systems, restrictions on the maximum number of fishing vessels, and special permitting conditions;

(23) Limited entry or controlled access system;

(24) Specification of the amount of herring to be used for roe

(25) In-season adjustments to ACLs;

(26) Measures to address bycatch and bycatch monitoring;

(27) Requirements for a herring processor survey;

(28) ACL set-aside amounts, provisions, adjustments;

(29) [Reserved]

(30) AMs; and

(31) Any other measure currently included in the FMP.

(c) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[72 FR 11277, Mar. 12, 2007, as amended at 73 FR 4757, Jan. 28, 2008; 76 FR 11380, Mar. 2, 2011; 76 FR 81850, Dec. 29, 2011]

§ 648.207 Herring Research Set-Aside (RSA).

(a) NMFS shall publish a Request for Proposals (RFP) in the FEDERAL REGISTER, consistent with procedures and requirements established by NMFS, to solicit proposals from industry for the

upcoming 3 fishing years, based on research priorities identified by the Council.

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives, the relationship of the proposed research to herring research priorities and/or management needs, project design, participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS shall convene a review panel, including technical experts, to review proposals submitted in response to the RFP. Each panel member shall recommend which research proposals should be authorized to utilize RSA, based on the selection criteria described in the RFP.

(d) NMFS shall consider each panel member's recommendation, provide final approval of the projects and the Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(e) The grant awards approved under the RFPs shall be for the upcoming 3 fishing years, unless the Council identifies new/different research priorities during the interim years and decides to publish a second RFP. Proposals to fund research that would start prior to, or that would end after the fishing year, are not eligible for consideration. The RSA must be utilized in the same fishing year in which it was distributed (i.e., RSA and compensation trips cannot be rolled over into future years). However, the money generated from the RSA may be rolled over into, or used to fund research in future years, consistent with the multi-year proposal.

(f) Whenever possible, research proposals shall be reviewed and approved prior to the publication of final quota specifications for the upcoming fishing years. In the event that the approved proposals do not make use of any or all of the set-asides, the unutilized portion of the set-aside shall be reallocated back to its respective management area(s) when the final specifications are published. If there is unutilized set-aside available, NMFS, at the request of the Council, could publish another RFP for either the second or third years of the 3-year specifications. In this case, NMFS shall release the unutilized portion of the RSA back to its respective management area(s) for the first year of the specifications and any other year that yields unutilized set-aside after an additional RFP is published. The Council also may decide not to publish another RFP, in which case NMFS may release the unutilized portion of the set-aside back to its respective management area(s) for all 3 fishing years covered by the specifications.

(g) If a proposal is approved, but a final award is not made by NMFS, or if NMFS determines that the allocated RSA cannot be utilized by a project, NMFS shall reallocate the unallocated or unused amount of the RSA to the respective sub-ACL, in accordance with the APA, provided that the RSA can be available for harvest before the end of the fishing year for which the RSA is specified.

(h) Any RSA reallocated under paragraphs (f) and (g) of this section may not be used solely as compensation for research.

(i) Researchers may apply for the use of more than one herring RAS allocation for individual research projects, and may request that the set-aside be collected separately from the research trip or as part of the research trip. The research compensation trips do not necessarily have to be conducted by the same vessel, but must be conducted in the management area from which the set-aside was derived.

(j) No more than 50 percent of the allocated set-aside may be taken before the research begins. If a research project is terminated for any reason prior to completion, any funds collected from the catch sold to pay for research expenses must be refunded to U.S. Treasury.

(k) NMFS shall provide authorization of the research activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional

Administrator, which must be kept on board the vessel.

(l) Upon completion of herring research projects approved under this part, researchers must provide the Council and NMFS with a report of research findings, which must include: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the herring research.

[72 FR 11277, Mar. 12, 2007, as amended at 76 FR 11381, Mar. 2, 2011]

Subpart L—Management Measures for the Spiny Dogfish Fishery

SOURCE: 65 FR 1570, Jan. 11, 2000, unless otherwise noted.

§ 648.230 Spiny dogfish Annual Catch Limits (ACLs).

(a) The Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee, an ACL for the commercial spiny dogfish fishery, which shall equal to the domestic ABC (*i.e.*, the ABC minus Canadian catch) recommended by the SSC as specified in § 648.20.

(1) *Periodicity*. The spiny dogfish ACL may be established on an annual basis for up to 5 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(2) [Reserved]

(b) *Performance review*. The Spiny Dogfish Monitoring Committee shall conduct a detailed review of fishery performance relative to the ACL at least every 5 years.

(1) If an ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Spiny Dogfish Monitoring Committee will review fishery performance information and make recommendations to the Councils for changes in measures intended to ensure ACLs are not exceeded as frequently.

(2) The Councils may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the spiny dogfish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

[76 FR 60642, Sept. 29, 2011]

§ 648.231 Spiny dogfish Annual Catch Target (ACT) and Total Allowable Level of Landings (TAL).

(a) The Spiny Dogfish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend an ACT and a TAL for the fishery as part of the spiny dogfish specification process specified in § 648.232. The Spiny Dogfish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, domestic commercial and recreational discards, and any additional relevant information considered in the ACT and TAL recommendation process.

(1) The ACT shall be identified as less than or equal to the ACL.

(2) The Spiny Dogfish Monitoring Committee shall recommend a TAL to the Joint Spiny Dogfish Committee, which accounts for domestic commercial and recreational discards (ACT minus domestic dead discards). The TAL is equivalent to the annual coastwide commercial quota.

(b) *Periodicity*. The TAL may be established on an annual basis for up to 5 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(c) *Performance review*. The Spiny Dogfish Monitoring Committee shall conduct a detailed review of fishery performance relative to TALs in conjunction with any ACL performance review, as outlined in § 648.230(b).

[76 FR 60642, Sept. 29, 2011]

§ 648.232 Spiny dogfish specifications.

(a) *Commercial quota and other specification measures*. The Spiny Dogfish

Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a TAL (*i.e.*, annual coastwide commercial quota) and any other measures, including those in paragraphs (a)(1) through (7) of this section, that are necessary to ensure that the commercial ACL will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. The measures that may be recommended include, but are not limited to:

(1) Minimum or maximum fish sizes;

(2) Seasons;

(3) Mesh size restrictions;

(4) Trip limits;

(5) [Reserved]

(6) Other gear restrictions; and

(7) Changes to AMs and ACT control rules.

(b) *Joint Spiny Dogfish Committee recommendation*. The Councils' Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a TAL, and possibly other measures, including those specified in paragraphs (a)(1) through (7) of this section, necessary to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years.

(c) *Council recommendations*. (1) The Councils shall review these recommendations and, based on the recommendations and any public comments, recommend to the Regional Administrator a TAL and other measures necessary to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year, for a period of 1–5 fishing years. The Councils' recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and other impacts of the recommendations. The Regional Administrator shall initiate a review of these recommendations and may modify the recommended quota and other management measures to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year, for a period of 1–5 fishing years. The Regional Administrator may modify the Councils' recommendations using any of the measures that were not rejected by both Councils.

(2) After such review, NMFS shall publish a proposed rule in the FEDERAL REGISTER specifying a TAL, adjustments to ACL, ACT, and TAL resulting from the accountability measures specified in § 648.233, and other measures necessary to ensure that the ACL will not be exceeded in any fishing year, for a period of 1–5 fishing years. After considering public comments, NMFS shall publish a final rule in the FEDERAL REGISTER to implement the TAL and other measures.

(d) [Reserved]

(e) *Distribution of annual quota*. (1) The TAL (*i.e.*, annual coastwide commercial quota) specified according to the process outlined section § 648.231 shall be allocated between two semi-annual quota periods as follows: May 1 through October 31 (57.9 percent); and November 1 through April 30 (42.1 percent).

(2) All spiny dogfish landed for a commercial purpose in the states from Maine through Florida shall be applied against the applicable semi-annual commercial quota, regardless of where the spiny dogfish were harvested.

[76 FR 60642, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011]

§ 648.233 Spiny dogfish Accountability Measures (AMs).

(a) *Commercial EEZ closure*. The Regional Administrator shall determine the date by which the quota for each semi-annual period described in § 648.232(e)(1) will be harvested and shall close the EEZ to fishing for spiny dogfish on that date for the remainder of that semi-annual period by publishing notification in the FEDERAL REGISTER. Upon the closure date, and for the remainder of the semi-annual quota period, no vessel may fish for or possess spiny dogfish in the EEZ, nor may vessels issued a spiny dogfish permit under this part land spiny dogfish, nor may dealers issued a Federal permit purchase spiny dogfish from vessels issued a spiny dogfish permit under this part.

(b) *ACL overage evaluation*. The ACL will be evaluated based on a single-

year examination of total catch (including both landings and dead discards) to determine if the ACL has been exceeded.

(c) *Overage repayment*. In the event that the ACL has been exceeded in a given fishing year, the exact amount in pounds by which the ACL was exceeded shall be deducted, as soon as possible from a subsequent single fishing year ACL.

[76 FR 60643, Sept. 29, 2011]

§ 648.234 Gear restrictions. [Reserved]

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) *Quota Period 1*. From May 1 through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(b) *Quota Period 2*. From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N, of this chapter.

[76 FR 60643, Sept. 29, 2011]

§ 648.236 Special Management Zones. [Reserved]

§§ 648.237–648.238 [Reserved]

§ 648.239 Spiny dogfish framework adjustments to management measures.

(a) *Within season management action*. The Councils may, at any time, initiate action to add or adjust management measures if they find that action is necessary to meet or be consistent with the goals and objectives of the Spiny Dogfish FMP.

(1) *Adjustment process*. After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear requirements, restrictions, or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions, and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *Councils' recommendation*. After developing management actions and receiving public testimony, the Councils shall make a recommendation approved by a majority of each Council's

members, present and voting, to the Regional Administrator. The Councils' recommendation must include supporting rationale, an analysis of impacts and, if management measures are recommended, a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, they must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule;

(3) *NMFS action*. If the Councils' recommendation includes adjustments or additions to management measures, then:

(i) If NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, then the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the Councils will be notified in writing of the reasons for the non-concurrence.

(iv) Framework actions can be taken only in the case where both Councils approve the proposed measure.

(b) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[76 FR 60643, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011]

Subpart M—Management Measures for the Atlantic Deep-Sea Red Crab Fishery

SOURCE: 67 FR 63233, Oct. 10, 2002, unless otherwise noted.

§ 648.260 Specifications.

(a) *Annual review and specifications process*. The Council, the Red Crab Plan Development Team (PDT), and the Red Crab Advisory Panel shall monitor the status of the red crab fishery and resource.

(1) The Red Crab PDT shall meet at least once annually during the intervening years between Stock Assessment and Fishery Evaluation (SAFE) Reports, described in paragraph (b) of this section, to review the status of the stock and the fishery. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the red crab stock and/or fishery, and it shall recommend whether the specifications for the upcoming year(s) need to be modified. At a minimum, this review shall include a review of at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

(2) If new and/or additional information becomes available, the Red Crab

PDT shall consider it during this annual review. Based on this review, the Red Crab PDT shall provide guidance to the Red Crab Committee and the Council regarding the need to adjust measures in the Red Crab FMP to better achieve the FMP's objectives. After considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the framework process specified in § 648.261, or through an amendment to the FMP.

(3) Based on the annual review, described above, and/or the SAFE Report described in paragraph (b) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee (SSC), and any other relevant information, the Red Crab PDT shall recommend to the Red Crab Committee and Council the following specifications for harvest of red crab: an annual catch limit (ACL) set less than or equal to ABC; and total allowable landings (TAL) necessary to meet the objectives of the FMP in each red crab fishing year, specified for a period of up to 3 fishing years.

(4) The PDT, after its review of the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

(5) Taking into account the annual review and/or SAFE Report described in paragraph (b) of this section, the advice of the SSC, and any other relevant information, the Red Crab PDT may also recommend to the Red Crab Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of red crab. These adjustments may be included in the Council's specifications for the red crab fishery.

(6) *Council recommendation*—(i) The Council shall review the recommendations of the Red Crab PDT, Red Crab Committee, and SSC, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded.

(ii) The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall consider the recommendations and publish a rule in the FEDERAL REGISTER proposing specifications and associated measures, consistent with the Administrative Procedure Act.

(iii) The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the FEDERAL REGISTER differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws.

(iv) If the final specifications are not published in the FEDERAL REGISTER for the start of the fishing year, the previous year's specifications shall remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(b) *SAFE Report.* (1) The Red Crab PDT shall prepare a SAFE Report at least every 3 yr. Based on the SAFE Report, the Red Crab PDT shall develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the red crab fishery. The SAFE Report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) In any year in which a SAFE Report is not completed by the Red Crab PDT, the annual review process described in paragraph (a) of this section

shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

[76 FR 60383, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011]

§ 648.261 Framework adjustment process.

(a) To implement a framework adjustment for the Red Crab FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) In response to an annual review of the status of the fishery or the resource by the Red Crab PDT, or at any other time, the Council may recommend adjustments to any of the measures proposed by the Red Crab FMP. The Red Crab Oversight Committee may request that the Council initiate a framework adjustment. Framework adjustments shall require one initial meeting (the agenda must include notification of the impending proposal for a framework adjustment) and one final Council meeting. After a management action has been initiated, the Council shall develop and analyze appropriate management actions within the scope identified below. The Council may refer the proposed adjustments to the Red Crab Committee for further deliberation and review. Upon receiving the recommendations of the Oversight Committee, the Council shall publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. After receiving public comment, the Council must take action (to approve, modify, disapprove, or table) on the recommendation at the Council meeting following the meeting at which it first received the recommendations. Documentation and analyses for the framework adjustment shall be available at least 2 weeks before the final meeting.

(2) After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts;

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the FEDERAL REGISTER. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the FEDERAL REGISTER.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in so doing, shall publish only the final

rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the FEDERAL REGISTER.

(5) The Regional Administrator may approve, disapprove, or partially disapprove the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) [Reserved]

§ 648.262 Accountability measures for red crab limited access vessels.

(a) *Closure authority*. NMFS shall close the EEZ to fishing for red crab in excess of the incidental limit by commercial vessels for the remainder of the fishing year if the Regional Administrator determines that the TAL has been harvested. Upon notification of the closure, a vessel issued a limited access red crab permit may not fish for, catch, possess, transport, land, sell, trade, or barter, in excess of 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit.

(b) *Adjustment for an overage*. (1) If NMFS determines that the TAL was exceeded in a given fishing year, the exact amount of the landings overage will be deducted, as soon as is practicable, from a subsequent single fishing year's TAL, through notification consistent with the Administrative Procedure Act.

(2) If NMFS determines that the ACL was exceeded in a given fishing year, the exact amount of an overage that was not already deducted from the TAL under paragraph (b)(i) of this section will be deducted, as soon as is practicable, from a subsequent single fishing year's TAL, through notification consistent with the Administrative Procedure Act.

[76 FR 60383, Sept. 29, 2011]

§ 648.263 Red crab possession and landing restrictions.

(a) *Vessels issued limited access red crab permits*. (1) [Reserved]

(2) *Conversion to whole crab weight*. (i) For red crab that is landed in half sections, with all gills and other detritus still intact, the recovery rate is 64 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.56.

(ii) For red crab that is landed in half sections, with all gills and other detritus removed, the recovery rate is 58 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.72.

(3) *Female red crab restriction*. A vessel may not fish for, catch, possess, transport, land, sell, trade, or barter, female red crabs in excess of one standard U.S. fish tote of incidentally caught female red crabs per trip when fishing under a red crab DAS.

(4) *Full-processing prohibition*. No person may fully process at sea, possess, or land, fully-processed red crab.

(5) *Mutilation restriction*. A vessel may not retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote per trip when fishing on a dedicated red crab trip.

(b) *Vessels issued red crab incidental catch permits*—(1) *Possession and landing restrictions*. A vessel or operator of a vessel that has been issued a red crab incidental catch permit, or a vessel issued a limited access red crab permit not on a dedicated red crab trip, as defined in § 648.2, may catch, possess, transport, land, sell, trade, or barter, up to 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at paragraphs (a)(1)(i) and (ii) of this section, per fishing trip in or from the Red Crab Management Unit.

(2) *Full-processing prohibition*. No person may fully process at sea, possess, or land, fully-processed red crab.

(3) *Mutilation restrictions*. (i) A vessel may not retain, possess, or land red crab claws and legs separate from crab bodies.

(ii) A vessel may not retain, possess, or land more than two claws and eight legs per crab.

[67 FR 63233, Oct. 10, 2002, as amended at 74 FR 20557, May 4, 2009; 76 FR 60384, Sept. 29, 2011]

§ 648.264 Gear requirements/restrictions.

(a) *Limited access red crab permitted vessels*. (1) Limited access red crab vessel may not harvest red crab from any fishing gear other than red crab traps/pots, marked as specified by paragraph (a)(5) of this section.

(2) A vessel owner or operator of a vessel that holds a valid limited access red crab permit may fish with, deploy, possess, haul, harvest red crab from, or carry on board a vessel, up to a total of 600 traps/pots when fishing for, catching, or landing red crab. A vessel owner is required to declare, on the annual permit application, the maximum number of traps/pots used per string and the maximum number of strings employed, such that the product of the maximum number of traps/pots per string and the maximum number of strings declared is no more than 600 traps/pots. The vessel is restricted to the product of the maximum number of traps/pots per string multiplied by the maximum number of strings declared on the annual vessel permit application.

(3) *Parlor traps/pots*. No person may haul or remove lobster, red crab or fish from parlor traps/pots when fishing under a red crab DAS.

(4) *Maximum trap/pot size*. The maximum allowable red crab trap/pot size of red crab traps/pots used or deployed on a red crab DAS is 18 cubic feet (0.51 cubic meters) in volume. Red crab traps/pots may be rectangular, trapezoidal or conical only, unless other red crab trap/pot designs whose volume does not exceed 18 cubic feet (0.51 cubic meters) are authorized by the Regional Administrator.

(5) *Gear markings*. The following is required on all buoys used at the end of each red crab trawl:

(i) The letters ''RC'' in letters at least 3 inches (7.62 cm) in height must be painted on top of each buoy.

(ii) The vessel's permit number in numerals at least 3 inches (7.62 cm) in height must be painted on the side of each buoy to clearly identify the vessel.

(iii) The number of each trap trawl relative to the total number of trawls used by the vessel (i.e., ''3 of 6'') must be painted in numerals at least 3 inches (7.62 cm) in height on the side of each buoy.

(iv) High flyers and radar reflectors are required on each trap trawl.

(6) *Additional gear requirements*. (i) Vessels must comply with the gear regulations found at § 229.32 of this title.

(ii) Red crab traps/pots, fished in 200 fathoms (365.8 m) or less by a vessel issued a limited access lobster permit under § 697.4(a), must comply with the trap tagging requirements specified at § 697.19.

(b) [Reserved]

[67 FR 63233, Oct. 10, 2002, as amended at 72 FR 57194, Oct. 5, 2007; 76 FR 60384, Sept. 29, 2011]

Subpart N—Management Measures for the Tilefish Fishery

SOURCE: 66 FR 49145, Sept. 26, 2001, unless otherwise noted.

§ 648.290 Tilefish Annual Catch Limit (ACL).

(a) The Tilefish Monitoring Committee shall recommend to the MAFMC an ACL for the commercial tilefish fishery, which shall be equal to the ABC recommended by the SSC.

(1) [Reserved]

(2) *Periodicity*. The tilefish commercial ACL may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review*. The Tilefish Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or in any 2 consecutive years), the Tilefish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not as frequently exceeded.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the tilefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

[76 FR 60644, Sept. 29, 2011]

§ 648.291 Tilefish Annual Catch Target (ACT).

(a) The Tilefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend an ACT as part of the tilefish specification process. The Tilefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. The ACT shall be less than or equal to the ACL. The Tilefish Monitoring Committee shall include the fishing mortality associated with the recreational fishery in its ACT recommendations only if this source of mortality has not already been accounted for in the ABC recommended by the SSC. The Tilefish Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review*. The Tilefish Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.290(b)(1) through (3).

[76 FR 60644, Sept. 29, 2011]

§ 648.292 Tilefish specifications.

The fishing year is the 12-month period beginning with November 1, annually.

(a) *Annual specification process*. The Tilefish Monitoring Committee shall review the ABC recommendation of the SSC, tilefish landings and discards information, and any other relevant available data to determine if the ACL, ACT, or total allowable landings (TAL) requires modification to respond to any changes to the stock's biological reference points or to ensure that the rebuilding schedule is maintained. The Monitoring Committee will consider whether any additional management measures or revisions to existing measures are necessary to ensure that the TAL will not be exceeded. Based on that review, the Monitoring Committee will recommend ACL, ACT, and TAL to the Tilefish Committee of the MAFMC. Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the MAFMC the appropriate ACL, ACT, TAL, and other management measures for a single fishing year or up to 3 years. The MAFMC shall review these recommendations and any public comments received, and recommend to the Regional Administrator, at least 120 days prior to the beginning of the next fishing year, the appropriate ACL, ACT, TAL, the percentage of TAL allocated to research quota, and any management measures to ensure that the TAL will not be exceeded, for the next fishing year, or up to 3 fishing years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the FEDERAL REGISTER specifying the annual ACL, ACT, TAL and any management measures to ensure that the TAL will not be exceeded for the upcoming fishing year or years. After considering public comments, NMFS will publish a final rule in the FEDERAL REGISTER to implement the ACL, ACT, TAL and any management measures. The previous year's specifications will remain effective unless revised through the specification process and/or the research quota process described in paragraph (e) of this section. NMFS will issue notification in the FEDERAL REGISTER if the previous year's specifications will not be changed.

(b) *TAL*. (1) The TAL for each fishing year will be 1.995 million lb (905,172 kg)

unless modified pursuant to paragraph (a) of this section.

(2) The sum of the TAL and estimated discards shall be less than or equal to the ACT.

(c) *TAL allocation.* For each fishing year, up to 3 percent of the TAL may be set aside for the purpose of funding research. Once a research amount, if any, is set aside, the TAL will first be reduced by 5 percent to adjust for the incidental catch. The remaining TAL will be allocated to the individual IFQ permit holder as described in § 648.294(a).

(d) *Adjustments to the quota.* If the incidental harvest exceeds 5 percent of the TAL for a given fishing year, the incidental trip limit of 500 lb (226.8 kg) may be reduced in the following fishing year. If an adjustment is required, a notification of adjustment of the quota will be published in the FEDERAL REGISTER.

(e) *Research quota.* See § 648.21(g).

[76 FR 60644, Sept. 29, 2011]

§ 648.293 Tilefish accountability measures.

(a) If the ACL is exceeded, the amount of the ACL overage that cannot be directly attributed to IFQ allocation holders having exceeded their IFQ allocation will be deducted from the ACL in the following fishing year. All overages directly attributable to IFQ allocation holders will be deducted from the appropriate IFQ allocation(s) in the subsequent fishing year, as required by § 648.294(f).

(b) [Reserved]

[76 FR 60645, Sept. 29, 2011]

§ 648.294 Individual fishing quota (IFQ) program.

(a) *IFQ allocation permits.* After adjustments for incidental catch, research set asides, and overages, as appropriate, pursuant to § 648.292(c), the Regional Administrator shall divide the remaining TAL among the IFQ allocation permit holders who held an IFQ permit as of September 1 of a giving fishing year. Allocations shall be made by applying the allocation percentages that exist on September 1 of a given fishing year to the IFQ TAL pursuant to § 648.292(c), subject to any deductions for overages pursuant to paragraph (f) of this section. Amounts of IFQ of 0.5 lb (0.23 kg) or smaller created by this allocation shall be rounded downward to the nearest whole number, and amounts of IFQ greater than 0.5 lb (0.23 kg) created by this division shall be rounded upward to the nearest whole number, so that IFQ allocations are specified in whole pounds. These allocations shall be issued in the form of an annual IFQ allocation permit.

(b) *Application*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from NMFS. The application must be filled out completely and signed by the applicant. Each application must include a declaration of all interests in IFQ allocations, as defined in § 648.2, listed by IFQ allocation permit number, and must list all Federal vessel permit numbers for all vessels that an applicant owns or leases that would be authorized to possess tilefish pursuant to the IFQ allocation permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(i) [Reserved]

(ii) *Renewal applications.* Applications to renew an IFQ allocation permit must be received by September 15 to be processed in time for the November 1 start of the fishing year. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An IFQ allocation permit holder must renew his/her IFQ allocation permit on an annual basis by submitting an application for such permit prior to the end of the fishing year for which the permit is required.

(2) *Issuance.* Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by September 15, as specified in paragraph (b)(1)(ii) of this section, NMFS shall issue annual IFQ allocation permits on or before October 31 to those who hold permanent allocation as of September 1 of the current fishing year. During the period between September 1 and October 31, transfer of IFQ is not permitted, as described in paragraph (e)(4) of this section. The IFQ allocation permit shall specify the

allocation percentage of the IFQ TAL which the IFQ permit holder is authorized to harvest.

(3) *Duration*. An annual IFQ allocation permit is valid until October 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904, or revised due to a transfer of all or part of the allocation percentage under paragraph (e) of this section. All Federal vessel permit numbers that are listed on the IFQ allocation permit are authorized to possess tilefish pursuant to the IFQ allocation permit until the end of the fishing year or until NMFS receives written notification from the IFQ allocation permit holder that the vessel is no longer authorized to possess tilefish pursuant to the subject permit. An IFQ allocation permit holder that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ allocation permit must send written notification to NMFS that includes the vessel permit number, and the dates on which the IFQ allocation permit holder desires the vessel to be authorized to land IFQ tilefish pursuant to the IFQ allocation permit to be effective.

(4) *Alteration*. An annual IFQ allocation permit that is altered, erased, or mutilated is invalid.

(5) *Replacement*. The Regional Administrator may issue a replacement permit upon written application of the annual IFQ allocation permit holder.

(6) *Transfer*. The annual IFQ allocation permit is valid only for the person to whom it is issued. All or part of the allocation specified in the IFQ allocation permit may be transferred in accordance with paragraph (e) of this section.

(7) *Abandonment or voluntary relinquishment*. Any IFQ Allocation permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to pay a recoverable cost fee, in accordance with the requirements specified in paragraph (h)(2) of this section, or for failure to renew in accordance with paragraph (b)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year.

(c)–(d) [Reserved]

(e) *Transferring IFQ allocations*—(1) *Temporary transfers*. Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the owner of an IFQ allocation may transfer the entire IFQ allocation, or a portion of the IFQ allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Temporary IFQ allocation transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed, unless the applicant specifically requests that the transfer be processed for the subsequent fishing year. The Regional Administrator has final approval authority for all temporary IFQ allocation transfer requests. The approval of a temporary transfer may be rescinded if the Regional Administrator finds that an emergency has rendered the lessee unable to fish for the transferred IFQ allocation, but only if none of the transferred allocation has been landed.

(2) *Permanent transfers*. Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, an owner of an IFQ allocation may permanently transfer the entire IFQ allocation, or a portion of the IFQ allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). The Regional Administrator has final approval authority for all permanent IFQ allocation transfer requests.

(3) *IFQ allocation transfer restrictions*. (i) If IFQ allocation is temporarily transferred to any eligible entity, it may not be transferred by the transferee again within the same fishing year, unless the transfer is rescinded due to an emergency, as described in paragraph (e)(1) of this section.

(ii) A transfer of IFQ will not be approved by the Regional Administrator if it would result in an entity owning, or having an interest in, a percentage of IFQ allocation exceeding 49 percent of the total tilefish adjusted TAL.

(iii) If the owner of an IFQ allocation leases additional quota from another IFQ allocation permit holder, any landings associated with this transferred quota will be deducted from the total yearly landings of the lessee, before his/her base allocation, if any exists, for the purpose of calculating the appropriate cost-recovery fee. As described in paragraph (h) of this section,

a tilefish IFQ allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation permit, including allocation that he/she leases to another IFQ allocation permit holder.

(4) *Application for an IFQ allocation transfer*. Any IFQ allocation permit holder applying for either permanent or temporary transfer of IFQ allocation must submit a completed IFQ Allocation Transfer Form, available from NMFS. The IFQ Allocation Transfer Form must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicant desires to have the IFQ allocation transfer effective. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications for IFQ allocation transfers must be received by September 1 to be processed for the current fishing year.

(i) *Application information requirements*. An application to transfer IFQ allocation must include the following information: The type of transfer (either temporary or permanent); the signature of both parties involved; the price paid for the transfer; indicate eligibility to receive IFQ allocation; the amount of allocation to be transferred; and a declaration; by IFQ Allocation permit number, of all the IFQ allocations that the person or entity receiving the IFQ allocation has an interest. The person or entity receiving the IFQ allocation must indicate the permit numbers of all federally permitted vessels that will possess or land their IFQ allocation. Information obtained from the IFQ Allocation Transfer Form is confidential pursuant to 16 U.S.C. 1881a.

(ii) *Approval of IFQ transfer applications*. Unless an application to transfer IFQ is denied according to paragraph (e)(4)(iii) of this section, the Regional Administrator shall issue confirmation of application approval in the form of a new or updated IFQ allocation permit to the parties involved in the transfer within 30 days of receipt of a completed application.

(iii) *Denial of transfer application*. The Regional Administrator may reject an application to transfer IFQ allocation for the following reasons: The application is incomplete; the transferor does not possess a valid tilefish IFQ allocation permit; the transferor's or transferee's vessel or tilefish IFQ allocation permit has been sanctioned, pursuant to an enforcement proceeding under 15 CFR part 904; the transfer will result in the transferee having a tilefish IFQ allocation that exceeds 49 percent of the adjusted TAL allocated to IFQ allocation permit holders; the transfer is to a person or entity that is not eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a); or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

(f) *IFQ allocation overages*. Any IFQ allocation that is exceeded, including amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, will be reduced by the amount of the overage in the subsequent fishing year(s). If an IFQ allocation overage is not deducted from the appropriate allocation before the IFQ allocation permit is issued for the subsequent fishing year, a revised IFQ allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation cannot be reduced in the subsequent fishing year because the full allocation has already been landed or transferred, the IFQ allocation permit will indicate a reduced allocation for the amount of the overage in the next fishing year.

(g) *IFQ allocation acquisition restriction*. No person or entity may acquire more than 49 percent of the annual adjusted tilefish TAL, specified pursuant to § 648.294, at any point during a fishing year. For purposes of this paragraph, acquisition includes any permanent or temporary transfer of IFQ. The calculation of IFQ allocation for purposes of the restriction on acquisition includes IFQ allocation interests held by: A company in which the IFQ holder is a shareholder, officer, or partner; an

immediate family member; or a company in which the IFQ holder is a part owner or partner.

(h) *IFQ cost recovery*. A fee shall be determined as described in paragraph (h)(1) of this section, and collected to recover the government costs associated with management, data collection and analysis, and enforcement of the IFQ program. A tilefish IFQ allocation permit holder shall be responsible for paying the fee assessed by NMFS. A tilefish IFQ allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation permit, including allocation that he/she leases to another IFQ allocation permit holder. A tilefish IFQ allocation permit holder, with a permanent allocation, shall be responsible for submitting this payment to NMFS once per year, as specified in paragraph (h)(2) of this section. For the purpose of this section, the cost-recovery billing period is defined as the full calendar year, beginning with January 1, 2010. NMFS will create an annual IFQ allocation bill for each cost-recovery billing period and provide it to each IFQ allocation permit holder. The bill will include annual information regarding the amount and value of IFQ allocation landed during the prior cost-recovery billing period, and the associated cost-recovery fees. NMFS will also create a report that will detail the costs incurred by NMFS, for the management, enforcement, and data collection and analysis associated with the IFQ allocation program during the prior cost-recovery billing period.

(1) *NMFS determination of the total annual recoverable costs of the tilefish IFQ program*. The Regional Administrator shall determine the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program. The recoverable costs will be divided by the amount of the total ex-vessel value of all tilefish IFQ landings during the cost-recovery billing period to derive a percentage. IFQ allocation permit holders will be assessed a fee based on this percentage multiplied by the total ex-vessel value of all landings under their permanent IFQ allocation permit, including landings of allocation that is leased. This fee shall not exceed 3 percent of the total value of tilefish landings of the IFQ allocation permit holder. If NMFS determines that the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program exceed 3 percent of the total value of tilefish landings, only 3 percent are recoverable.

(i) *Valuation of IFQ allocation*. The 3-percent limitation on cost-recovery fees shall be based on the ex-vessel value of landed allocation. The ex-vessel value for each pound of tilefish landed by an IFQ allocation holder shall be determined from Northeast Federal dealer reports submitted to NMFS, which include the price per pound paid to the vessel at the time of dealer purchase.

(ii) [Reserved]

(2) *Fee payment procedure*. An IFQ allocation permit holder who has incurred a cost-recovery fee must pay the fee to NMFS within 45 days of the date of the bill. Cost-recovery payments shall be made electronically via the Federal Web portal, *http://www.pay.gov* or other Internet sites designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the cost-recovery fee bill. Electronic payment options shall include payment via a credit card, as specified in the cost-recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Alternatively, payment by check may be authorized by Regional Administrator if he/she determines that electronic payment is not possible.

(3) *Payment compliance*. If the cost-recovery payment, as determined by NMFS, is not made within the time specified in paragraph (h)(2) of this section, the Regional Administrator will deny the renewal of the appropriate IFQ allocation permit until full payment is received. If, upon preliminary review of a fee payment, the Regional Administrator determines that the IFQ allocation permit holder has not paid the full amount due, he/she shall notify the IFQ allocation permit holder in writing of the deficiency. NMFS shall

explain the deficiency and provide the IFQ allocation permit holder 30 days from the date of the notice, either to pay the amount assessed or to provide evidence that the amount paid was correct. If the IFQ allocation permit holder submits evidence in support of the appropriateness of his/her payment, the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that the amount of the tendered payment is correct. This determination shall be in set forth in a Final Administrative Determination (FAD) that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce. If the Regional Administrator determines that the IFQ allocation permit holder has not paid the appropriate fee, he/she shall require payment within 30 days of the date of the FAD. If a FAD is not issued until after the start of the fishing year, the IFQ allocation permit holder may be issued a letter of authorization to fish until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the tilefish IFQ allocation permit shall not be issued, and the letter of authorization shall not be valid until such terms are met. Any tilefish landed pursuant to the above authorization will count against the IFQ allocation permit, if issued. If the Regional Administrator determines that the IFQ allocation permit holder owes additional fees for the previous cost-recovery billing period, and the renewed IFQ allocation permit has already been issued, the Regional Administrator shall issue a FAD and will notify the IFQ allocation permit holder in writing. The IFQ allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD. If the IFQ allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall rescind the IFQ allocation permit until such terms are met. If an appropriate payment is not received within 30 days of the date of a FAD, the Regional Administrator shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection. No permanent or temporary IFQ allocation transfers may be made to or from the allocation of an IFQ allocation permit holder who has not complied with any FAD. If the Regional Administrator determines that the terms of a FAD have been met, the IFQ allocation permit holder may renew the tilefish IFQ allocation permit. If NMFS does not receive full payment of a recoverable cost fee prior to the end of the cost-recovery billing period immediately following the one for which the fee was incurred, the subject IFQ allocation permit shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(7) of this section.

(4) *Periodic review of the IFQ program.* A formal review of the IFQ program must be conducted by the MAFMC within 5 years of the effective date of the final regulations. Thereafter, it shall be incorporated into every scheduled MAFMC review of the FMP (*i.e.*, future amendments or frameworks), but no less frequently than every 7 years.

[76 FR 60645, Sept. 29, 2011]

§ 648.295 Tilefish incidental trip limits.

(a) *Incidental trip limit for vessels not fishing under an IFQ allocation.* Any vessel of the United States fishing under a tilefish permit, as described at § 648.4(a)(12), is prohibited from possessing more than 500 lb (226.8 kg) of tilefish at any time, unless the vessel is fishing under a tilefish IFQ allocation permit, as specified at § 648.294(a). Any tilefish landed by a vessel fishing under an IFQ allocation permit, on a given fishing trip, count as landings under the IFQ allocation permit.

(b) *In-season closure of the incidental fishery.* The Regional Administrator will monitor the harvest of the tilefish incidental TAL based on dealer reports and other available information, and shall determine the date when the incidental tilefish TAL has been landed. The Regional Administrator shall publish a notice in the FEDERAL REGISTER notifying vessel and dealer permit holders that, effective upon a specific date, the incidental tilefish fishery is closed for the remainder of the fishing year.

[76 FR 60647, Sept. 29, 2011]

§ 648.296 Tilefish recreational possession limit.

Any person fishing from a vessel that is not fishing under a tilefish vessel permit issued pursuant to § 648.4(a)(12), may land up to eight tilefish per trip. Anglers fishing onboard a charter/party vessel shall observe the recreational possession limit.

[76 FR 60647, Sept. 29, 2011]

§ 648.297 Tilefish gear restricted areas.

No vessel of the United States may fish with bottom-tending mobile gear within the areas bounded by the following coordinates:

Canyon	N. lat.			W. long.		
	Degrees	Min	Seconds	Degrees	Min	Seconds
Oceanographer	40.0	29.0	50.0	68.0	10.0	30.0
	40.0	29.0	30.0	68.0	8.0	34.8
	40.0	25.0	51.6	68.0	6.0	36.0
	40.0	22.0	22.8	68.0	6.0	50.4
	40.0	19.0	40.8	68.0	4.0	48.0
	40.0	19.0	5.0	68.0	2.0	19.0
	40.0	16.0	41.0	68.0	1.0	16.0
	40.0	14.0	28.0	68.0	11.0	28.0
Lydonia	40.0	31.0	55.2	67.0	43.0	1.2
	40.0	28.0	52.0	67.0	38.0	43.0
	40.0	21.0	39.6	67.0	37.0	4.8
	40.0	21.0	4.0	67.0	43.0	1.0
	40.0	26.0	32.0	67.0	40.0	57.0
	40.0	28.0	31.0	67.0	43.0	0.0
Veatch	40.0	0.0	40.0	69.0	37.0	8.0
	40.0	0.0	41.0	69.0	35.0	25.0
	39.0	54.0	43.0	69.0	33.0	54.0
	39.0	54.0	43.0	69.0	40.0	52.0
Norfolk	37.0	5.0	50.0	74.0	45.0	34.0
	37.0	6.0	58.0	74.0	40.0	48.0
	37.0	4.0	31.0	74.0	37.0	46.0
	37.0	4.0	1.0	74.0	33.0	50.0
	36.0	58.0	37.0	74.0	36.0	58.0
	37.0	4.0	26.0	74.0	41.0	2.0

[76 FR 60647, Sept. 29, 2011]

§ 648.298 [Reserved]

§ 648.299 Tilefish framework specifications.

(a) *Within-season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Tilefish FMP.

(1) *Specific management measures.* The following specific management measures may be adjusted at any time through the framework adjustment process:

(i) Minimum fish size;

(ii) Minimum hook size;

(iii) Closed seasons;

(iv) Closed areas;

(v) Gear restrictions or prohibitions;

(vi) Permitting restrictions;

(vii) Gear limits;

(viii) Trip limits;

(ix) Adjustments within existing ABC control rule levels;

(x) Adjustments to the existing MAFMC risk policy;

(xi) Introduction of new AMs, including sub ACTs;

(xii) Annual specification quota setting process;

(xiii) Tilefish FMP Monitoring Committee composition and process;

(xiv) Description and identification of EFH;

(xv) Fishing gear management measures that impact EFH;

(xvi) Habitat areas of particular concern;

(xvii) Set-aside quotas for scientific research;

(xviii) [Reserved]

(xix) Recreational management measures, including the bag limit, minimum fish size limit, seasons, and gear restrictions or prohibitions; and

(xx) IFQ program review components, including capacity reduction, safety at sea issues, transferability rules, ownership concentration caps, permit and reporting requirements, and fee and cost-recovery issues.

(xxi) Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require a formal amendment of the FMP instead of a framework adjustment.

(2) *Adjustment process*. If the MAFMC determines that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, it will recommend, develop, and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC will provide the public with advance notice of the availability of the recommendation, appropriate justifications and economic and biological analyses, and opportunity to comment on the proposed adjustments prior to and at the second MAFMC meeting on that framework action.

(3) *MAFMC recommendation*. After developing management actions and receiving public testimony, the MAFMC will make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the MAFMC's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action*. If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

(i) If the Regional Administrator concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraphs (a)(2) and (a)(3) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If the Regional Administrator concurs with the MAFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the MAFMC's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If the Regional Administrator does not concur with the MAFMC's recommendation, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[76 FR 60648, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011]

Subpart O—Management Measures for the NE Skate Complex Fisheries

SOURCE: 68 FR 49701, Aug. 19, 2003, unless otherwise noted.

§ 648.320 Skate FMP review and monitoring.

(a) *Annual review and specifications process*. The Council, its Skate Plan Development Team (PDT), and its Skate Advisory Panel shall monitor the status of the fishery and the skate resources.

(1) The Skate PDT shall meet at least annually to review the status of the species in the skate complex. At a minimum, this review shall include annual updates to survey indices, fishery landings and discards; a re-evaluation of stock status based on the updated survey indices and the FMP's overfishing definitions; and a determination of whether any of the accountability measures specified under § 648.323 were triggered. The review shall also include an analysis of changes to other FMPs (e.g., Northeast Multispecies, Monkfish, Atlantic Scallops, etc.) that may impact skate stocks, and describe the anticipated impacts of those changes on the skate fishery.

(2) If new and/or additional information becomes available, the Skate PDT shall consider it during this annual review. Based on this review, the Skate PDT shall provide guidance to the Skate Committee and the Council regarding the need to adjust measures in the Skate FMP to better achieve the FMP's objectives. After considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the framework process specified in § 648.321, or through an amendment to the FMP.

(3) For overfished skate species, the Skate PDT and the Council shall monitor the trawl survey index as a proxy for stock biomass. As long as the 3-year average of the appropriate weight per tow increases above the average for the previous 3 years, it is assumed that the stock is rebuilding to target levels. If the 3-year average of the appropriate survey mean weight per tow declines below the average for the previous 3 years, then the Council shall take management action to ensure that stock rebuilding will achieve target levels.

(4) Based on the annual review described above and/or the Stock Assessment and Fishery Evaluation (SAFE) Report described in paragraph (b) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee, and any other relevant information, the Skate PDT shall recommend to the Skate Committee and Council the following annual specifications for harvest of skates: An annual catch limit (ACL) for the skate complex set less than or equal to ABC; an annual catch target (ACT) for the skate complex set less than or equal to 75 percent of the ACL; and total allowable landings (TAL) necessary to meet the objectives of the FMP in each fishing year (May 1–April 30), specified for a period of up to 2 fishing years.

(5) *Recommended measures*. The Skate PDT shall also recommend management measures to the Skate Committee and Council to assure that the specifications are not exceeded. Recommended measures should include, but are not limited to:

(i) Possession limits in each fishery;

(ii) In-season possession limit triggers for the wing and/or bait fisheries; and

(iii) Required adjustments to in-season possession limit trigger percentages or the ACL-ACT buffer, based on the accountability measures specified at § 648.323.

(6) Taking into account the annual review and/or SAFE Report described in paragraph (b) of this section, the advice of the Scientific and Statistical Committee, and any other relevant information, the Skate PDT may also recommend to the Skate Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of the skate complex and its component species. These adjustments may be included in the Council's specifications for the skate fisheries.

(7) *Council recommendation*. The Council shall review the recommendations of the Skate PDT, Skate Committee, and Scientific and Statistical Committee, any public comment received thereon, and any other relevant information, and make a recommendation

to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall consider the recommendations and publish a rule in the FEDERAL REGISTER proposing specifications and associated measures, consistent with the Administrative Procedure Act. The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the FEDERAL REGISTER differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws. If the final specifications are not published in the FEDERAL REGISTER for the start of the fishing year, the previous year's specifications shall remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(b) *Biennial SAFE Report*—(1) The Skate PDT shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE skate complex and its associated fisheries. The SAFE Report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) In any year in which a SAFE Report is not completed by the Skate PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

[75 FR 34058, June 16, 2010]

§ 648.321 Framework adjustment process.

(a) *Adjustment process.* To implement a framework adjustment for the Skate FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings (the initial meeting agenda must include notification of the impending proposal for a framework adjustment) and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) *Council review and analyses.* In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Skate FMP. After a framework action has been initiated, the Council shall develop and analyze appropriate management actions within the scope of measures specified in paragraph (b) of this section. The Council shall publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. Documentation and analyses for the framework adjustment shall be available at least 1 week before the final meeting.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the framework measures should be issued directly as a final rule, without opportunity for public notice and comment, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for

adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) The Regional Administrator may publish the recommended framework measures in the FEDERAL REGISTER. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the FEDERAL REGISTER.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the FEDERAL REGISTER.

(5) The Regional Administrator may approve, disapprove, or partially approve the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) *Possible framework adjustment measures*. Measures that may be changed or implemented through framework action, provided that any corresponding management adjustments can also be implemented through a framework adjustment, include:

(1) Skate permitting and reporting;

(2) Skate overfishing definitions and related targets and thresholds;

(3) Prohibitions on possession and/or landing of individual skate species;

(4) Skate possession limits;

(5) Skate closed areas (and consideration of exempted gears and fisheries);

(6) Seasonal skate fishery restrictions and specifications;

(7) Target TACs for individual skate species;

(8) Hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or quotas for non-directed fisheries;

(9) Establishment of a mechanism for TAC set-asides to conduct scientific research, or for other reasons;

(10) Onboard observer requirements;

(11) Gear modifications, requirements, restrictions, and/or prohibitions;

(12) Minimum and/or maximum sizes for skates;

(13) Adjustments to exemption area requirements, area coordinates, and/or management lines established by the FMP;

(14) Measures to address protected species issues, if necessary;

(15) Description and identification of EFH;

(16) Description and identification of habitat areas of particular concern;

(17) Measures to protect EFH;

(18) OY and/or MSY specifications;

(19) Changes to the accountability measures described at § 648.323;

(20) Changes to TAL allocation proportions to the skate wing and bait fisheries;

(21) Changes to seasonal quotas in the skate bait or wing fisheries;

(22) Reduction of the baseline 25–percent ACL-ACT buffer to less than 25 percent; and

(23) Changes to catch monitoring procedures.

(c) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[75 FR 34059, June 16, 2010]

§ 648.322 Skate allocation, possession, and landing provisions.

(a) *Allocation of TAL.* (1) A total of 66.5 percent of the annual skate complex TAL shall be allocated to the skate wing fishery. All skate products that are landed in wing form, for the skate wing market, or classified by Federal dealers as food as required under § 648.7(a)(1)(i), shall count against the skate wing fishery TAL.

(2) A total of 33.5 percent of the annual TAL shall be allocated to the skate bait fishery. All skate products that are landed for the skate bait market, or classified by Federal dealers as bait as required under § 648.7(a)(1)(i), shall count against the skate bait fishery TAL. The annual skate bait fishery TAL shall be allocated in three seasonal quota periods as follows:

(i) Season 1–May 1 through July 31, 30.8 percent of the annual skate bait fishery TAL shall be allocated;

(ii) Season 2–August 1 through October 31, 37.1 percent of the annual skate bait fishery TAL shall be allocated; and

(iii) Season 3–November 1 through April 30, the remainder of the annual skate bait fishery TAL not landed in Seasons 1 or 2 shall be allocated.

(b) *Skate wing possession and landing limits.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, and fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows:

(1) Up to 2,600 lb (1,179 kg) of skate wings (5,902 lb (2,677 kg) whole weight) per trip from May 1 through August 31, and 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) whole weight) per trip from September 1 through April 30, except for a vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), which is limited to no more than 220 lb (100 kg) of skate wings (500 lb (227 kg) whole weight) per trip (or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27—for example, 100 lb (45.4 kg) of skate wings × 2.27 = 227 lb (103.1 kg) of whole skates).

(2) *In-season adjustment of skate wing possession limits.* When the Regional Administrator projects that 85 percent of the annual skate wing fishery TAL has been landed, the Regional Administrator shall, through a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act, reduce the skate wing trip limit to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27) for the remainder of the fishing year, unless such a reduction would be expected to prevent attainment of the annual TAL.

(3) *Incidental possession limit for vessels not under a DAS.* A vessel issued a Federal skate permit that is not fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, or is a limited access multispecies vessel participating in an approved sector described under § 648.87 but not fishing on one of the DAS specified at §§ 648.53, 648.82, or 648.92, may retain up to 500 lb (227 kg) of skate wings or 1,135 lb (515 kg) of whole skate, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27, per trip.

(4) *Allowable forms of skate landings.* Except for vessels fishing under a skate bait letter of authorization as specified at § 648.322(c), a vessel may possess and/or land skates as wings only (wings removed from the body of the skate and the remaining carcass discarded), wings with associated carcasses possessed separately (wings removed from the body of the skate but the associated carcass retained on board the vessel), or in whole (intact) form, or any combination of the three, provided that the weight of the skate carcasses on board the vessel does not exceed 1.27 times the weight of skate wings on board. When any combination of skate wings, carcasses, and whole skates are possessed and/or landed, the applicable possession or landing limit shall be based on the whole weight limit, in

which any wings are converted to whole weight using the wing to whole weight conversion factor of 2.27. For example, if the vessel possesses 100 lb (45.4 kg) of skate wings, the whole weight equivalent would be 227 lb (103.0 kg) of whole skates (100 lb (45.4 kg) × 2.27), and the vessel could possess up to 127 lb (57.6 kg) of skate carcasses (100 lb (45.4 kg) of skate wings × 1.27). A vessel may not possess and/or land skate carcasses and only whole skates.

(c) *Bait Letter of Authorization (LOA).* A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions for a minimum of 7 consecutive days, provided that when the vessel is fishing pursuant to the terms of authorization at least the following requirements and conditions are met:

(1) The vessel owner or operator obtains and retains onboard the vessel a valid LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner or operator possesses and/or lands only whole skates less than 23 inches (58.42 cm) total length.

(3) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.

(4) The vessel owner or operator possesses or lands no more than 25,000 lb (11,340 kg) of only whole skates less than 23 inches (58.42 cm) total length, and does not possess or land any skate wings or whole skates greater than 23 inches (58.42 cm) total length.

(5) Vessels that choose to possess or land skate wings during the participation period of this letter of authorization must comply with possession limit restrictions under paragraph (b) of this section for all skates or skate parts on board. Vessels possessing skate wings in compliance with the possession limit restrictions under paragraph (b) may fish for, possess, or land skates for uses other than bait.

(6) The vessel owner or operator complies with the transfer at sea requirements at § 648.13(h).

(d) *In-season adjustment of skate bait possession limits.* When the Regional Administrator projects that 90 percent of the skate bait fishery seasonal quota has been landed in Seasons 1 or 2, or 90 percent of the annual skate bait fishery TAL has been landed, the Regional Administrator shall, through a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act, reduce the skate bait trip limit to the whole weight equivalent of the skate wing trip limit specified under paragraph (b) of this section for the remainder of the quota period, unless such a reduction would be expected to prevent attainment of the seasonal quota or annual TAL.

(e) *Prohibitions on possession of skates.* A vessel fishing in the EEZ portion of the Skate Management Unit may not:

(1) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

[75 FR 34060, June 16, 2010, as amended at 76 FR 28331, May 17, 2011; 77 FR 25100, Apr. 27, 2012]

§ 648.323 Accountability measures.

(a) *TAL overages.* If the skate wing fishery TAL or skate bait fishery TAL is determined to have been exceeded by more than 5 percent in any given year based upon, but not limited to, available landings information, the Regional Administrator shall reduce the in-season possession limit trigger for that fishery, as specified at § 648.322(b) and (d), in the next fishing year by 1 percent for each 1 percent of TAL overage, consistent with the Administrative Procedure Act.

(b) *ACL overages*–(1) If the ACL is determined to have been exceeded in any given year, based upon, but not limited to, available landings and discard information, the percent buffer between ACL and ACT, initially specified at 25 percent, shall be increased by 1 percent for each 1–percent ACL overage in the second fishing year following the fishing year in which the ACL overage occurred, through either the specifications or framework adjustment process described under §§ 648.320 and 648.321.

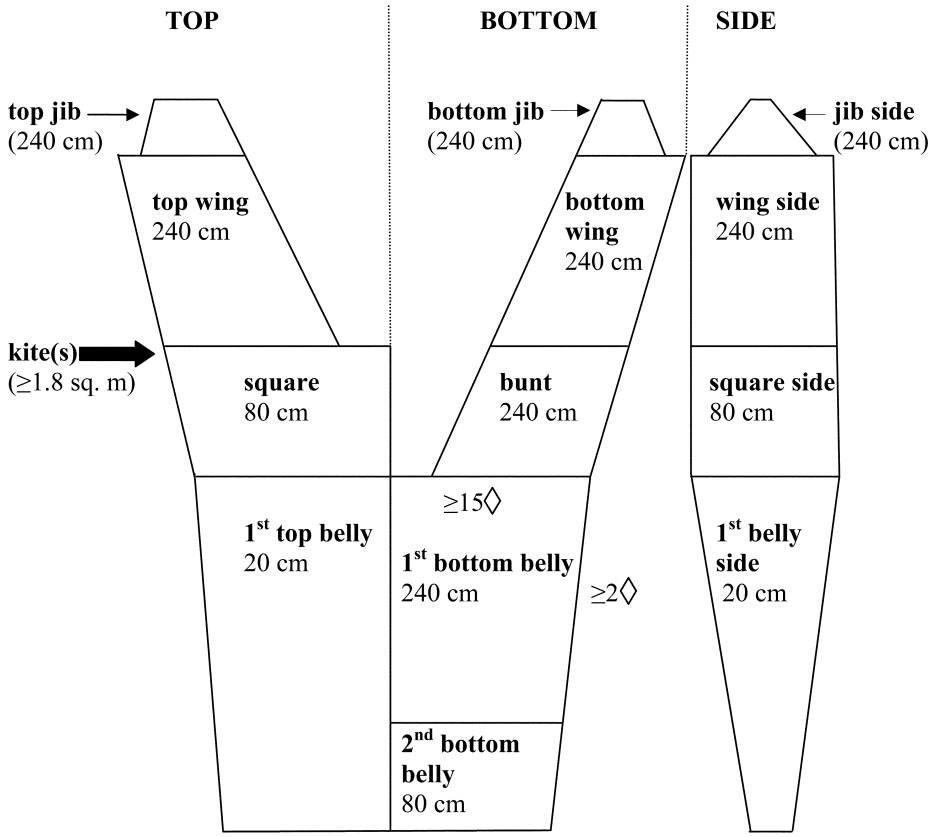
(2) If the Council fails to initiate action to correct an ACL overage

through the specifications or framework adjustment process, consistent with paragraph (b)(1) of this section, the Regional Administrator shall implement the required adjustment, as described under paragraph (b)(1) of this section, consistent with the Administrative Procedure Act.

[75 FR 34061, June 16, 2010]

FIGURE 1 TO PART 648

Figure 1 to Part 648



Nomenclature for Ruhle Trawl and Minimum Mesh Size by Section

20 cm = 7.9 inches;
80 cm = 31.5 inches;
240 cm = 7.9 ft

[77 FR 26127, May 2, 2012]

PARTS 655–659 [RESERVED]