

code of federal regulations

Wildlife and Fisheries

50

PART 600 TO END

Revised as of October 1, 1996

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1996

With Ancillaries

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

as a Special Edition of
the Federal Register



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1996

For sale by U.S. Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328

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Cite this Code: CFR

*To cite the regulations in
this volume use title,
part and section num-
ber. Thus, 50 CFR 600.5
refers to title 50, part
600, section 5.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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

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

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

LEGAL STATUS

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

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR part 51 are met. Some of the elements on which approval is based are:

- (a) The incorporation will substantially reduce the volume of material published in the Federal Register.
- (b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.
- (c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table II). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

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

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

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

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There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

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For a legal interpretation or explanation of any regulation in this volume, contact the issuing agency. The issuing agency's name appears at the top of odd-numbered pages.

For inquiries concerning CFR reference assistance, call 202-523-5227 or write to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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RICHARD L. CLAYPOOLE,
Director,
Office of the Federal Register.

October 1, 1996.

THIS TITLE

Title 50—FISH AND WILDLIFE is composed of three volumes. The parts in these volumes are arranged in the following order: Parts 1–199, parts 200–599 and part 600 to end. The first volume (parts 1–199) contains the current regulations issued under chapter I—United States Fish and Wildlife Service, Department of the Interior. The second volume (parts 200–599) contains the current regulations issued under chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; chapter III—International Fishing and Related Activities, chapter IV—Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee regulations; and chapter V—Marine Mammal Commission. The third volume (part 600 to end) contains the current regulations issued under chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1996.

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

The OMB control numbers for the National Oceanic and Atmospheric Administration appear in 15 CFR 902.1.

For this volume, Carol Conroy was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

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if any changes have been made to the *Code of Federal Regulations* or what documents have been published in the *Federal Register* without reading the *Federal Register* every day? If so, you may wish to subscribe to the *LSA* (List of CFR Sections Affected), the *Federal Register Index*, or both.

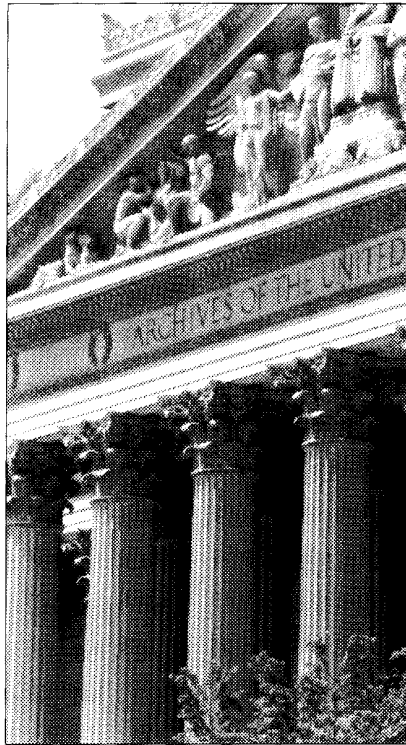
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Title 50—Wildlife and Fisheries

(This book contains part 600 to end)

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CROSS REFERENCES: Commercial fishing on Red Lake Indian Reservation, Bureau of Indian Affairs: 25 CFR part 242.	
Disposal of certain wild animals in national parks, National Park Service: 36 CFR part 10.	
Exchanges of land for migratory bird or other wildlife refuges, Bureau of Land Management: 43 CFR part 2200.0—2272.1.	
Fishing, hunting, trapping, and protection of wildlife in national forests and wildlife refuges, Forest Service: 36 CFR part 241, §§261.8, 261.9.	
Fishing, hunting, trapping, and protection of wildlife in national parks, memorials, recreation areas, etc., National Park Service: 36 CFR parts 2, 7, 20.	
Fishing and hunting in reservoir areas, Corps of Engineers: 36 CFR part 327.8.	
Free entry of animals, birds and products of American fisheries under specified conditions, Customs Service: 19 CFR part 10.70—10.83.	
Grazing areas for wildlife maintenance, Bureau of Land Management: 43 CFR part 4110.	
Making pictures, television production, or sound tracks on areas administered by the United States Fish and Wildlife Service or the National Park Service: 43 CFR part 5.1.	

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

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

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

Subpart A—General

§ 600.5 Purpose and scope.

(a) This part contains general provisions governing the operation of the eight Regional Fishery Management Councils established by the Magnuson 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 Act, prescribes procedures for the conduct of preemption hearings under section

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306(b) of the Magnuson Act, and collects the general provisions common to all domestic fisheries governed by this chapter.

§ 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 Act.

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

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

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.

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

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

Authorized officer means:

- (1) Any commissioned, warrant, or petty officer of the USCG;
- (2) Any special agent or fishery enforcement officer of NMFS;

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(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 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).

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.

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

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

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

Continental shelf fishery resources means the species listed under section 3(4) of the Magnuson Act.

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

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 Fisheries Conservation and

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Management, 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.

Drift gillnet means a gillnet that is unattached to the ocean bottom, whether or not attached to a vessel.

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

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

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

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, rec-

reational, or economic characteristics, or method of catch; or

(2) Any fishing for such stocks.

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

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

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

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

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

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

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

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

(1) Fishing; or

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

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.

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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 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.

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.

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.)

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

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:

(1) That will provide the greatest overall benefit to the United States, with particular reference to food production and recreational opportunities; and

(2) That is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

Owner, with respect to any vessel, means:

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

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

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

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

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

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

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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.

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

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

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

Regional Director (RD) means the Director of one of the five NMFS Regions described in Table 1 of § 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.

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

Secretary means the Secretary of Commerce or a designee.

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

Scientific cruise means the period of time during which a scientific research vessel is operated in furtherance of a scientific research project, beginning when the vessel leaves port to undertake the project and ending when the

vessel completes the project as provided for in the applicable scientific research plan.

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

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

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

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

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

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

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

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

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

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

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

Scouting means any operation by a vessel exploring (on the behalf of an FFV or U.S. fishing vessel) for the presence of fish by visual, acoustic, or

other means that do not involve the catching of fish.

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 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 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.

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

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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 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.

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.

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

Trawl means a cone or funnel-shaped net that is towed through the water by one or more vessels.

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.

§ 600.15 Other acronyms.

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

(2) DAH—estimated domestic annual harvest

(3) DAP—estimated domestic annual processing

(4) EIS—environmental impact statement

(5) EY—equilibrium yield

(6) FMP—fishery management plan

(7) JVP—joint venture processing

(8) MSY—maximum sustainable yield

(9) PMP—preliminary FMP

(10) TAC—total allowable catch

(11) 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) MFCMA—Magnuson Fishery Conservation and Management Act

(8) MMPA—Marine Mammal Protection Act

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

(10) NEPA—National Environmental Policy Act

(11) PA—Privacy Act

(12) PRA—Paperwork Reduction Act

(13) 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

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 Act.

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

§ 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 Act. The purpose of the SOPP is to inform the public how the Council operates within the framework of the Secretary's uniform standards.

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

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

§ 600.120 Employment practices.

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

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§ 600.125 Budgeting, funding, and accounting.

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

§ 600.130 Protection of confidentiality of statistics.

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

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

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

Subpart C—Council Membership

§ 600.205 Principal state officials and their designees.

(a) Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be designated by a constituent state Governor as the principal state official for purposes of section 302(b) of the Magnuson Act. New or revised designations by state Governors of principal state officials, and new or revised designations by principal state officials of their designees(s), must be delivered in writing to the appropriate NMFS Regional Director at least 48 hours before the individual may vote on any issue before the Council. Written designation(s) must indicate the employment status of each principal state official

and that of his/her designee(s), how the official or designee is employed by the state fisheries agency, where each individual is employed (business address and telephone number), and whether the official's full salary is paid by the state.

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

§ 600.210 Terms of Council members.

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

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

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

§ 600.215 Appointments.

The following procedures govern the nomination and appointment of Council members.

(a) Each year, terms of approximately one-third of the appointed members of each Council expire. New members will be appointed, or seated members will be reappointed to another term, by the Secretary to fill the seats being vacated. The Secretary will select the appointees from lists of nominees submitted by March 15 of each year by the Governors of the constituent states that are eligible to nominate candidates for that vacancy.

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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 among the nominees submitted by the responsible Governor(s).

(b) A Governor must submit the names of at least three qualified nominees for each applicable vacancy.

(c) Governors are responsible for ensuring that persons nominated for appointment meet the qualification requirements of the Magnuson Act. A Governor must provide a statement explaining how each of his or her nominees meets the qualification requirements; and must 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:

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

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

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

(4) 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, AP, SSC, or FIAC;

(5) 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; and

(6) Teaching, journalism, writing, consulting, legal practice, or researching matters related to fisheries, fishery management, and marine resource conservation.

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(d) To assist in identifying necessary 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 above criteria. Nominees may provide such information in any format they wish. Career and educational history information sent to the Governors should also be sent to the NMFS Office of Fisheries Conservation and Management.

(e) The Secretary will review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the criteria prescribed in paragraph (c) of this section. If the Secretary determines that any nominee is not qualified, the Secretary will notify the appropriate Governor of that determination. The Governor shall then submit a revised list 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.

(f) There are two categories of seats to which voting members are appointed: "obligatory" and "at-large."

(1) Each constituent state is entitled to one seat on the Council on which it is a member, except that Alaska is entitled to five seats and 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 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 seat. In order to fill a state's obligatory seat, the Secretary may select from any of the nominees for such obligatory seat and from the nominees for any at-large seat submitted by the Governor of that state. If a Governor fails to provide a list of at least three qualified nominees for a seat obligated to that Governor's state, then the state's obligatory seat will remain vacant until three qualified nominees are submitted by the Governor and acted upon by the Secretary.

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(2) Prior to submitting nominees for appointment to a Council, a constituent state Governor must determine if each of his or her nominees is a resident of that constituent state. A State Governor may not nominate a non-resident of that state for appointment to a Council seat obligated to that state. If, at any time during a term, an appointee to an obligatory seat changes residency to another state that is not a constituent state of that Council, the member may no longer vote as a representative of that state and must resign from that obligated seat. For purposes of this paragraph (f)(2), a state resident is an individual who maintains his/her principal residence within that constituent state and, if applicable, pays income taxes to that state and/or to another appropriate jurisdiction within that state.

(g) When the term of an at-large member is expiring, or 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 that seat.

(1) In order to fill an at-large seat, the Secretary may select a nominee for that seat submitted by any Governor of a constituent state. 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.

(2) If a Governor fails to submit a list of three qualified nominees for an available at-large seat within the time allotted, then a new at-large member will be appointed from lists of qualified nominees submitted by Governors of other constituent states.

(3) If a Governor chooses to submit nominations for one or more vacant at-large seats on a Council, he or she must submit lists that contain at least three different nominees for each vacant seat. In making selections to each of the available at-large seats, the Sec-

retary will consider all names submitted by the constituent state governors.

(4) In filling expiring at-large seats, the Secretary will consider only complete slates of nominees submitted by the Governors of the Council's constituent states. If nominations are requested to fill more than one at-large seat and a Governor elects to nominate a total of four candidates, (i.e., a slate of three candidates for one seat and one for the other(s)), the set of three candidates will be considered only for the first seat, but the two candidates who were not selected will not be considered for the other(s). In this case, the only candidates considered for the other seat(s) would be derived from the slates offered by the Governors of the other states that included three different qualified candidates (i.e., candidates who were not considered for one of the other seats).

(5) Governors may nominate residents of another constituent state of a Council for appointment to an at-large seat on that Council.

(6) 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.

§ 600.220 Oath of office.

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

§ 600.225 Rules of conduct.

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

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

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members and employees of the Councils must comply with the following standards of conduct:

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

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

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

(4) No employee of a Council may have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties. However, an Executive Director may retain a financial interest in harvesting, processing or marketing activities, and participate in matters of general public concern on the Council that might affect that interest, if that interest has been disclosed in a report filed under § 600.235.

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

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

(7) No Council member or employee of the Council may use Council property on other than official business.

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Such property must be protected and preserved from improper or deleterious operation or use.

(8) No Council member may participate—

(i) 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; or

(ii) In any matter of general public concern that is likely to have a direct and predictable effect on a member's financial interest, unless that interest is in harvesting, processing, or marketing activities and has been disclosed in a report filed under § 600.235. For purposes of this section, the member's financial interest includes that of the member's spouse; minor child; partner; organization in which the member is serving as officer, director, trustee, partner or employee; or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment.

§ 600.230 Removal.

The Secretary may remove for cause any Secretarially appointed member of a Council in accordance with section 302(b)(5) of the Magnuson 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.

§ 600.235 Financial disclosure.

(a) The Magnuson Act requires the disclosure by each Council nominee, voting member appointed to the Council by the Secretary, and Executive Director, of any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the authority of the individual's Council, and of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the

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Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members, Nominees, and Executive Directors of Regional Fishery Management Councils" (Financial Interest Form), or such other form as the Secretary may prescribe. The report must be filed by each nominee for Secretarial appointment with the Assistant Administrator by April 15 or, if nominated after March 15, 1 month after nomination by the Governor. A seated voting member appointed by the Secretary, or an Executive Director, must file a Financial Interest Form within 45 days of taking office; must update his or her statement within 30 days of acquiring any such financial interest, or of substantially changing a financial interest; and must update his/her statement annually and file that update by February 1 of each year with the Executive Director of the appropriate Council, and concurrently provide copies of such documents to the NMFS Regional Director for the geographic area concerned. The completed Financial Interest Forms will be kept on file, and made available for public inspection at reasonable hours at the Council offices. In addition, the statements will be made available at each public Council meeting or hearing.

(b) The provisions of 18 U.S.C. 208 do not apply to an individual who has filed a financial report under this section regarding an interest that has been reported.

(c) By February 1 of each year, Councils must forward copies of the completed disclosure from each current Council member and Executive Director to the Director, Office of Fisheries Conservation and Management, NMFS. Councils must also include any updates in disclosures, as well as revisions required for changes of interests.

(d) Councils must retain the disclosure forms for each member for at least 5 years after the expiration of that member's last term.

§ 600.240 Security assurances.

(a) DOC/OS will issue security assurances to Council nominees and mem-

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

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

§ 600.245 Council member compensation.

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

(b) All voting Council members whose eligibility for compensation has been established in accordance with NOAA guidelines will be paid through the cooperative agreement as a direct

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

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

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

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

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

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

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

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

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

Subpart D—National Standards

§ 600.305 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development

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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 Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Magnuson 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 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 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 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) *Determine* is used when referring to OY.

(12) *Adjust* is used when establishing a deviation from MSY for biological reasons, such as in establishing ABC, TAC, or EY.

(13) *Modify* is used when the deviation from MSY is for the purpose of determining OY, in accord with relevant economic, social, or ecological factors.

§ 600.310 National Standard 1—Optimum Yield.

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

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

(c) *Overfishing.* (1) Overfishing is a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis. Each FMP must specify, to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by that FMP, and provide an analysis of how the definition was determined and how it relates to reproductive potential.

(2) The definition of overfishing for a stock or stock complex may be developed or expressed in terms of a minimum level of spawning biomass ("threshold"); maximum level or rate of fishing mortality; or formula, model, or other measurable standard designed to ensure the maintenance of the stock's productive capacity. Overfishing must be defined in a way to enable the Council and the Secretary to monitor and evaluate the condition of the stock or stock complex relative to the definition.

(3) Different fishing patterns can produce a variety of effects on local and areawide abundance, availability, size, and age composition of a stock. Some of these fishing patterns have been called "growth," "localized," or "pulse" overfishing; however, these patterns are not necessarily overfishing under the national standard 1 definition, which focuses on recruitment and long-term reproductive capacity. (Also see paragraph (c)(6)(v)).

(4) Overfishing definitions must be based on the best scientific information available. Councils must build into the definition appropriate consideration of risk, taking into account uncertainties in estimating domestic harvest, stock conditions, or the effects of environmental factors (also see § 600.335). In cases where scientific data are severely limited, the Councils' informed judgment must be used, and effort should be directed to identifying and gathering the needed data.

(5) Secretarial approval or disapproval of the overfishing definition will be based on consideration of whether the proposal:

- (i) Has sufficient scientific merit.
 - (ii) Is likely to result in effective Council action to prevent the stock from closely approaching or reaching an overfished status.
 - (iii) Provides a basis for objective measurement of the status of the stock against the definition.
 - (iv) Is operationally feasible.
- (6) In addition to a specific definition of overfishing for each stock or stock complex, an FMP must contain management measures necessary to prevent overfishing.

(i) If overfishing is defined in terms of a threshold biomass level, the Council must ensure that fishing effort does not cause spawning biomass to fall and remain below that threshold.

(ii) If overfishing is defined in terms of a maximum fishing mortality rate, the Council must ensure that fishing effort on that stock does not cause the maximum rate to be exceeded.

(iii) If data indicate that an overfished condition exists, a program must be established for rebuilding the stock over a period of time specified by the Council and acceptable to the Secretary.

(iv) If data indicate that a stock or stock complex is approaching an overfished condition, the Council should identify actions or combination of actions to be undertaken in response.

(v) Depending on the objectives of a particular FMP and the specific definition of overfishing established for the stock or stock complex under management, a Council may recommend measures to prevent or permit pulse, localized, or growth overfishing.

(7) Significant adverse alterations in environment/habitat conditions increase the possibility that fishing effort will contribute to a stock collapse. Care should be taken to identify the cause of any downward trends in spawning stock sizes or average annual recruitment.

(i) Whether these trends are caused by environmental changes or by fishing effort, the only direct control provided by the Magnuson Act is to reduce fishing mortality.

(ii) Unless the Council asserts, as supported by appropriate evidence, that reduced fishing effort would not alleviate the problem, the FMP must include measures to reduce fishing mortality, regardless of the cause of the low population level.

(iii) If manmade environmental changes are contributing to the downward trends, in addition to controlling effort, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible, and consider whether to take action under section 302(i) of the Magnuson Act.

(8) There are certain limited exceptions to the requirement to prevent overfishing. Harvesting the major component of a mixed fishery at its optimum level may result in the overfishing of a minor (smaller or less valuable) stock component in the fishery. A Council may decide to permit this type of overfishing if it is demonstrated by analysis (paragraph (f)(5) of this section) that it will result in net benefits to the Nation, and if the Council's action will not cause any stock to require protection under the ESA.

(9) All FMPs should contain a definition of overfishing for the stock or stock complex managed under the affected FMP.

(d) *MSY*. (1) *MSY* is the largest average annual catch or yield that can be taken over a significant period of time from each stock under prevailing ecological and environmental conditions.

(2) *MSY* may be presented as a range of values. One *MSY* may be specified for a related group of species in a mixed-species fishery. Since *MSY* is a long-term average, it need not be specified annually, but must be based on the best scientific information available.

(3) MSY may be only the starting point in providing a realistic biological description of allowable fishery removals. MSY may need to be adjusted because of environmental factors, stock peculiarities, or other biological variables, prior to the determination of OY. An example of such an adjustment is determination of ABC.

(e) ABC. (1) ABC is a preliminary description of the acceptable harvest (or range of harvests) for a given stock or stock complex. Its derivation focuses on the status and dynamics of the stock, environmental conditions, other ecological factors, and prevailing technological characteristics of the fishery.

(2) When ABC is used, its specification constitutes the first step in deriving OY from MSY. Unless the best scientific information available indicates otherwise (see §600.315, ABC should be no higher than the product of the stock's natural mortality rate and the biomass of the exploitable stock. If a threshold has been specified for the stock, ABC must equal zero when the stock is at or below that threshold (also see paragraph (c)(2) of this section). ABC may be expressed in numeric or nonnumeric terms.

(f) OY—(1) *Definition*. The term “optimum” with respect to the yield from a fishery, means the amount of fish that will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and that is prescribed as such on the basis of the MSY from each fishery, as modified by any relevant economic, social, or ecological factors (section 3(21)(b) of the Magnuson Act).

(2) *Values in determination*. In determining the greatest benefit to the Nation, two values that should be weighed are food production and recreational opportunities (section 3(21)(a) of the Magnuson Act). They should receive serious attention as measures of benefit when considering the economic, ecological, or social factors used in modifying MSY to obtain OY.

(i) *Food production* encompasses the goals of providing seafood to consumers, maintaining an economically viable fishery, and utilizing the capacity of U.S. fishery resources to meet nutritional needs.

(ii) *Recreational opportunities* includes recognition of the importance of the quality of the recreational fishing experience, and of the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(3) *Factors relevant to OY*. The Magnuson Act's definition of OY identifies three categories of factors to be used in modifying MSY to arrive at OY: Economic, social, and ecological (section 3(21)(b) of the Magnuson Act). Not every factor will be relevant in every fishery. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding modifications to MSY.

(i) *Economic factors*. Examples are promotion of domestic fishing, development of unutilized or underutilized fisheries, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S.-harvested fish. Some other factors that may be considered are the value of fisheries, the level of capitalization, operating costs of vessels, alternate employment opportunities, and economies of coastal areas.

(ii) *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. Among other factors that may be considered are the cultural place of subsistence fishing, obligations under Indian treaties, and worldwide nutritional needs.

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

(4) *Specification*. (i) The amount of fish that constitutes the OY need not be expressed in terms of numbers or weight of fish. The economic, social, or ecological modifications to MSY may

be expressed by describing fish having common characteristics, the harvest of which provides the greatest overall benefit to the Nation. For instance, OY may be expressed as a formula that converts periodic stock assessments into quotas or guideline harvest levels for recreational, commercial, and other fishing. OY may be defined in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement. OY may also be expressed as an amount of fish taken only in certain areas, or in certain seasons, or with particular gear, or by a specified amount of fishing effort. In the case of a mixed-species fishery, the incidental-species OY may be a function of the directed catch, or absorbed into an OY for related species.

(ii) If a numerical OY is chosen, a range or average may be specified.

(iii) In a fishery where there is a significant discard component, the OY may either include or exclude discards, consistent with the other yield determinations.

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

(v) The determination of OY requires a specification of MSY. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or 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 make this concept of limited value, the OY should be based on the best scientific information available.

(5) *Analysis.* An FMP must contain an analysis of how its OY specification was determined (section 303(a)(3) of the Magnuson Act). It should relate the explanation of overfishing in paragraph (c) of this section to conditions in the particular fishery, and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. If overfishing is permitted under paragraph (c)(8)

of this section, the analysis must contain a justification in terms of overall benefits and an assessment of the risk of the species or stock component reaching a threatened or endangered status. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate them to arrive at the modification (if any) of MSY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation.

(g) *OY as a target.* (1) The specification of OY in an FMP is not automatically a quota or ceiling, although quotas may be derived from the OY, where appropriate. OY is a target or goal; an FMP must contain conservation and management measures, and provisions for information collection, that are designed to achieve OY. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach, but not to exceed OY by a substantial amount. The Secretary has an obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive, or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification.

(2) Exceeding OY does not necessarily constitute overfishing, although they might coincide. Even if no overfishing resulted, continual harvest at a level above a fixed-value OY would violate National Standard 1, because OY was exceeded (not achieved) on a continuing basis.

(3) Part of the OY may be held as a reserve to allow for uncertainties in estimates of stock size and of DAH or to solve operational problems in achieving (but not exceeding) OY. 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.

(h) *OY and foreign fishing.* Section 201(d) of the Magnuson Act provides that fishing by foreign nations is limited to that portion of the OY that will

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not be harvested by vessels of the United States.

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

(2) *DAP*. Each FMP must identify the capacity of U.S. processors. It must also identify the amount of DAP, which is the sum of two estimates:

(i) The amount of U.S. harvest that domestic processors will process. This estimate may be based on historical performance and on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information.

(ii) The amount of fish that will be harvested by domestic vessels, but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

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

§ 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 and the fishery.

(3) The information submitted by various data suppliers about the stocks(s) throughout its range or about the fishery 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 the most recent biological condition of species in the FMU, and the social and economic condition of the recreational and commercial fishing interests 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.

(i) The Secretary has the responsibility to assure that a SAFE report or

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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 and fishery over time, and assessing the relative success of existing state and Federal fishery management programs. 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 information on which to assess the social and economic condition of the persons and businesses that rely on the use of fish resources, including fish processing industries.

(4) 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.

§ 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 stock(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 con-

cerned 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 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

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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 exists 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.

§ 600.325 National Standard 4—Allocations.

(a) *Standard 4.* Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges

among various U.S. fishermen, such allocation shall be:

(1) Fair and equitable to all such fishermen.

(2) Reasonably calculated to promote conservation.

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

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

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

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

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

(1) *Definition.* An "allocation" or "assignment" of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in

an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

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

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

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

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the

status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered "conservation and management" measures under section 303 of the Magnuson 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.

(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.

§ 600.330 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, promote 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, and marketing, since management decisions affect all three sectors of the industry. The goal of promoting efficient utilization of fishery resources may conflict with other legitimate social or biological objectives of fishery management. In encouraging 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 Act, is a type of allocation of fishing privileges that may be used to promote 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 Act.

(2) *Factors to consider*. The Magnuson 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 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 Act’s limitation on returning economic rent to the public under section 304(d)(1). 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.

§ 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 re-

gime 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

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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 Act does not require Councils to prepare FMPs for each and every fishery—only for those where regulation would serve some useful purpose and where the present or future benefits of regula-

tion 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 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

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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.

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Subpart E—Confidentiality of Statistics

§ 600.405 Types of statistics covered.

NOAA is authorized under the Magnuson 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.

§ 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.

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§ 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 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.

§ 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.

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(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 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 Act, the applicable GIFA, this subpart, and any permit issued under the Magnuson 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.

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(c) *Activity codes.* Permits to fish under a GIFA 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 below. 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

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vessels and any foreign fishing vessels authorized under any activity code under paragraph (c) of this subpart.

(d) *Application.* (1) Applications for FFV permits must be submitted by each foreign nation to the DOS. Application forms are available from OES/OMC, DOS, Washington, DC. The applicant 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 foreign nation may substitute one FFV for another by submitting a new vessel information form and a short explanation of the reason for the substitution to the DOS. 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 DOS has notified the appropriate Council(s) of the substituted application.

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

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

(ii) The foreign nation has paid the fees, including any surcharge fees and provided any assurances required by the Secretary in accordance with the provisions of § 600.518.

(iii) The foreign nation has appointed an agent.

(iv) The foreign nation has identified a designated representative.

(v) The general "conditions and restrictions" of receiving permits, as required by section 204(b)(7) of the Magnuson Act, and any "additional restrictions" attached to the permit for the

conservation and management of fishery resources or to prevent significant impairment of the national defense or security interests, have been accepted by the nation issuing the FFV's documents.

(2) NMFS will distribute blank permit forms to the designated representative while the application is being processed. The designated representative must ensure that each FFV receives a permit form and must accurately transmit the permit form and the contents of the permit to the FFV when it is issued. NMFS may authorize the modification and use of the previous year's permit forms to be used on an interim basis in place of the current year's permit forms if the current forms were not made available to the designated representatives for timely distribution. The FFV owner or operator must accurately complete the permit form prior to fishing in the EEZ.

(3) A completed permit form must contain—

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

(ii) The permitted fisheries and 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 (1) 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

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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 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 Act has become overdue; or as otherwise specified in the Magnuson Act.

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

(k) *Change in application information.* (1) The foreign nation 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.

(2) The Assistant Administrator may make technical modifications or changes in the permit application requested or reported by a Nation, such as a change in radio call sign, processing equipment, or tonnage, which will be effective immediately.

(3) If, in the opinion of the Assistant Administrator, a permit change requested by a Nation could significantly affect the status of any fishery resource, such request will be processed as an application for a new permit under this section.

(4) The Assistant Administrator will notify the designated representative of any revision that must be made on the permit form as the result of a permit change.

(5) The vessel owner or operator must record the modification on the permit form.

(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 per-

mit, 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 (1)(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 (1)(2) through (1)(5) of this section.

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§ 600.502 Vessel reports.

(a) The operator of each FFV must report the FFV's activities within the EEZ 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

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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 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 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 Director, the designated representative may submit weekly reports to some other facility of NMFS.

TABLE 1 TO § 600.502.—ADDRESSES

NMFS regional directors	NMFS science and research directors	U.S. Coast Guard commanders
Director, 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 Street, Woods Hole, MA 02543–1097.	Commander, Atlantic Area, U.S. Coast Guard, 431 Crawford Street, Portsmouth, VA 23704.
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9721 Exec. Center Drive N., St. Petersburg, FL 33702.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149–1003.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York, NY 10004.
Director, 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 Boulevard East, Seattle, WA 98112–2097.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501.
Director, 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.
Director, Southwest Region National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.	Director, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038–0271.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96850.

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

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

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

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

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

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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

§ 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 Act and this subpart.

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(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 Director, 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:

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(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.

§ 600.505 Prohibitions.

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

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(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 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 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 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 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 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 appropriate Regional Director;

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

(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 appli-

cation 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);

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

§ 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 Act, the appropriate Regional 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(i)(2) of the Magnuson 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 Director or Science and Research Director; and also to the Chief, Office of Enforcement, NMFS, Silver Spring, MD, 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 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 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 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 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 or Science and Research Director will assign a supplementary observer to that vessel. The costs of supplementary observers will be paid for

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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 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 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 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 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 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 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 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

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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.

§ 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 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 or 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—PRODUCT" must contain, on a daily basis, for each allocated species caught and product produced—

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(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 informa-

tion 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.

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(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 Director and the USCG commander (see tables 1 and 2 to § 600.502). With the agreement of the USCG commander, the Regional Director may authorize the use of that log format for vessels of the requesting Nation.

§ 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

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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) Each FFV authorized by the Governor of a state under section 306(c) of the Magnuson Act may engage in 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.

§ 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—

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(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 Director is authorized to close a fishery on behalf of NMFS. The Regional Director 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 re-established.

§ 600.512 Scientific research.

(a) *Scientific research activity.* Persons planning to conduct scientific research activities in the EEZ that may be con-

fused with fishing are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required under any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research activity, but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activities. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Reports.* Persons conducting scientific research are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

§ 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

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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 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.

§ 600.516 Total allowable level of foreign fishing (TALFF).

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the OY of such fishery that will not be caught by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF’s will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFF’s at the beginning of the relevant fishing year will be published in the FEDERAL REGISTER. Adjustments to those numbers will be published in the FEDERAL REGISTER upon occasion or as directed by regulations implementing FMPs. For current apportionments, contact the appropriate Regional Director or the Director.

§ 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

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of \$354 per vessel, plus the surcharge, if required under paragraph (e) of this section, rounded to the nearest dollar. At the time the application is submitted to the DOS, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA," must be sent to the Director. The permit fee payment must be accompanied by a list of the vessels for which the payment is made.

(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, plus the surcharge required by paragraph (c) of this section.

TABLE—SPECIES AND POUNDAGE FEES
[Dollars per metric ton, unless otherwise noted]

Species fees	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	163.97
3. Hake, silver	174.63
4. Herring	61.76
5. Mackerel, Atlantic	58.33
6. Other groundfish	119.09
7. Squid, <i>Illex</i>	103.98
8. Squid, <i>Loligo</i>	245.73

(2) *Method of payment of poundage fees, surcharges 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 allocations at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the surcharges and observer fees required by paragraphs (c) and (d) 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 quar-

terly for the actual catch during January through March, April through June, July through September, and October through December. The appropriate Regional Director 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 Director will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Director during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(c) *Surcharges*. The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraph (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has effectively waived the surcharge until further notice.

(d) *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.

(e) *Financial assurances*. (1) A foreign nation, or the owners and operators of certain vessels of that foreign nation,

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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 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.

§ 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 Director 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 Director 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 Director.

(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.

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(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

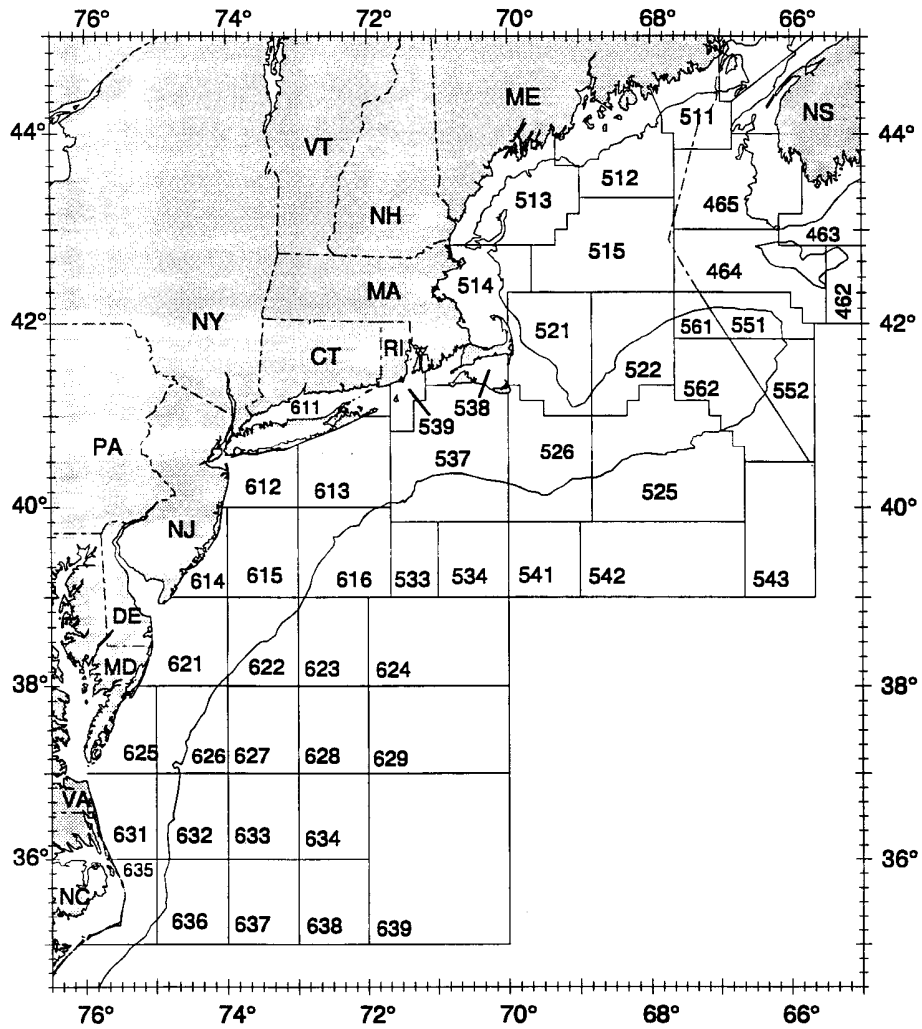
be returned to the sea as required under §600.509.

(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.

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Figure 1 to § 600.520--Fishing Areas of the Northwest Atlantic Ocean Fisheries



§ 600.525 Atlantic herring fishery.

(a) *Initial specifications.* The initial specifications of OY, DAH, DAP, JVP, TALFF, and reserve (if any) have been established by the PMP for Atlantic herring approved on July 6, 1995. These annual specifications will remain in effect unless adjusted pursuant to the provisions specified in paragraph (b) of this section.

(b) *Procedures to adjust initial specifications.* NMFS may adjust these initial specifications upward or downward to produce the greatest overall benefit to the United States at any time prior to or during the fishing years for which the initial specifications are set by publishing notification in the FEDERAL REGISTER with the reasons for such adjustments. Any notice of adjustment may provide for public comment. Adjustments to the initial specifications may take into account the following information:

(1) The estimated domestic processing capacity and extent to which it will be used.;

(2) Landings and catch statistics.;

(3) Stock assessments.

(4) Relevant scientific information.

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

§ 600.605 General policy.

It is the policy of the Secretary that preemption proceedings will be conducted expeditiously. The administrative law judge and counsel or other representative for each party are encouraged to make every effort at each stage of the proceedings to avoid delay.

§ 600.610 Factual findings for Federal preemption.

(a) The two factual findings for Federal preemption of state management authority over a fishery are:

(1) The fishing in a fishery that is covered by an FMP implemented under the Magnuson 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.

§ 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.

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(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(e) of the Magnuson Act.

§ 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.

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§ 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 Act or any other statute administered by NOAA and/or any regulation or permit issued under the Magnuson 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 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 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 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 Act or any other statute administered by NOAA.

(h) Resist a lawful arrest for any act prohibited under the Magnuson 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 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 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) It is prohibited to violate any other provision of this part, the Magnuson Act or any other statute administered by NOAA, any notice issued under this part, or any other regulation promulgated under the Magnuson Act or any other statute administered by NOAA.

§ 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

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boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act or any other statute administered by NOAA and this chapter.

(b) *Communications.* (1) Upon being approached by a USCG vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF-FM radiotelephone is the preferred method for communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. USCG units will normally use the flashing light signal "L" as the signal to stop. In the International Code of Signals, "L" (·-·) means "you should stop your vessel instantly." (Period (·) means a short flash of light; dash (-) means a long flash of light.)

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes prima facie evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Guard Channel 16, VHF-FM, if so equipped.

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his/her party to come aboard.

(3) Except for those vessels with a freeboard of 4 ft (1.2 m) or less, provide

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a safe ladder, if needed, for the authorized officer and his/her party to come aboard.

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

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

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly. (Period (·) means a short flash of light; dash (-) means a long flash of light.)

(1) "AA" repeated (·-·) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (·- ·- — ·- ·- —) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... —·- ...—) means "you should stop or heave to; I am going to board you."

[61 FR 32540, June 24, 1996, as amended at 61 FR 37225, July 17, 1996]

§ 600.735 Penalties.

Any person committing, or fishing vessel used in the commission of a violation of the Magnuson Act or any other statute administered by NOAA and/or any regulation issued under the Magnuson Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act, to this section, to 15 CFR

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part 904 (Civil Procedures), and to other applicable law.

§ 600.740 Enforcement policy.

(a) The Magnuson 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 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 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 Act is used in the commission of an offense prohibited by section 307 of the Magnuson 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 Act requires permit sanctions following the assessment of a civil penalty or the imposition of a criminal fine. In sum, the Magnuson 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.

§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity.* Nothing in this section is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities in the EEZ are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required by any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity or recommend the applicant request an EFP. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activity. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing.*—(1) *General.* A NMFS Regional Director or Director may authorize, for limited testing,

public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Director or Director in accordance with the criteria and procedures specified in this section. The Regional Director 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 Director or Director to find out the applicable fee.

(2) *Application.* An applicant for an EFP shall submit a completed application package to the appropriate Regional Director or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

- (i) The date of the application.
- (ii) The applicant's name, mailing address, and telephone number.
- (iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.
- (iv) For each vessel to be covered by the EFP, as soon as the information is available and before operations begin under the EFP:
 - (A) A copy of the USCG documentation, state license, or registration of each vessel, or the information contained on the appropriate document.
 - (B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on marine mammals or endangered species.

(vi) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(vii) The signature of the applicant.

(viii) The Regional Director 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 Director 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 Director 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 Director or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the FEDERAL REGISTER with a brief description of the proposal, and the intent of NMFS to issue an EFP. Interested persons will be given a 15- to 45-day opportunity to comment and/or comments will be requested during public testimony at a Council meeting. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Director or Director also will forward copies of the application to the Council(s), the USCG, and the appropriate fishery management agencies of

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affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any TAC.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on marine mammals and threatened or endangered species.

(ii) If the application is complete and warrants additional consultation, the Regional Director 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 Director or Regional Director shall notify the applicant in advance of any meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving responses from the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Director or Director shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or threatened or endangered species in a significant way; or

(C) Issuance of the EFP would have economic allocation as its sole purpose; or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Director 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 Director or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing, including, but not limited to:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) The time(s) and place(s) where exempted fishing may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(E) The condition that observers, a vessel monitoring system, or other electronic equipment be carried on board vessels operated under an EFP, and any necessary conditions, such as predeployment notification requirements.

(F) Reasonable data reporting requirements.

(G) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(H) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures at set out in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(5) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* EFPs issued under this section are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(8) *Sanctions.* Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports.* (1) Persons conducting scientific research activity are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

(2) Persons fishing under an EFP are required to report their catches to the appropriate Regional Director or Director, as specified in the EFP.

(d) *Exempted educational activities—*(1) *General.* A NMFS Regional Director or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The decision of a Regional Director 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 Director or Director in accordance with the criteria and procedures specified in this section. Such au-

thorization will be issued without charge.

(2) *Application.* An applicant for an exempted educational activity authorization shall submit to the appropriate Regional Director or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information:

- (i) The date of the application.
- (ii) The applicant's name, mailing address, and telephone number.
- (iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.
- (iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.
- (v) The scope and duration of the activity.
- (vi) For each vessel to be covered by the authorization:
 - (A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.
 - (B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.
- (vii) The species and amounts expected to be caught during the exempted educational activity.
- (viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.
- (ix) The signature of the applicant.
- (x) The Regional Director 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 Director 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,

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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 Director or Director may attach terms and conditions to the authorization, consistent with the purpose of the exempted educational activity, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) The time(s) and place(s) where the exempted educational activity may be conducted.

(C) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(D) Reasonable data reporting requirements.

(E) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(F) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activities as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), species and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration.* Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

(5) *Alteration.* Any authorization that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued or be in possession of the applicant to which it was issued while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of fishing, despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal.

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 61 FR 34934, July 3, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 622.1 Purpose and scope.

(a) The purpose of this part is to implement the FMPs prepared under the Magnuson Act by the CFMC, GMFMC, and/or SAFMC listed in Table 1 of this section.

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, or South Atlantic EEZ, as indicated in Table 1 of this section. For the FMPs noted in the following table, conservation and management extends to adjoining state waters for the purposes of data collection and monitoring:

TABLE 1.—FMPs IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
Atlantic Coast Red Drum FMP	SAFMC	Mid-Atlantic and South Atlantic.
FMP for Coastal Migratory Pelagic Resources.	GMFMC/SAFMC	Gulf, ¹ Mid-Atlantic ^{1,2} and South Atlantic. ^{1,3}
FMP for Coral and Coral Reefs of the Gulf of Mexico.	GMFMC	Gulf.
FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region.	SAFMC	South Atlantic.
FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Golden Crab Fishery of the South Atlantic Region.	SAFMC	South Atlantic
FMP for the Red Drum Fishery of the Gulf of Mexico.	GMFMC	Gulf. ¹
FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Reef Fish Resources of the Gulf of Mexico.	GMFMC	Gulf. ¹
FMP for the Shrimp Fishery of the Gulf of Mexico.	GMFMC	Gulf. ¹
FMP for the Shrimp Fishery of the South Atlantic Region.	SAFMC	South Atlantic.
FMP for the Snapper-Grouper Fishery of the South Atlantic Region.	SAFMC	South Atlantic. ^{1,4}
FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.

¹ Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.

² Only king and Spanish mackerel are managed under the FMP in the Mid-Atlantic.

³ Bluefish are not managed under the FMP in the South Atlantic.

⁴ Bank, rock, and black sea bass and scup are not managed by the FMP or regulated by this part north of 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996]

§ 622.2 Definitions and acronyms.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, and the acronyms in § 600.15 of this chapter, the terms and acronyms

used in this part have the following meanings:

Allowable chemical means a substance, generally used to immobilize marine life so that it can be captured alive, that, when introduced into the water, does not take Gulf and South Atlantic prohibited coral and is allowed by Florida for the harvest of tropical fish (e.g.,

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quinaldine, quinaldine compounds, or similar substances).

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral.

NOTE: An erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, with attached substrate exceeding 1 inch (2.54 cm) is considered to be live rock and not allowable octocoral.

Aquacultured live rock means live rock that is harvested under a Federal aquacultured live rock permit, as required under § 622.4(a)(3)(iii).

Authorized statistical reporting agent means:

(1) Any person so designated by the SRD; or

(2) Any person so designated by the head of any Federal or State agency that has entered into an agreement with the Assistant Administrator to collect fishery data.

Buoy gear means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom. A hook or hooks (usually 6 to 10) are on the lines at or near the end. The float and line(s) drift freely and are retrieved periodically to remove catch and rebait hooks.

Carapace length means the straight-line distance from the orbital notch inside the orbital spine, in a line parallel to the lateral rostral sulcus, to the posterior margin of the cephalothorax. (See Figure 1 in Appendix C of this part.)

Caribbean means the Caribbean Sea around Puerto Rico and the U.S. Virgin Islands.

Caribbean coral reef resource means one or more of the species, or a part thereof, listed in Table 1 in Appendix A of this part, whether living or dead.

Caribbean prohibited coral means, in the Caribbean; a gorgonian, that is, a Caribbean coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Scleractinia, 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,

Order Scleractinia (stony corals) and Antipatharia (black corals); or a part thereof.

Caribbean reef fish means one or more of the species, or a part thereof, listed in Table 2 in Appendix A of this part.

Caribbean spiny lobster means the species *Panulirus argus*, or a part thereof.

CFMC means the Caribbean Fishery Management Council.

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the USCG to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Coastal migratory pelagic fish means one or more of the following species, or a part thereof:

(1) Bluefish, *Pomatomus saltatrix* (Gulf of Mexico only).

(2) Cero, *Scomberomorus regalis*.

(3) Cobia, *Rachycentron canadum*.

(4) Dolphin, *Coryphaena hippurus*

(5) King mackerel, *Scomberomorus cavalla*.

(6) Little tunny, *Euthynnus alletteratus*.

(7) Spanish mackerel, *Scomberomorus maculatus*.

Coral area means marine habitat in the Gulf or South Atlantic EEZ where coral growth abounds, including patch reefs, outer bank reefs, deep water banks, and hard bottoms.

Dealer, in addition to the definition specified in § 600.15 of this chapter, means the person who first receives rock shrimp harvested from the EEZ upon transfer ashore.

Drift gillnet, for the purposes of this part, means a gillnet, other than a run-around gillnet, that is unattached to the ocean bottom, whether or not 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.

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(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*.

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(4) Coral in a coral reef, except for allowable octocoral.

(5) Coral in an HAPC, including allowable octocoral.

HAPC means habitat area of particular concern.

Headboat means a vessel that holds a valid Certificate of Inspection issued by the USCG to carry passengers for hire. A headboat with a commercial vessel permit, as required under § 622.4(a)(2), is considered to be operating as a headboat when it carries a passenger who pays a fee or—

(1) In the case of persons aboard fishing for or possessing South Atlantic snapper-grouper, when there are more persons aboard than the number of crew specified in the vessel's Certificate of Inspection; or

(2) In the case of persons aboard fishing for or possessing coastal migratory pelagic fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

MAFMC means the Mid-Atlantic Fishery Management Council.

Mid-Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter, to the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter.

Migratory group, for king and Spanish mackerel, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King and Spanish mackerel are divided into migratory groups—the Atlantic migratory group and the Gulf migratory group. The boundaries between these groups are as follows:

(1) *King mackerel*—(i) *Summer separation*. From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 25°48' N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary to the outer limit of the EEZ.

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(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 Dade/Monroe County, FL, boundary to the outer limit of the EEZ.

Off Florida means the waters in the Gulf and South Atlantic from 30°42'45.6" N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary, to 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary.

Off Georgia means the waters in the South Atlantic from a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary to 30°42'45.6" N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary.

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 ex-

tension of the boundary between Louisiana and Texas.

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 Director (RD), for the purposes of this part, means the Director, Southeast Region, NMFS (see Table 1 of §600.502 of this chapter).

Run-around gillnet means a gillnet with a float line 1,000 yd (914 m) or less in length that, when used, encloses an area of water.

SAFMC means the South Atlantic Fishery Management Council.

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

Science and Research Director (SRD), for the purposes of this part, means the Science and Research Director, Southeast Fisheries Science Center, NMFS (see Table 1 of §600.502 of this chapter).

Sea bass pot means a trap has six rectangular sides and does not exceed 25 inches (63.5 cm) in height, width, or depth.

Shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Penaeus aztecus*.

(2) Pink shrimp, *Penaeus duorarum*.

(3) Rock shrimp, *Sicyonia brevirostris*.

(4) Royal red shrimp, *Pleoticus robustus*.

(5) Seabob shrimp, *Xiphopenaeus kroyeri*.

(6) White shrimp, *Penaeus setiferus*.

SMZ means special management zone.

South Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the MAFMC and the SAFMC, as specified in §600.105(b) of this chapter, to the

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line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in § 600.105(c) of this chapter.

South Atlantic snapper-grouper means one or more of the species, or a part thereof, listed in Table 4 in Appendix A of this part.

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.

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.

Wild live rock means live rock other than aquacultured live rock.

Wreckfish means the species *Polyprion americanus*, or a part thereof, one of the South Atlantic snapper-grouper species.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 47448, Sept. 9, 1996]

EFFECTIVE DATE NOTE: At 61 FR 47448, Sept. 9, 1996, § 622.2 was amended by adding the definition of "Dealer" effective Oct. 9, 1996.

§ 622.3 Relation to other laws and regulations.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) and (c) of this section.

(b) Except for regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock, this part is intended to apply within the EEZ portions of applicable National Marine Sanctuaries and National Parks, unless the regulations governing such Sanctuaries or Parks prohibit their application. Regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock do not apply within the EEZ portions

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of the following National Marine Sanctuaries and National Parks:

(1) Everglades National Park (36 CFR 7.45).

(2) Looe Key National Marine Sanctuary (15 CFR part 937).

(3) Fort Jefferson National Monument (36 CFR 7.27).

(4) Key Largo Coral Reef National Marine Sanctuary (15 CFR part 929).

(5) Biscayne National Park (16 U.S.C. 410gg).

(6) Gray's Reef National Marine Sanctuary (15 CFR Part 938).

(7) Monitor Marine Sanctuary (15 CFR part 924).

(c) For allowable octocoral, if a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the Gulf or South Atlantic EEZ must comply with the more restrictive state regulation.

(d) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and 600.740 of this chapter, respectively.

(e) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 600.745 of this chapter.

§ 622.4 Permits and fees.

(a) *Permits required.* To conduct activities in fisheries governed in this part, valid Federal permits are required as follows:

(1) *Charter vessel/headboat permits.* For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper in or from the EEZ, a charter vessel/headboat permit for coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper, respectively, must have been issued to the vessel and must be on board. A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or

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headboat, a person aboard must adhere to the bag limits.

(2) *Commercial vessel permits and endorsements*—(i) *Fish traps in the Gulf*. For a person to possess or use a fish trap in the EEZ in the Gulf of Mexico, a commercial vessel permit for Gulf reef fish with a fish trap endorsement must have been issued to the vessel and must be on board. See paragraph (n) of this section regarding a moratorium on fish trap endorsements.

(ii) *Gillnets for king mackerel in the Florida west coast subzone*. For a person aboard a vessel to use a run-around gillnet for king mackerel in the Florida west coast subzone (see § 622.42(c)(1)(i)(A)(3)), a commercial vessel permit for king and Spanish mackerel with a gillnet endorsement must have been issued to the vessel and must be on board. See paragraph (o) of this section for restrictions on addition or deletion of a gillnet endorsement.

(iii) [Reserved]

(iv) *King and Spanish mackerel*. For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king or Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king and Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king and Spanish mackerel, at least 10 percent of the applicant's earned income must have been derived from commercial fishing, that is, sale of fish harvested from the applicant's vessels, during one of the 3 calendar years preceding the application.

(v) *Gulf reef fish*. For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing, that is, sale of fish harvested from the applicant's vessels, or from charter or headboat operations during either of the 2 calendar years preceding the application.

See paragraph (m) of this section regarding a moratorium on commercial vessel permits for Gulf reef fish and paragraph (m)(3) of this section for a limited exception to the earned income requirement for a permit.

(vi) *South Atlantic snapper-grouper*. For a person aboard a vessel to be eligible for exemption from the bag limits for South Atlantic snapper-grouper in or from the South Atlantic EEZ, to engage in the directed fishery for tilefish in the South Atlantic EEZ, to use a longline to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, or to use a sea bass pot in the South Atlantic EEZ north of 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 kilograms) of tilefish aboard is considered to be in the directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 lb of tilefish aboard harvested such tilefish in the EEZ. To obtain or renew a commercial vessel permit for South Atlantic snapper-grouper, more than 50 percent of the applicant's earned income must have been derived from commercial fishing, that is, sale of fish harvested from the applicant's vessels, or from charter or headboat operations; or gross sales of fish harvested from the owner's, operator's, corporation's, or partnership's vessels must have been greater than \$20,000, during one of the 3 calendar years preceding the application.

(vii) *Wreckfish*. For a person aboard a vessel to fish for wreckfish in the South Atlantic EEZ, possess wreckfish in or from the South Atlantic EEZ, off-load wreckfish from the South Atlantic EEZ, or sell wreckfish in or from the South Atlantic EEZ, a commercial vessel permit for wreckfish must have been issued to the vessel and must be on board. To obtain a commercial vessel permit for wreckfish, the applicant must be a wreckfish shareholder; and either the shareholder must be the vessel owner or the owner or operator must be an employee, contractor, or agent of the shareholder. (See § 622.15

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for information on wreckfish shareholders.)

(viii) *South Atlantic rock shrimp*. For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ or possess rock shrimp in or from the South Atlantic EEZ, a commercial vessel permit for rock shrimp must be issued to the vessel and must be on board.

(ix) *Gulf red snapper*. Effective through December 31, 1997, as a prerequisite for exemption from the trip limit for red snapper specified in § 622.44(e)(1), a commercial vessel permit for Gulf reef fish with a red snapper endorsement must have been issued to the vessel and must be on board.

(3) *Coral permits*—(i) *Allowable chemical*. For an individual to take or possess fish or other marine organisms with an allowable chemical in a coral area, other than fish or other marine organisms that are landed in Florida, a Federal allowable chemical permit must have been issued to the individual. Such permit must be available when the permitted activity is being conducted and when such fish or other marine organisms are possessed, through landing ashore.

(ii) *Allowable octocoral*. For an individual to take or possess allowable octocoral in the Gulf or South Atlantic EEZ, other than allowable octocoral that is landed in Florida, a Federal allowable octocoral permit must have been issued to the individual. Such permit must be available for inspection when the permitted activity is being conducted and when allowable octocoral is possessed, through landing ashore.

(iii) *Aquacultured live rock*. For a person to take or possess aquacultured live rock in the Gulf or South Atlantic EEZ, a Federal aquacultured live rock permit must have been issued for the specific harvest site. Such permit, or a copy, must be on board a vessel depositing or possessing material on an aquacultured live rock site or harvesting or possessing live rock from an aquacultured live rock site.

(iv) *Prohibited coral*. A Federal permit may be issued to take or possess Gulf and South Atlantic prohibited coral or Caribbean prohibited coral only as scientific research activity, exempted

fishing, or exempted educational activity. See § 600.745 of this chapter for the procedures and limitations for such activities and fishing.

(v) *Florida permits*. Appropriate Florida permits and endorsements are required for the following activities, without regard to whether they involve activities in the EEZ or Florida's waters:

(A) Landing in Florida fish or other marine organisms taken with an allowable chemical in a coral area.

(B) Landing allowable octocoral in Florida.

(C) Landing live rock in Florida.

(vi) *Wild live rock permits*. A Federal permit is required for a vessel to take or possess wild live rock in or from the Gulf EEZ. To be eligible for a wild live rock vessel permit, the current owner of the vessel for which the permit is requested must have had the required Florida permit and endorsements for live rock on or before February 3, 1994, and a record of landings of live rock on or before February 3, 1994, as documented on trip tickets received by the Florida Department of Environmental Protection before March 15, 1994. For landings other than in Florida, equivalent state permits/endorsements, if required, and landing records may be substituted for the Florida permits/endorsements and trip tickets. An owner will not be issued permits in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings. An owner of a permitted vessel may transfer the vessel permit to another vessel owned by the same person by returning the existing permit with an application for a vessel permit for the replacement vessel. No wild live rock vessel permits will be issued after the quota for wild live rock in the Gulf, as specified in § 622.42(b)(2), is reached or after December 31, 1996.

(4) *Dealer permits*. For a dealer to receive Gulf reef fish, golden crab harvested from the South Atlantic EEZ, South Atlantic snapper-grouper, rock shrimp harvested from the South Atlantic EEZ, or wreckfish, a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, rock shrimp, or wreckfish, respectively, must be issued to the dealer. To obtain

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a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(b) *Applications for permits.* Application forms for all permits are available from the RD. Completed application forms and all required supporting documents must be submitted to the RD 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 traf-

fic, 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

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the vessel owner and of the applicant, if other than the owner.

(D) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(F) If applying for a commercial vessel permit, documentation, as specified in the instructions accompanying each application form, showing that applicable eligibility requirements of paragraph (a)(2) of this section have been met.

(G) If a fish trap or sea bass pot will be used, the number, dimensions, and estimated cubic volume of the traps/pots that will be used and the applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

(c) *Change in application information.* The owner or operator of a vessel with a permit or a dealer with a permit must notify the RD 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 or under § 622.17(d) and for each fish trap or sea bass pot identification tag required under § 622.6(b)(1)(i). The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RD, 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 or request for fish trap/sea bass pot identification tags.

(e) *Initial issuance.* (1) The RD 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 RD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RD's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the vessel or dealership is sold.

(g) *Transfer.* A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish or as provided in paragraph (n) of this section for a fish trap endorsement. A person who acquires a vessel or dealership who desires to conduct activities for which a permit or endorsement is required must apply for a permit or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

(h) *Renewal.* Although a permit required by this section is issued on an annual basis, an application for permit renewal is required only every 2 years. In the interim years, a permit is renewed automatically (without application) for a vessel owner or dealer who has met the specific requirements for the requested permit, who has submitted all reports required under the Magnuson Act, and who is not subject to a permit sanction or denial under paragraph (j) of this section. An owner or dealer whose permit is expiring will be mailed a notification by the RD approximately 2 months prior to expiration of the current permit. That notification will advise the status of the renewal of the permit. That is, the notification will advise that the renewed permit will be issued without further action by the owner or dealer, that the permit is not eligible for automatic renewal, or that a new application is required. A notification that a permit is not eligible for automatic renewal will specify the reasons and will provide an

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opportunity for correction of any deficiencies. A notification that a new application is required will include a preprinted renewal application. An automatically renewed permit will be mailed by the RD approximately 1 month prior to expiration of the old permit. A vessel owner or dealer who does not receive a notification of status of renewal of a permit by 45 days prior to expiration of the current permit must contact the RD.

(i) *Display.* A vessel permit or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. The operator of a vessel must present the permit or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer.

(j) *Sanctions and denials.* A permit or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(k) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(l) *Replacement.* A replacement permit or endorsement may be issued. An application for a replacement permit or endorsement 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.

(m) *Moratorium on commercial vessel permits for Gulf reef fish.* This paragraph (m) is effective through December 31, 2000.

(1) Except for an application for renewal of an existing commercial vessel permit for Gulf reef fish, or as provided in paragraphs (m)(2) and (3) of this section, no applications for such commercial vessel permits will be accepted.

(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 by returning the existing permit to the RD with an application for a commercial vessel permit for the replacement vessel.

(3) An owner whose earned income qualified for the commercial vessel permit for Gulf reef fish may transfer that permit to the owner of another vessel or to the new owner when he or she sells the permitted vessel. The owner of a vessel that is to receive the transferred permit must return the existing permit to the RD with an application for a commercial vessel permit for Gulf reef fish for his or her vessel. Such new owner may receive a commercial vessel permit for Gulf reef fish for that vessel, and renew it for the first calendar year after obtaining it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to renew the commercial vessel permit for the second calendar year after the transfer, the new owner must meet that earned income requirement not later than the first calendar year after the permit transfer takes place.

(4) 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 RD within 1 year of the expiration date of the permit.

(n) *Moratorium on endorsements for fish traps in the Gulf.* The provisions of this paragraph (n) are effective through February 7, 1997.

(1) A fish trap endorsement will not be issued or renewed unless the current owner of the commercially permitted vessel for which the endorsement is requested has a record of landings of Gulf reef fish from fish traps in the Gulf EEZ during 1991 or 1992, as reported on fishing vessel logbooks received by the SRD on or before November 19, 1992. An owner will not be issued fish trap endorsements for vessels in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings in 1991 or 1992.

(2) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by

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the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(3) A fish trap endorsement is not transferable upon change of ownership of a vessel with such endorsement, except as follows:

(i) Such endorsement is transferable when the change of ownership of the permitted vessel is from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(ii) In the event that a vessel with a fish trap endorsement has a change of ownership that is directly related to the disability or death of the owner, the RD may issue such endorsement, temporarily or permanently, with the commercial vessel permit for Gulf reef fish that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial vessel permit for Gulf reef fish upon disability or death of an owner is considered a purchase of a permitted vessel and paragraph (m)(3) of this section applies regarding a commercial vessel permit for Gulf reef fish for the vessel under the new owner.)

(4) A fish trap endorsement in effect on September 12, 1995, may be transferred to a vessel with a commercial vessel permit for Gulf reef fish whose owner has a record of landings of reef fish from fish traps in the Gulf EEZ, as reported on fishing vessel logbooks received by the SRD from November 20, 1992, through February 6, 1994, and who was unable to obtain a fish trap endorsement for such vessel under paragraph (n)(1) of this section. The owner of a vessel that is to receive the transferred endorsement must return the currently endorsed commercial vessel permit for Gulf reef fish and the unendorsed permit to the RD with an application for a fish trap endorsement for his or her vessel. Revised commercial vessel permits will be returned to each owner.

(5) If a fish trap endorsement is transferred under paragraph (n)(3) or

(4) of this section, the owner of the vessel to which the endorsement is transferred may renew the endorsement without regard to the requirement of paragraph (n)(1) of this section regarding a record of landing of Gulf reef fish from fish traps.

(6) A fish trap endorsement that is not renewed or that is revoked will not be reissued. Such endorsement is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

(o) *Endorsements for the use of gillnets for king and Spanish mackerel in the Florida west coast subzone.* Other paragraphs of this section notwithstanding—

(1) An owner of a vessel that has a commercial vessel permit for king and Spanish mackerel may add or delete a gillnet endorsement on a permit by returning to the RD the vessel's existing permit with a written request for addition or deletion of the gillnet endorsement. Such request must be postmarked or hand delivered during June, each year.

(2) A gillnet endorsement may not be added or deleted from July 1 through May 31 each year, any renewal of the permit during that period notwithstanding. From July 1 through May 31, a permitted vessel that is sold, if permitted by the new owner for king and Spanish mackerel, will receive a permit with or without the gillnet endorsement as was the case for the vessel under the previous owner. From July 1 through May 31, the initial commercial vessel permit for king and Spanish mackerel issued for a vessel new to the fishery will be issued without a gillnet endorsement.

(p) *Gulf red snapper endorsements.* This paragraph (p) is effective through December 31, 1997.

(1) Based on documented historical red snapper landings from the Gulf of 5,000 lb (2,269 kg), round weight, or its equivalent in eviscerated weight, per year in 2 of the years 1990, 1991, and 1992, Gulf red snapper endorsements have been issued for vessels that have commercial permits for Gulf reef fish. In cases where a red snapper endorsement is issued based on the qualifications of an operator, the validity of

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that endorsement is conditioned on that named operator being aboard and in charge of the permitted vessel.

(2) A Gulf red snapper endorsement is invalid upon sale of the vessel; however, an owner of a vessel with a red snapper endorsement may transfer the endorsement to another vessel owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(3) Paragraph (p)(2) of this section notwithstanding—

(i) In the event that a vessel with a Gulf red snapper endorsement has a change of ownership that is directly related to the disability or death of the owner, the RD may issue a red snapper endorsement, temporarily or permanently, with the commercial permit for Gulf reef fish that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial vessel permit for Gulf reef fish upon disability or death of an owner is considered a purchase of a permitted vessel and paragraph (m)(3) of this section applies regarding a commercial vessel permit for Gulf reef fish for the vessel under the new owner.)

(ii) In the event of the disability or death of an operator whose presence aboard a vessel is a condition for the validity of a Gulf red snapper endorsement, the RD may revise and reissue an endorsement, temporarily or permanently, to the permitted vessel. Such revised endorsement will contain the name of a substitute operator specified by the operator or his/her legal guardian, in the case of a disabled operator, or by the will or executor/administrator of the estate, in the case of a deceased operator. As was the case with the replaced endorsement, the presence of the substitute operator aboard and in charge of the vessel is a condition for the validity of the revised endorsement. Such revised endorsement will

be reissued only with the concurrence of the vessel owner.

[61 FR 34937, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 47448, Sept. 9, 1996; 61 FR 48414, Sept. 13, 1996]

EFFECTIVE DATE NOTES: 1. At 61 FR 43956, Aug. 27, 1996, § 622.4 was amended by revising the first sentence of paragraph (a)(4), effective Oct. 28, 1996. For the convenience of the user, the superseded text is set forth as follows:

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(a) ***

(4) *** For a dealer to receive Gulf reef fish, South Atlantic snapper-grouper, or wreckfish harvested from the Gulf or South Atlantic EEZ, a dealer permit for Gulf reef fish, South Atlantic snapper-grouper, or wreckfish, respectively, must have been issued to the dealer. ***

* * * * *

2. At 61 FR 47448, Sept. 9, 1996, in § 622.4, paragraph (a)(2)(viii) was added and the first sentence of paragraph (a)(4) was revised effective November 1, 1996. For the convenience of the user, the text in effect from Oct. 28, 1996 to Oct. 31, 1996 is set forth as follows:

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(a) ***

(4) *** For a dealer to receive Gulf reef fish, golden crab harvested from the South Atlantic EEZ, South Atlantic snapper-grouper, or wreckfish, a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, or wreckfish, respectively, must be issued to the dealer. ***

§ 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 or South Atlantic EEZ or adjoining state waters, or whose vessel is issued a commercial permit for king and Spanish mackerel, as required under § 622.4(a)(2)(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.

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(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*. The owner or operator of a vessel that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(iv) *South Atlantic snapper-grouper*. (A) The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), or whose vessel fishes for or lands South Atlantic snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(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 § 622.17(a), who is selected to report by the SRD must maintain a fishing record on a form available from the SRD.

(B) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(C) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required

under § 622.4(a)(2)(vii), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(2) *Reporting deadlines*. (i) Completed fishing records required by paragraphs (a)(1)(i), (ii), and (iv) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(ii) Reporting forms required in paragraph (a)(1)(v) of this section must be submitted to the SRD postmarked not later than 30 days after sale of the golden crab offloaded from a trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Charter vessel/headboat owners and operators*—(1) *Coastal migratory pelagic fish, reef fish, and snapper-grouper*. The owner or operator of a vessel for which a charter vessel/headboat permit for coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, or snapper-grouper in or from state waters adjoining the Gulf or South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(2) *Reporting deadlines*—(i) *Charter vessels*. Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

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(ii) *Headboats*. Completed fishing records required by paragraph (b)(1) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Dealers*—(1) *Coastal migratory pelagic fish*. (i) A person who purchases coastal migratory pelagic fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters who is selected to report by the SRD must submit information on forms provided by the SRD. This information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no coastal migratory pelagic fish were received during a calendar month, a report so stating must be submitted on one of the forms, in accordance with the instructions on the form, and must be postmarked not later than 5 days after the end of the month. The information to be reported is as follows:

(A) Dealer's or processor's name and address.

(B) County where fish were landed.

(C) Total poundage of each species received during that month, or other requested interval.

(D) Average monthly price paid for each species.

(E) Proportion of total poundage landed by each gear type.

(ii) *Alternate SRD*. For the purposes of paragraph (c)(1)(i) of this section, in the states from New York through Virginia, or in the waters off those states, "SRD" means the Science and Research Director, Northeast Fisheries Science Center, NMFS (see Table 1 of § 600.502 of this chapter), or a designee.

(2) *Gulf red drum*. A dealer 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,

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that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide the following information when requested by the SRD:

(i) Name and official number of the vessel from which shrimp were received or the name of the person from whom shrimp were received, if received from other than a vessel.

(ii) Amount of shrimp received by species and size category for each receipt.

(iii) Exvessel value, by species and size category, for each receipt.

(5) *South Atlantic snapper-grouper.* (i) A person who purchases South Atlantic snapper-grouper that were harvested from the EEZ or from adjoining state waters and who is selected to report by the SRD and a dealer who has been issued a dealer permit for wreckfish, as required under § 622.4(a)(4), must provide information on receipts of South Atlantic snapper-grouper and prices paid, by species, on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no South Atlantic snapper-grouper were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month. However, during complete months encompassed by the wreckfish spawning-season closure (that is, February and March), a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

(ii) A dealer reporting South Atlantic snapper-grouper other than wreckfish may submit the information required in paragraph (c)(5)(i) of this section via facsimile (fax).

(iii) A dealer who has been issued a dealer permit for wreckfish, as required under § 622.4(a)(4), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(6) *South Atlantic golden crab.* A dealer who receives from a fishing vessel golden crab harvested from the South Atlantic EEZ and who is selected by the

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SRD must provide information on receipts of, and prices paid for, South Atlantic golden crab to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD.

(7) *South Atlantic rock shrimp.* (i) A dealer who has been issued a permit for rock shrimp, as required under § 622.4(a)(4), and who is selected by the SRD must provide information on receipts of rock shrimp and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(ii) On demand, a dealer who has been issued a dealer permit for rock shrimp, as required under § 622.4(a)(4), must make available to an authorized officer all records of offloadings, purchases, or sales of rock shrimp.

(d) *Individuals with coral or live rock permits.* (1) An individual with a Federal allowable octocoral permit must submit a report of harvest to the SRD. Specific reporting requirements will be provided with the permit.

(2) A person with a Federal aquacultured live rock permit must report to the RD 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 RD. Specific reporting requirements will be provided with the permit. This reporting requirement is waived for aquacultured live rock that is landed in Florida.

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(e) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents and by authorized officers. A person who fishes for or possesses species in or from the EEZ governed in this part is required to make the applicable fish or parts thereof available for inspection by the SRD or an authorized officer upon request.

(f) *Commercial vessel, charter vessel, and headboat inventory.* The owner or operator of a commercial vessel, charter vessel, or headboat operating in a fishery governed in this part who is not selected to report by the SRD under paragraph (a) or (b) of this section must provide the following information when interviewed by the SRD:

- (1) Name and official number of vessel and permit number, if applicable.
- (2) Length and tonnage.
- (3) Current home port.
- (4) Fishing areas.
- (5) Ports where fish were offloaded during the last year.
- (6) Type and quantity of gear.
- (7) Number of full- and part-time fishermen or crew members.

[61 FR 34940, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 47448, Sept. 9, 1996]

EFFECTIVE DATE NOTES: 1. At 61 FR 43956, Aug. 27, 1996, § 622.5 was amended by redesignating the text of paragraph (a)(2) as paragraph (a)(2)(i); the heading of paragraph (a)(2) was revised; and paragraphs (a)(1)(v), (a)(2)(ii), and (c)(6) were added, effective Oct. 28, 1996. For the convenience of the user, the superseded text is set forth as follows:

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(a) * * *

(2) *Reporting deadline.* * * *

* * * * *

2. At 61 FR 47448, Sept. 9, 1996, § 622.5 was amended by adding paragraph (c)(7), effective Nov. 1, 1996.

§ 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 or § 622.17, and a vessel that fishes for or possesses shrimp in the Gulf EEZ, must display its official number—

(A) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(B) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(C) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in height for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) long or less.

(ii) *Official number and color code.* The following vessels must display their official number as specified in paragraph (a)(1)(i) of this section and, in addition, must display their assigned color code: A vessel for which a fish trap endorsement has been issued, as required under § 622.4(a)(2)(i); a vessel for which a permit has been issued to fish with a sea bass pot, as required under § 622.4(a)(2)(vi); a vessel in the commercial Caribbean reef fish fishery fishing with traps; and a vessel in the Caribbean spiny lobster fishery. Color codes required for the Caribbean reef fish fishery and Caribbean spiny lobster fishery are assigned by Puerto Rico or the U.S. Virgin Islands, whichever is applicable; color codes required in all other fisheries are assigned by the RD. 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

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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 or pots*—(i) *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.

(ii) *Gulf and South Atlantic EEZ*. A fish trap used or possessed in the Gulf EEZ and a sea bass pot used or possessed in the South Atlantic EEZ, or a fish trap or sea bass pot on board a vessel with a commercial permit for Gulf reef fish or South Atlantic snapper-grouper, must have a valid identification tag issued by the RD 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 RD may be used for this purpose but is not required.

(2) *Buoys*. A buoy must display the assigned number and color code so as to be easily distinguished, located, and identified as follows—

(i) *Caribbean EEZ*. Each buoy must display the official number and color code specified for the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(ii) *Gulf and South Atlantic EEZ*. Each buoy must display the number and color code assigned by the RD. In the Gulf EEZ, a buoy must be attached to each trap, or each end trap if traps are connected by a line. In the South Atlantic EEZ, buoys are not required to be used, but, if used, each buoy must display the number and color code. However, no color code is required on a buoy attached to a golden crab trap.

(c) *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 RD.

(d) *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 is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43957, Aug. 27, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43957, Aug. 27, 1996, § 622.6 was amended in paragraph (a)(1)(i) introductory text by removing the reference “§ 622.4” and adding the reference “§ 622.4 or § 622.17” in its place; in the first sentence of paragraph (c) and in paragraph (d), the phrase “a golden crab trap,” is added after “a fish trap,”; a sentence is added at the end of paragraph (b)(1)(ii); and a sentence is added at the end of paragraph (b)(2)(ii), effective Oct. 28, 1996.

§ 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 is required under § 622.4 or § 622.17 without such permit.

(b) Falsify information on a permit application or submitted with such application, as specified in § 622.4 (b) or (g) or § 622.17.

(c) Fail to display a permit or endorsement, as specified in § 622.4(i) or § 622.17(g).

(d) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 622.5 (a) through (f).

(e) Fail to make a fish, or parts thereof, available for inspection, as specified in § 622.5(e).

(f) Falsify or fail to display and maintain vessel and gear identification, as specified in § 622.6 (a) and (b).

(g) Fail to comply with any requirement or restriction regarding ITQ coupons, as specified in § 622.15(c)(3), (c)(5), (c)(6), or (c)(7).

(h) Possess wreckfish as specified in § 622.15(c)(4), receive wreckfish except as specified in § 622.15(c)(7), or offload a wreckfish except as specified in § 622.15 (d)(3) and (d)(4).

(i) Transfer—

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(1) A wreckfish, as specified in § 622.15(d)(1);

(2) A limited-harvest species, as specified in § 622.32(c) introductory text;

(3) A species/species group subject to a bag limit, as specified § 622.39(a)(1);

(4) South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in § 622.41(d)(2)(iii); or

(5) A species subject to a commercial trip limit, as specified in § 622.44.

(j) Use or possess prohibited gear or methods or possess fish in association with possession or use of prohibited gear, as specified in § 622.31.

(k) Fish for, harvest, or possess a prohibited species, or a limited-harvest species in excess of its limitation, sell or purchase such species, fail to comply with release requirements, or molest or strip eggs from a Caribbean spiny lobster, as specified in § 622.32.

(l) Fish in violation of the prohibitions, restrictions, and requirements applicable to seasonal and/or area closures, including but not limited to: Prohibition of all fishing, gear restrictions, restrictions on take or retention of fish, fish release requirements, and restrictions on use of an anchor or grapple, as specified in § 622.33, § 622.34, or § 622.35, or as may be specified under § 622.46 (b) or (c).

(m) Harvest, possess, offload, sell, or purchase fish in excess of the seasonal harvest limitations, as specified in § 622.36.

(n) Except as allowed under § 622.37(c) (2) and (3) for king and Spanish mackerel, possess undersized fish, fail to release undersized fish, or sell or purchase undersized fish, as specified in § 622.37.

(o) Fail to maintain a fish intact through offloading ashore, as specified in § 622.38.

(p) Exceed a bag or possession limit, as specified in § 622.39.

(q) Fail to comply with the limitations on traps and pots, including but not limited to: Tending requirements, constructions requirements, and area specific restrictions, as specified in § 622.40.

(r) Fail to comply with the species-specific limitations, as specified in § 622.41.

(s) Fail to comply with the restrictions that apply after closure of a fishery, as specified in § 622.43.

(t) Possess on board a vessel or land, purchase, or sell fish in excess of the commercial trip limits, as specified in § 622.44.

(u) Fail to comply with the restrictions on sale/purchase, as specified in § 622.45.

(v) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 622.46(a).

(w) Fail to comply with the requirements for observer coverage as specified in § 622.10.

(x) Assault, resist, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(y) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

(z) Fish for or possess golden crab in or from a designated fishing zone of the South Atlantic EEZ other than the zone for which the vessel is permitted, as specified in § 622.17(h).

[61 FR 34934, July 3, 1996, as amended at 61 FR 43957, Aug. 27, 1996; 61 FR 48415, Sept. 13, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43957, Aug. 27, 1996, § 622.7 was amended by revising paragraphs (a) and (c) and adding paragraph (z), effective Oct. 28, 1996. For the convenience of the user, the superseded text is set forth as follows:

§ 622.7 Prohibitions.

(a) Engage in an activity for which a valid Federal permit is required under § 622.4 without such permit.

* * * * *

(c) Fail to display a permit or endorsement, as specified in § 622.4(i).

* * * * *

§ 622.8 At-sea observer coverage.

(a) If a vessel's trip is selected by the SRD for observer coverage, the owner or operator of a vessel for which a commercial permit for golden crab has been issued, as required under § 622.17(a), must carry a NMFS-approved observer.

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(b) When notified in writing by the SRD that his or her vessel has been selected to carry an NMFS-approved observer, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time).

(2) Expected landing information (port, dock, and date).

(c) An owner or operator of a vessel on which a NMFS approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

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

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store golden crab.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of golden crab for that trip.

[61 FR 43957, Aug. 27, 1996]

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 RD 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 RD. The RD will confirm, in writing, each transfer of shares. The effective date of each transfer is the confirmation date provided by the RD. 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 RD, 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 RD 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 RD 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 RD 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 RD.

(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 RD 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 RD through February 15. Thus, the ITQs

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will be in terms of eviscerated weight of wreckfish.

(2) The RD will provide each wreckfish shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred from one wreckfish shareholder to another by completing the sale endorsement thereon (that is, the signature and shareholder certificate number of the buyer). An ITQ coupon may be possessed only by the shareholder to whom it has been issued, or by the shareholder's employee, contractor, or agent, unless the ITQ coupon has been transferred to another shareholder. An ITQ coupon that has been transferred to another shareholder may be possessed only by the shareholder whose signature appears on the coupon as the buyer, or by the shareholder's employee, contractor, or agent, and with all required sale endorsements properly completed.

(4) Wreckfish may not be possessed on board a fishing vessel—

(i) In an amount exceeding the total of the ITQ coupons on board the vessel;

(ii) That does not have on board a commercial vessel permit for wreckfish, as required under § 622.4(a)(2)(vii); or

(iii) That does not have on board logbook forms for that fishing trip, as required under § 622.5(a)(1)(iv)(B).

(5) Prior to termination of a trip, a signature and date signed must be affixed in ink to the "Fisherman" part of ITQ coupons in denominations equal to the eviscerated weight of the wreckfish on board. The "Fisherman" part of each such coupon must be separated from the coupon and submitted with the logbook forms required by § 622.5(a)(1)(iv)(B) for that fishing trip.

(6) The "Fish House" part of each such coupon must be given to the dealer to whom the wreckfish are transferred in amounts totaling the eviscerated weight of the wreckfish transferred to that dealer. A wreckfish may be transferred only to a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4).

(7) A dealer may receive a wreckfish only from a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii). A dealer must receive the "Fish House" part of ITQ coupons in amounts totaling the eviscerated weight of the wreckfish received; enter the permit number of the vessel from which the wreckfish were received, enter the date the wreckfish were received, enter the dealer's permit number, and sign each such "Fish House" part; and submit all such parts with the dealer reports required by § 622.5(c)(5)(i).

(8) An owner or operator of a vessel and a dealer must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(d) *Wreckfish limitations.* (1) A wreckfish taken in the South Atlantic EEZ may not be transferred at sea, regardless of where the transfer takes place; and a wreckfish may not be transferred in the South Atlantic EEZ.

(2) A wreckfish possessed by a fisherman or dealer shoreward of the outer boundary of the South Atlantic EEZ or in a South Atlantic coastal state will be presumed to have been harvested from the South Atlantic EEZ unless accompanied by documentation that it was harvested from other than the South Atlantic EEZ.

(3) A wreckfish may be offloaded from a fishing vessel only between 8 a.m. and 5 p.m., local time.

(4) If a wreckfish is to be offloaded at a location other than a fixed facility of a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4), the wreckfish shareholder or the vessel operator must advise the NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, by telephone (1-800-853-1964), of the location not less than 24 hours prior to offloading.

§ 622.16 Red snapper individual transferable quota (ITQ) system.

The ITQ system established by this section will remain in effect through March 31, 2000, during which time NMFS and the GMFMC will evaluate the effectiveness of the system. Based on the evaluation, the system may be modified, extended, or terminated.

(a) *Percentage shares.* (1) Initial percentage shares of the annual quota of red snapper are assigned to persons in accordance with the procedure specified in Amendment 8 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP) and in paragraphs (c)(1) through (c)(4) of this section. Each person is notified by the RD of his or her initial percentage shares. If additional shares become available to NMFS, such as by forfeiture pursuant to subpart F of 15 CFR part 904 for rule violations, such shares will be proportionately reissued to shareholders based on their shares as of November 1, after the additional shares become available. If NMFS is required to issue additional shares, such as may be required in the resolution of disputes, existing shares will be proportionately reduced. This reduction of shares will be based on shares as of November 1 after the required addition of shares.

(2) All or a portion of a person's percentage shares may be transferred to another person who is a U.S. citizen or permanent resident alien. (See paragraph (c)(5) of this section for restrictions on the transfer of shares in the initial months under the ITQ system.) Transfer of shares must be reported on a form available from the RD. The RD will confirm, in writing, the registration of each transfer. The effective date of each transfer is the confirmation date provided by the RD. The confirmation of registration date will normally be not later than 3 working days after receipt of a properly completed transfer form. However, reports of share transfers received by the RD from November 1 through December 31 will not be recorded or confirmed until after January 1. A fee is charged for each transfer of percentage shares. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service provided by NOAA to non-Federal recipients. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(3) On or about January 1 each year, the RD will provide each red snapper

shareholder with a list of all red snapper shareholders and their percentage shares, reflecting share transfers as indicated on properly completed transfer forms received through October 31. Updated lists may be obtained at other times, and by persons who are not red snapper shareholders, by written request to the RD.

(b) *ITQs.* (1) Annually, as soon after November 15 as the following year's red snapper quota is established, the RD will calculate each red snapper shareholder's ITQ in terms of eviscerated weight. Each ITQ is the product of the red snapper quota, in round weight, for the ensuing fishing year, the factor for converting round weight to eviscerated weight, and each red snapper shareholder's percentage share, reflecting share transfers reported on forms received by the RD through October 31.

(2) The RD will provide each red snapper shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred. If the transfer is by sale, the seller must enter the sale price on the coupon.

(4) Except when the red snapper bag limit applies, red snapper in or from the EEZ or on board a vessel that has been issued a commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), may not be possessed in an amount, in eviscerated weight, exceeding the total of ITQ coupons on board. (See § 622.39(a) for applicability of the bag limit.)

(5) Prior to termination of a trip, the operator's signature and the date signed must be written in ink on the "Vessel" part of ITQ coupons totaling at least the eviscerated weight of the red snapper on board. An owner or operator of a vessel must separate the "Vessel" part of each such coupon, enter thereon the permit number of the dealer to whom the red snapper are transferred, and submit the "Vessel" parts with the logbook forms for that fishing trip. An owner or operator of a vessel must make available to an authorized officer all ITQ coupons in his or her possession upon request.

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(6) Red snapper harvested from the EEZ or possessed by a vessel with a commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), may be transferred only to a dealer with a Gulf reef fish permit, as required under § 622.4(a)(4). The “Fish House” part of each ITQ coupon must be given to such dealer, or the agent or employee of such dealer, in amounts totaling at least the eviscerated weight of the red snapper transferred to that dealer.

(7) A dealer with a Gulf reef fish permit may receive red snapper only from a vessel that has on board a commercial permit for Gulf reef fish. A dealer, or the agent or employee of a dealer, must receive the “Fish House” part of ITQ coupons totaling at least the eviscerated weight of the red snapper received. Immediately upon receipt of red snapper, the dealer, or the agent or employee of the dealer, must enter the permit number of the vessel received from and date and sign each such “Fish House” part. The dealer must submit all such parts as required by paragraph (d)(6) of this section. A dealer, agent, or employee must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(c) *Procedures for implementation—(1) Initial shareholders.* The following persons are initial shareholders in the red snapper ITQ system:

(i) Either the owner or operator of a vessel with a valid permit on August 29, 1995, provided such owner or operator had a landing of red snapper during the period 1990 through 1992. If the earned income of an operator was used to qualify for the permit that is valid on August 29, 1995, such operator is the initial shareholder rather than the owner. In the case of an owner, the term “person” includes a corporation or other legal entity; and

(ii) A historical captain. A historical captain means an operator who meets all of the following qualifications:

(A) From November 6, 1989, through 1993, fished solely under verbal or written share agreements with an owner, and such agreements provided for the operator to be responsible for hiring the crew, who was paid from the share under his or her control.

(B) Landed from that vessel at least 5,000 lb (2,268 kg) of red snapper per

year in 2 of the 3 years 1990, 1991, and 1992.

(C) Derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, in each of the years 1989 through 1993.

(D) Landed red snapper prior to November 7, 1989.

(2) *Initial shares.* (i) Initial shares are apportioned to initial shareholders based on each shareholder’s average of the top 2 years’ landings in 1990, 1991, and 1992. However, no person who is an initial shareholder under paragraph (c)(1) of this section will receive an initial percentage share that will amount to less than 100 lb (45.36 kg), round weight, of red snapper (90 lb (41 kg), eviscerated weight).

(ii) The percentage shares remaining after the minimum shares have been calculated under paragraph (c)(2)(i) of this section are apportioned based on each remaining shareholder’s average of the top 2 years’ landings in 1990, 1991, and 1992. In a case where a landing is associated with an owner and a historical captain, such landing is apportioned between the owner and historical captain in accordance with the share agreement in effect at the time of the landing.

(iii) The determinations of landings of red snapper during the period 1990 through 1992 and historical captain status are made in accordance with the data collected under Amendment 9 to the FMP. Those data identify each red snapper landing during the period 1990 through 1992. Each landing is associated with an owner and, when an operator’s earned income was used to qualify for the vessel permit at the time of the landing, with such operator. Where appropriate, a landing is also associated with a historical captain. However, a red snapper landings record during that period that is associated solely with an owner may be retained by that owner or transferred as follows:

(A) An owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, who transferred a vessel permit to another vessel owned by him or her will retain the red snapper landings record for the previous vessel.

(B) An owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, will retain the landings

record of a permitted vessel if the vessel had a change of ownership to another entity without a substantive change in control of the vessel. It will be presumed that there was no substantive change in control of a vessel if a successor in interest received at least a 50 percent interest in the vessel as a result of the change of ownership whether the change of ownership was—

(1) From a closely held corporation to its majority shareholder;

(2) From an individual who became the majority shareholder of a closely held corporation receiving the vessel;

(3) Between closely held corporations with a common majority shareholder; or

(4) From one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(C) In other cases of transfer of a permit through change of ownership of a vessel, an owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, will receive credit for the landings record of the vessel before his or her ownership only if there is a legally binding agreement for transfer of the landings record.

(iv) Requests for transfers of landings records must be submitted to the RD and must be postmarked not later than December 14, 1995. The RD may require documentation supporting such request. After considering requests for transfers of landings records, the RD will advise each initial shareholder or applicant of his or her tentative allocation of shares.

(3) *Notification of status.* The RD will advise each owner, operator, and historical captain for whom NMFS has a record of a red snapper landing during the period 1990 through 1992, including those who submitted such record under Amendment 9 to the FMP, of his or her tentative status as an initial shareholder and the tentative landings record that will be used to calculate his or her initial share.

(4) *Appeals.* (i) A special advisory panel, appointed by the GMFMC to function as an appeals board, will consider written requests from persons who contest their tentative status as an initial shareholder, including historical captain status, or tentative landings record. In addition to consid-

ering written requests, the board may allow personal appearances by such persons before the board.

(ii) The panel is only empowered to consider disputed calculations or determinations based on documentation submitted under Amendment 9 to the FMP regarding landings of red snapper during the period 1990 through 1992, including transfers of such landings records, or regarding historical captain status. In addition, the panel may consider applications and documentation of landings not submitted under Amendment 9 if, in the board's opinion, there is justification for the late application and documentation. The board is not empowered to consider an application from a person who believes he or she should be eligible because of hardship or other factors.

(iii) A written request for consideration by the board must be submitted to the RD, postmarked not later than December 27, 1995, and must contain documentation supporting the allegations that form the basis for the request.

(iv) The board will meet as necessary to consider each request that is submitted in a timely manner. Members of the appeals board will provide their individual recommendations for each appeal to the GMFMC, which will in turn submit its recommendation to the RD. The board and the GMFMC will recommend whether the eligibility criteria, specified in Amendment 8 to the FMP and paragraphs (c)(1) and (c)(2) of this section, were correctly applied in each case, based solely on the available record including documentation submitted by the applicant. The GMFMC will also base its recommendation on the recommendations of the board. The RD will decide the appeal based on the above criteria and the available record, including documentation submitted by the applicant and the recommendation of the GMFMC. The RD will notify the appellant of his decision and the reason therefor, in writing, normally within 45 days of receiving the GMFMC's recommendation. The RD's decision will constitute the final administrative action by NMFS on an appeal.

(v) Upon completion of the appeal process, the RD will issue share certificates to initial shareholders.

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(5) *Transfers of shares.* The following restrictions apply to the transfer of shares:

(i) The transfer of shares is prohibited through September 30, 1996.

(ii) From October 1, 1996, through September 30, 1997, shares may be transferred only to other persons who are initial shareholders and are U.S. citizens or permanent resident aliens.

(d) *Exceptions/additions to general measures.* Other provisions of this part notwithstanding—

(1) Management of the red snapper ITQ system extends to adjoining state waters in the manner stated in paragraphs (d)(2) and (d)(3) of this section.

(2) For a dealer to receive red snapper harvested from state waters adjoining the Gulf EEZ by or possessed on board a vessel with a commercial permit for Gulf reef fish, the dealer permit for Gulf reef fish specified in § 622.4(a)(4) must have been issued to the dealer.

(3) A copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel red snapper from adjoining state waters harvested by or possessed on board a vessel with a commercial permit for Gulf reef fish.

(4) As a condition of a commercial vessel permit for Gulf reef fish, without regard to where red snapper are harvested or possessed, a vessel with such permit must comply with the red snapper ITQ requirements of paragraph (b) of this section; may not transfer or receive red snapper at sea; and must maintain red snapper with head and fins intact through landing, and the exceptions to that requirement contained in § 622.38(d) do not apply to red snapper. Red snapper may be eviscerated, gilled, and scaled but must otherwise be maintained in a whole condition.

(5) As a condition of a dealer permit for Gulf reef fish, as required under § 622.4(a)(4) or under paragraph (d)(2) of this section, without regard to where red snapper are harvested or possessed, a permitted dealer must comply with the red snapper ITQ requirements of paragraph (b) of this section.

(6) In any month that a red snapper is received, a dealer must submit the report required under § 622.5(c)(3)(ii). The "Fish House" parts of red snapper individual transferable coupons, received

during the month in accordance with paragraph (b) of this section, must be submitted to the SRD with the report.

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

(i) Receive red snapper from a fishing vessel without a dealer permit for Gulf reef fish.

(ii) Fail to carry a copy of the dealer's permit, as specified in paragraph (d)(3) of this section.

(iii) Fail to comply with a condition of a permit, as specified in paragraph (d)(4) or (d)(5) of this section.

(iv) Fail to report red snapper received, as specified in paragraph (d)(6) of this section.

EFFECTIVE DATE NOTE: At 61 FR 48415, Sept. 13, 1996, § 622.16 was stayed indefinitely.

§ 622.17 South Atlantic golden crab controlled access.

(a) *Applicability.* 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 or off-loaded from a vessel in the South Atlantic was harvested from the South Atlantic EEZ.

(b) *Initial eligibility.* A vessel is eligible for an initial commercial vessel permit for golden crab if the owner meets the documentation requirements described in paragraph (c) of this section substantiating his or her landings of golden crab harvested from the South Atlantic EEZ in quantities of at least 600 lb (272 kg) by April 7, 1995, or at least 2,500 lb (1,134 kg) by September 1, 1995. Only the owner of a vessel at the time landings occurred may use those landings to meet the eligibility requirements described in this paragraph, except if that owner transferred the right to use those landings to a subsequent owner in writing as part of the vessel's sales agreement. If evidence of such agreement is provided to the RD, the subsequent owner may use those landings to meet the eligibility requirements instead of the owner of

the vessel at the time the landings occurred.

(c) *Documentation of eligibility.* The documentation requirements described in this paragraph are the only acceptable means for an owner to establish a vessel's eligibility for an initial permit. Failure to meet the documentation requirements, including submission of data as required, will result in failure to qualify for an initial commercial vessel permit. Acceptable sources of documentation include: Landings documented by the trip ticket systems of Florida or South Carolina as described in paragraph (c)(1) of this section and data substantiating landings that occurred prior to establishment of the respective trip ticket systems or landings that occurred in North Carolina or Georgia as described in paragraph (c)(2) of this section.

(1) *Trip ticket data.* NMFS has access to records of golden crab landings reported under the trip ticket systems in Florida and South Carolina. No further documentation or submission of these records is required if the applicant was the owner of the harvesting vessel at the time of the landings documented by these records. An applicant will be given printouts of trip ticket records for landings made when the applicant owned the harvesting vessel, and an applicant will have an opportunity to submit records of landings he or she believes should have been included on such printouts or to clarify allocation of landings shown on such printouts. Landings reported under these trip ticket systems and received by the respective states prior to December 31, 1995, with such adjustments/clarifications for landings for which there is adequate documentation that they should have been included on the printouts, are conclusive as to landings in the respective states during the period that landing reports were required or voluntarily submitted by a vessel. For such time periods, landings data from other sources will not be considered for landings in these states.

(2) *Additional landings data.* (i) An owner of a vessel that does not meet the criteria for initial eligibility for a commercial vessel permit based on landings documented by the trip ticket systems of Florida or South Carolina

may submit documentation of required landings that either occurred prior to the implementation of the respective trip ticket systems or occurred in North Carolina or Georgia. Acceptable documentation of such landings consists of trip receipts or dealer records that definitively show the species known as golden crab; the vessel's name, official number, or other reference that clearly identifies the vessel; and dates and amounts of South Atlantic golden crab landings. In addition, a sworn affidavit may be submitted to document landings. A sworn affidavit is a notarized written statement wherein the individual signing the affidavit affirms under penalty of perjury that the information presented is accurate to the best of his or her knowledge, information, and belief.

(ii) Documentation by a combination of trip receipts and dealer records is acceptable, but duplicate records for the same landings will not result in additional credit.

(iii) Additional data submitted under paragraph (c)(2) of this section must be attached to a Golden Crab Landings Data form, which is available from the RD.

(3) *Verification.* Documentation of golden crab landings from the South Atlantic EEZ and other information submitted under this section are subject to verification by comparison with state, Federal, and other records and information. Submission of false documentation or information may disqualify a person from initial participation under the South Atlantic golden crab controlled access program.

(d) *Application procedure.* Permit application forms are available from the RD. An application for an initial commercial vessel permit that is postmarked or hand-delivered after September 26, 1996, will not be accepted.

(1) An application for a commercial vessel permit must be submitted and signed by the vessel owner (in the case of a corporate-owned vessel, an officer or shareholder who meets the requirements of paragraph (b) of this section; in the case of a partnership-owned vessel, a general partner who meets these requirements).

(2) An owner must provide the following:

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(i) A copy of the vessel's valid U.S. Coast Guard certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(ii) Vessel name and official number.

(iii) Name, address, telephone number, and other identifying information of the vessel owner.

(iv) Documentation of initial eligibility, as specified in paragraphs (b) and (c) of this section.

(v) The fishing zone in which the vessel will fish, as specified in paragraph (h) of this section.

(vi) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(vii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(e) *Issuance.* (1) The RD will mail an initial commercial vessel permit to an applicant no later than October 28, 1996, if the application is complete and the eligibility requirements specified in paragraph (b) of this section are met.

(2) Upon receipt of an incomplete application that is postmarked or hand-delivered on or before September 26, 1996, the RD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RD's notification, the application will be considered abandoned.

(3) The RD will notify an applicant, in writing, no later than October 28, 1996, if the RD determines that the applicant fails to meet the eligibility requirements specified in paragraph (b) of this section.

(f) *Appeals.* (1) An appeal of the RD's decision regarding initial permit eligibility may be submitted to an ad hoc appeals committee appointed by the SAFMC.

(2) The appeals committee is empowered only to deliberate whether the eligibility criteria specified in paragraph (b) of this section were applied correctly to the appellant's application. In making that determination, the appeals committee members will consider only disputed calculations and determinations based on documentation pro-

vided as specified in paragraph (c) of this section, including transfers of landings records. The appeals committee is not empowered to consider whether a person should have been eligible for a commercial vessel permit because of hardship or other factors.

(3) A written request for consideration of an appeal must be submitted within 30 days of the date of the RD's notification denying permit issuance and must provide written documentation supporting the basis for the appeal. Such a request must contain the appellant's acknowledgment that the confidentiality provisions of the Magnuson Act at 16 U.S.C. 1853(d) and subpart E of part 600 of this chapter are waived with respect to any information supplied by the RD to the SAFMC and its advisory bodies for purposes of receiving the recommendations of the appeals committee members on the appeal. An appellant may also make a personal appearance before the appeals committee.

(4) The appeals committee will meet only once to consider appeals submitted within the time period specified in paragraph (f)(3) of this section. Members of the appeals committee will provide their individual recommendations for each appeal to the RD. Members of the appeals committee may comment upon whether the eligibility criteria, specified in the FMP and in paragraph (b) of this section, were correctly applied in each case, based solely on the available record, including documentation submitted by the appellant. The RD will decide the appeal based on the initial eligibility criteria in paragraph (b) of this section and the available record, including documentation submitted by the appellant and the recommendations and comments from members of the appeals committee. The RD will notify the appellant of the decision and the reason therefore, in writing, normally within 30 days of receiving the recommendation from the appeals committee members. The RD's decision will constitute the final administrative action by NMFS on an appeal.

(g) *Display.* A commercial vessel permit issued under this section must be carried on board the vessel. The operator of a vessel must present the permit

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for inspection upon the request of an authorized officer.

(h) *Fishing zones.* (1) The South Atlantic EEZ is divided into three fishing zones for golden crab. A vessel owner must indicate on the initial application for a commercial vessel permit the zone in which the vessel will fish. A permitted vessel may fish for golden crab only in the zone shown on its permit. A vessel may possess golden crab only in that zone, except that other zones may be transited if the vessel notifies NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, by telephone (813-570-5344) in advance and does not fish in an unpermitted zone. The designated fishing zones are as follows:

(i) Northern zone—the South Atlantic EEZ north of 28° N. lat.

(ii) Middle zone—the South Atlantic EEZ from 25° N. lat. to 28° N. lat.

(iii) Southern zone—the South Atlantic EEZ south of 25° N. lat.

(2) An owner of a permitted vessel may have the zone specified on a permit changed only when the change is from the middle or southern zone to the northern zone. A request for such change must be submitted to the RD with the existing permit.

(i) *Transfer.* (1) A valid golden crab permit may be transferred for use by another vessel by returning the existing permit(s) to the RD along with an application for a permit for the replacement vessel.

(2) To obtain a commercial vessel permit via transfer, the owner of the replacement vessel must submit to the RD a valid permit for a vessel with a documented length overall, or permits for vessels with documented aggregate lengths overall, of at least 90 percent of the documented length overall of the replacement vessel.

(j) *Renewal.* (1) In addition to the procedures and requirements of § 622.4(h) for commercial vessel permit renewals, for a golden crab permit to be renewed, the SRD must have received reports for the permitted vessel, as required by § 622.5(a)(1)(v), documenting that at least 5,000 lb (2,268 kg) of golden crab were landed from the South Atlantic EEZ by the permitted vessel during at least one of the two 12-month periods

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immediately prior to the expiration date of the vessel permit.

(2) An existing permit for a vessel meeting the minimum golden crab landing requirement specified in paragraph (j)(1) of this section may be renewed by following the procedure specified in paragraph (d) of this section. However, documentation of the vessel's initial eligibility need not be resubmitted.

[61 FR 43957, 43959, Aug. 27, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43959, Aug. 27, 1996, § 622.17 was amended by adding paragraphs (a), (g), (i), and (j), effective Oct. 28, 1996.

Subpart C—Management Measures

§ 622.30 Fishing years.

The fishing year for species or species groups governed in this part is January 1 through December 31 except for the following:

(a) *Allowable octocoral*—October 1 through September 30.

(b) *King and Spanish mackerel.* The fishing year for the king and Spanish mackerel bag limits specified in § 622.39(c)(1) is January 1 through December 31. The following fishing years apply only for the king and Spanish mackerel quotas specified in § 622.42(c):

(1) *Gulf migratory group king mackerel*—July 1 through June 30.

(2) *All other migratory groups of king and Spanish mackerel*—April 1 through March 31.

(c) *Wreckfish*—April 16 through April 15.

§ 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.

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(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 in the South Atlantic EEZ. A fish trap deployed in the South Atlantic EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(d) *Gillnets.* A gillnet that has a float line that is more than 1,000 yd (914 m) in length or a drift gillnet may not be used in the Gulf, Mid-Atlantic, or South Atlantic EEZ to fish for king or Spanish mackerel; in the Gulf or South Atlantic EEZ to fish for coastal migratory pelagic fish, other than bluefish; or in the Gulf EEZ to fish for bluefish. A vessel in, or having fished on a trip in, the Gulf, Mid-Atlantic, or South Atlantic EEZ with such a gillnet or a drift gillnet on board may not have on board on that trip any of the indicated fish.

(e) *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.

(f) *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.

(g) *Power-assisted tools.* A power-assisted tool may not be used in the Caribbean EEZ to take a Caribbean coral reef resource or in the Gulf or South Atlantic EEZ to take allowable octocoral, prohibited coral, or live rock.

(h) *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.

(i) *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.

(j) *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.

(k) *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.

§ 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

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Caribbean EEZ is not considered unlawful possession provided it is returned immediately to the sea in the general area of fishing.

(ii) Four-eye, banded, and longsnout butterflyfish; jewfish; Nassau grouper; and seahorses may not be harvested or possessed in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released immediately with a minimum of harm.

(iii) Egg-bearing spiny lobster in the Caribbean EEZ must be returned to the water unharmed. An egg-bearing spiny lobster may be retained in a trap, provided the trap is returned immediately to the water. An egg-bearing spiny lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(2) *Gulf.* (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the Gulf EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Jewfish may not be harvested or possessed in or from the Gulf EEZ.

(iii) Red drum may not be harvested or possessed in or from the Gulf EEZ. Red drum caught in the Gulf EEZ must be released immediately with a minimum of harm.

(3) *Mid-Atlantic.* Red drum may not be harvested or possessed in or from the Mid-Atlantic EEZ south of a line extending in a direction of 115° from true north commencing at a point at 40°29.6' N. lat., 73°54.1' W. long., such point being the intersection of the New Jersey/New York boundary with the 3-nm line denoting the seaward limit of state waters. Red drum caught in such portion of the Mid-Atlantic EEZ must be released immediately with a minimum of harm.

(4) *South Atlantic.* (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the South Atlantic EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited

coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Jewfish and Nassau grouper may not be harvested or possessed in or from the South Atlantic EEZ. Jewfish and Nassau grouper taken in the South Atlantic EEZ incidentally by hook-and-line must be released immediately by cutting the line without removing the fish from the water.

(iii) Red drum may not be harvested or possessed in or from the South Atlantic EEZ. Red drum caught in the South Atlantic EEZ must be released immediately with a minimum of harm.

(iv) Wild live rock may not be harvested or possessed in the South Atlantic EEZ.

(v) It is intended that no female golden crabs in or from the South Atlantic EEZ be retained on board a vessel and that any female golden crab in or from the South Atlantic EEZ be released in a manner that will ensure maximum probability of survival. However, to accommodate legitimate incidental catch and retention, the number of female golden crabs in or from the South Atlantic EEZ retained on board a vessel may not exceed 0.5 percent, by number, of all golden crabs on board. See § 622.45(f)(1) regarding the prohibition of sale of female golden crabs.

(vi) South Atlantic snapper-grouper may not be possessed in whole, gutted, or filleted form by a person aboard a vessel fishing for or possessing golden crab in or from the South Atlantic EEZ or possessing a golden crab trap in the South Atlantic. Only the head, fins, and backbone (collectively the "rack") of South Atlantic snapper-grouper may be possessed for use as bait.

(c) *Limited-harvest species.* A person who fishes in the EEZ may not combine a harvest limitation specified in this paragraph (c) with a harvest limitation applicable to state waters. A species subject to a harvest limitation specified in this paragraph (c) taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ.

(1) *Cobia.* No person may possess more than two cobia per day in or from

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the Gulf or South Atlantic EEZ, regardless of the number of trips or duration of a trip.

(2) *Cubera snapper*. No person may harvest more than two cubera snapper measuring 30 inches (76.2 cm), TL, or larger, per day in the South Atlantic EEZ off Florida and no more than two such cubera snapper in or from the South Atlantic EEZ off Florida may be possessed on board a vessel at any time.

(3) *Speckled hind and warsaw grouper*. The possession of speckled hind and warsaw grouper in or from the South Atlantic EEZ is limited to one of each per vessel per trip.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996]

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Mutton snapper spawning aggregation area*. From March 1 through June 30, each year, fishing is prohibited in the area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	17°37.9'	64°52.6'
B	17°38.2'	64°52.1'
C	17°38.3'	64°51.8'
D	17°38.1'	64°51.4'
A	17°37.9'	64°52.6'

(b) *Red hind spawning aggregation areas*. From December 1 through February 28, each year, fishing is prohibited in the following three areas. Each area is bounded by rhumb lines connecting, in order, the points listed.

(1) *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'

(2) *South of St. Thomas*.

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'

(3) *West of Puerto Rico*.

Point	North lat.	West long.
A	18°11.0'	67°25.5'
B	18°11.0'	67°20.4'
C	18°08.0'	67°20.4'
D	18°08.0'	67°25.5'
A	18°11.0'	67°25.5'

§ 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

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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, and shown in Figures 1 and 2, in Appendix B of this part.

(d) *Riley's Hump seasonal closure.* From May 1 through June 30, each year, fishing is prohibited in the following area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°32.2'	83°08.7'
B	24°32.2'	83°05.2'
C	24°28.7'	83°05.2'
D	24°28.7'	83°08.7'
A	24°32.2'	83°08.7'

(e) *Shrimp/stone crab separation zones.* Five zones are established in the Gulf EEZ and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. Although Zone II is entirely within Florida's waters, it is included in this paragraph (e) for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. Geographical coordinates of the points referred to in this paragraph (e) are as follows:

Point	North lat.	West long.
A	28°59'30"	82°45'36"
B	28°59'30"	83°00'10"
C	28°26'01"	82°59'47"
D	28°26'01"	82°56'54"
E	28°41'39"	82°55'25"
F	28°41'39"	82°56'09"
G	28°48'56"	82°56'19"
H	28°53'51"	82°51'19"
I ¹	28°54'43"	82°44'52"
J ²	28°51'09"	82°44'00"
K	28°50'59"	82°54'16"
L	28°41'39"	82°53'56"
M ³	28°41'39"	82°38'46"
N	28°41'39"	82°53'12"
O	28°30'51"	82°55'11"
P	28°40'00"	82°53'08"
Q	28°40'00"	82°47'58"
R	28°35'14"	82°47'47"
S	28°30'51"	82°52'55"
T	28°27'46"	82°55'09"
U	28°30'51"	82°52'09"

¹Crystal River Entrance Light 1A.

²Long Pt. (southwest tip).

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³Shoreline.

(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 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'

¹On 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

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order, the points listed in Table 2, and shown in Figures 3 and 4, 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.

(2) A roller trawl may not be used in the stressed area. Roller trawl means a trawl net equipped with a series of large, solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, that is, in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

(3) A fish trap may not be used in the stressed area. A fish trap used in the stressed area will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Assistant Administrator (including an authorized officer).

(h) *Texas closure.* (1) From 30 minutes after sunset on May 15 to 30 minutes after 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 RD 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 Flor-

ida shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
N ¹	25°52.9'	81°37.9'
F	25°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'	81°08.0'

¹ Coon Key Light.

² New Ground Rocks Light.

³ Rebecca Shoal Light.

⁴ Marquesas 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.

(3) Effective from May 26 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point F, as specified in paragraph (i)(1) of this section, to point Q at 24°46.7' N. lat., 81°52.2' W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (i)(2)(i) of this section.

(j) *West and East Flower Garden Banks HAPC.* Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited year-round in the HAPC. The West and East Flower Garden Banks are geographically centered at

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27°52'14.21" N. lat., 93°48'54.79" W. long. and 27°55'07.44" N. lat., 93°36'08.49" W. long., respectively. The HAPC extends from these centers to the 50-fathom (300-ft) (91.4-m) isobath.

(k) *Wild live rock area closures.* No person may harvest or possess wild live rock in the Gulf EEZ—

(1) North and west of a line extending in a direction of 235° from true north from a point at the mouth of the Suwannee River at 29°17.25' N. lat., 83°09.9' W. long. (the Levy/Dixie County, FL, boundary); or

(2) South of 25°20.4' N. lat. (due west from the Monroe/Collier County, FL, boundary).

(l) *1997 closure of the commercial fishery for red snapper.* From January 1 through 31, 1997, the possession of red snapper in or from the Gulf EEZ and on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1).

[61 FR 34934, July 3, 1996, as amended at 61 FR 48642, Sept. 16, 1996]

EFFECTIVE DATE NOTE: At 61 FR 48642, Sept. 16, 1996, § 622.34 was amended by adding paragraph (l), effective Oct. 16, 1996.

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

(a) *Allowable octocoral closed area.* No person may harvest or possess allowable octocoral in the South Atlantic EEZ north of 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL).

(b) *Longline closed areas.* A longline may not be used to fish in the EEZ for South Atlantic snapper-grouper south of 27°10' N. lat. (due east of the entrance to St. Lucie Inlet, FL); or north of 27°10' N. lat. where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location. A person aboard a vessel with a longline on board that fishes on a trip in the South Atlantic EEZ south of 27°10' N. lat., or north of 27°10' N. lat. where the

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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 HAPC.* The Oculina Bank HAPC 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. In the Oculina Bank HAPC:

(1) Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited.

(2) A fishing vessel may not anchor, use an anchor and chain, or use a grapple and chain.

(3) No fishing for South Atlantic snapper-grouper is allowed, and South Atlantic snapper-grouper may not be retained, in or from the HAPC. South Atlantic snapper-grouper taken incidentally in the HAPC 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.

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(2) During a closure, as specified in paragraph (d)(1) of this section—

(i) No person may trawl for brown shrimp, pink shrimp, or white shrimp in the closed portion of the EEZ (closed area); and no person may possess on board a fishing vessel brown shrimp, pink shrimp, or white shrimp in or from a closed area, except as authorized in paragraph (d)(2)(iii) of this section.

(ii) No person aboard a vessel trawling in that part of a closed area that is within 25 nm of the baseline from which the territorial sea is measured may use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

(iii) Brown shrimp, pink shrimp, or white shrimp may be possessed on board a fishing vessel in a closed area, provided the vessel is in transit and all trawl nets with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, are stowed below deck while transiting the closed area. For the purpose of this paragraph, a vessel is in transit when it is on a direct and continuous course through a closed area.

(e) SMZs. (1) The SMZs consist of artificial reefs and surrounding areas as follows:

(i) *Paradise Reef* is bounded on the north by 33°31.59' N. lat.; on the south by 33°30.51' N. lat.; on the east by 78°57.55' W. long.; and on the west by 78°58.85' W. long.

(ii) *Ten Mile Reef* is bounded on the north by 33°26.65' N. lat.; on the south by 33°24.80' N. lat.; on the east by 78°51.08' W. long.; and on the west by 78°52.97' W. long.

(iii) *Pawleys Island Reef* is bounded on the north by 33°26.58' N. lat.; on the south by 33°25.76' N. lat.; on the east by 79°00.29' W. long.; and on the west by 79°01.24' W. long.

(iv) *Georgetown Reef* is bounded on the north by 33°14.90' N. lat.; on the south by 33°13.85' N. lat.; on the east by 78°59.45' W. long.; and on the west by 79°00.65' W. long.

(v) *Capers Reef* is bounded on the north by 32°45.45' N. lat.; on the south by 32°43.91' N. lat.; on the east by

79°33.81' W. long.; and on the west by 79°35.10' W. long.

(vi) *Kiawah Reef* is bounded on the north by 32°29.78' N. lat.; on the south by 32°28.25' N. lat.; on the east by 79°59.00' W. long.; and on the west by 80°00.95' W. long.

(vii) *Edisto Offshore Reef* is bounded on the north by 32°15.30' N. lat.; on the south by 32°13.90' N. lat.; on the east by 79°50.25' W. long.; and on the west by 79°51.45' W. long.

(viii) *Hunting Island Reef* is bounded on the north by 32°13.72' N. lat.; on the south by 32°12.30' N. lat.; on the east by 80°19.23' W. long.; and on the west by 80°21.00' W. long.

(ix) *Fripp Island Reef* is bounded on the north by 32°15.92' N. lat.; on the south by 32°14.75' N. lat.; on the east by 80°21.62' W. long.; and on the west by 80°22.90' W. long.

(x) *Betsy Ross Reef* is bounded on the north by 32°03.60' N. lat.; on the south by 32°02.88' N. lat.; on the east by 80°24.57' W. long.; and on the west by 80°25.50' W. long.

(xi) *Hilton Head Reef/Artificial Reef—T* is bounded on the north by 32°00.71' N. lat.; on the south by 31°59.42' N. lat.; on the east by 80°35.23' W. long.; and on the west by 80°36.37' W. long.

(xii) *Artificial Reef—A* is bounded on the north by 30°56.4' N. lat.; on the south by 30°55.2' N. lat.; on the east by 81°15.4' W. long.; and on the west by 81°16.5' W. long.

(xiii) *Artificial Reef—C* is bounded on the north by 30°51.4' N. lat.; on the south by 30°50.1' N. lat.; on the east by 81°09.1' W. long.; and on the west by 81°10.4' W. long.

(xiv) *Artificial Reef—G* is bounded on the north by 30°59.1' N. lat.; on the south by 30°57.8' N. lat.; on the east by 80°57.7' W. long.; and on the west by 80°59.2' W. long.

(xv) *Artificial Reef—F* is bounded on the north by 31°06.6' N. lat.; on the south by 31°05.6' N. lat.; on the east by 81°11.4' W. long.; and on the west by 81°13.3' W. long.

(xvi) *Artificial Reef—J* is bounded on the north by 31°36.7' N. lat.; on the south by 31°35.7' N. lat.; on the east by 80°47.0' W. long.; and on the west by 80°48.1' W. long.

(xvii) *Artificial Reef—L* is bounded on the north by 31°46.2' N. lat.; on the

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south by 31°45.1' N. lat.; on the east by 80°35.8' W. long.; and on the west by 80°37.1' W. long.

(xviii) *Artificial Reef—KC* is bounded on the north by 31°51.2' N. lat.; on the south by 31°50.3' N. lat.; on the east by 80°46.0' W. long.; and on the west by 80°47.2' W. long.

(xix) *Ft. Pierce Inshore Reef* is bounded on the north by 27°26.8' N. lat.; on the south by 27°25.8' N. lat.; on the east by 80°09.24' W. long.; and on the west by 80°10.36' W. long.

(xx) *Ft. Pierce Offshore Reef* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°23.68'	80°03.95'
B	27°22.80'	80°03.60'
C	27°23.94'	80°00.02'
D	27°24.85'	80°00.33'
A	27°23.68'	80°03.95'

(xxi) *Key Biscayne/Artificial Reef—H* is bounded on the north by 25°42.82' N. lat.; on the south by 25°41.32' N. lat.; on the east by 80°04.22' W. long.; and on the west by 80°05.53' W. long.

(xxii) *Little River Offshore Reef* is bounded on the north by 33°42.10' N. lat.; on the south by 33°41.10' N. lat.; on the east by 78°26.40' W. long.; and on the west by 78°27.10' W. long.

(xxiii) *BP-25 Reef* is bounded on the north by 33°21.70' N. lat.; on the south by 33°20.70' N. lat.; on the east by 78°24.80' W. long.; and on the west by 78°25.60' W. long.

(xxiv) *Vermilion Reef* is bounded on the north by 32°57.80' N. lat.; on the south by 32°57.30' N. lat.; on the east by 78°39.30' W. long.; and on the west by 78°40.10' W. long.

(xxv) *Cape Romaine Reef* is bounded on the north by 33°00.00' N. lat.; on the south by 32°59.50' N. lat.; on the east by 79°02.01' W. long.; and on the west by 79°02.62' W. long.

(xxvi) *Y-73 Reef* is bounded on the north by 32°33.20' N. lat.; on the south by 32°32.70' N. lat.; on the east by 79°19.10' W. long.; and on the west by 79°19.70' W. long.

(xxvii) *Eagles Nest Reef* is bounded on the north by 32°01.48' N. lat.; on the south by 32°00.98' N. lat.; on the east by 80°30.00' W. long.; and on the west by 80°30.65' W. long.

(xxviii) *Bill Perry Jr. Reef* is bounded on the north by 33°26.20' N. lat.; on the south by 33°25.20' N. lat.; on the east by 78°32.70' W. long.; and on the west by 78°33.80' W. long.

(xxix) *Comanche Reef* is bounded on the north by 32°27.40' N. lat.; on the south by 32°26.90' N. lat.; on the east by 79°18.80' W. long.; and on the west by 79°19.60' W. long.

(2) The use of a sea bass pot or a bottom longline is prohibited in each of the SMZs. The following additional restrictions apply in the indicated SMZs:

(i) In SMZs specified in paragraphs (e)(1) (i) through (xviii) and (e)(1) (xxii) through (xxix) of this section, the use of a gillnet or a trawl is prohibited; and fishing may be conducted only with hand-held hook-and-line gear (including a manual, electric, or hydraulic rod and reel) and spearfishing gear.

(ii) In SMZs specified in paragraphs (e)(1) (xix) and (xx) of this section, a hydraulic or electric reel that is permanently affixed to the vessel is prohibited when fishing for South Atlantic snapper-grouper.

(iii) In the SMZs specified in paragraphs (e)(1) (xix) and (xxi) of this section, the use of spearfishing gear is prohibited.

(iv) In the SMZs specified in paragraphs (e)(1)(i) through (x) and (e)(1) (xxii) through (xxix) of this section, a powerhead may not be used to take South Atlantic snapper-grouper. Possession of a powerhead and a mutilated South Atlantic snapper-grouper in one of the specified SMZs, or after having fished in one of the SMZs, constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ.

(f) *Golden crab trap closed areas.* In the golden crab northern zone, a golden crab trap may not be deployed in waters less than 900 ft (274 m) deep. In the golden crab middle and southern zones, a golden crab trap may not be deployed in waters less than 700 ft (213 m) deep. See § 622.17(h) for specification of the golden crab zones.

(g) *Rock shrimp closed area.* No person may trawl for rock shrimp in the area east of 80°00' W. long. between 27°30' N. lat. and 28°30' N. lat. shoreward of the 100-fathom (183-m) contour, as shown on the latest edition of NOAA chart 11460; and no person may possess rock

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shrimp in or from this area on board a fishing vessel.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996; 61 FR 47449, Sept. 9, 1996]

EFFECTIVE DATE NOTE: At 61 FR 47449, Sept. 9, 1996, § 622.35 was amended by adding paragraph (g), effective Oct. 9, 1996.

§ 622.36 Seasonal harvest limitations.

The following limitations apply in the South Atlantic EEZ:

(a) *Greater amberjack spawning season.* During April, each year, south of 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), the possession of greater amberjack in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to three per person during a single day, regardless of the number of trips or the duration of a trip.

(b) *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 during a single day, regardless of the number of trips or the duration of a trip.

(c) *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.

§ 622.37 Minimum sizes.

Except for undersized king and Spanish mackerel allowed in paragraphs (c)(2) and (3) of this section, a fish smaller than its minimum size, 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. An undersized fish 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 no smaller than the minimum 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 or South Atlantic—33 inches (83.8 cm), fork length.

(2) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—20 inches (30.5 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) Black sea bass and lane and vermilion snappers—8 inches (20.3 cm), TL.

(2) Gray, mutton, and yellowtail snappers—12 inches (30.5 cm), TL.

(3) Red snapper—

(i) Effective through December 31, 1997—15 inches (38.1 cm), TL;

(ii) Effective January 1, 1998—16 inches (40.6 cm), TL.

(4) Black, red, Nassau, and yellowfin groupers and gag—20 inches, (50.8 cm), TL.

(5) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(i) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

(e) *South Atlantic snapper-grouper.* (1) Black sea bass and lane snapper—8 inches (20.3 cm), TL.

(2) Vermilion snapper—10 inches (25.4 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(v) and 12 inches (30.5 cm), TL, for a fish taken by a person not subject to the bag limit.

(3) Blackfin, cubera, dog, gray, mahogany, queen, silk, and yellowtail snappers; schoolmaster; and red porgy—12 inches (30.5 cm), TL.

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(4) Gray triggerfish in the South Atlantic EEZ off Florida—12 inches (30.5 cm), TL.

(5) Hogfish—12 inches (30.5 cm), fork length.

(6) Mutton snapper—16 inches (40.6 cm), TL.

(7) Black, red, yellowfin, and yellowmouth grouper; scamp; gag; and red snapper—20 inches (50.8 cm), TL.

(8) 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, or, if the head is removed, 28 inches (71.1 cm), measured from the center edge at the deheaded end to the fork of the tail, for a fish taken by a person not subject to the bag limit. (See Figure 2 in Appendix C of this part for deheaded fish length measurement.)

(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.

§ 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: A cobia in or from the Gulf or South Atlantic EEZ; a king mackerel or Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ; a South Atlantic snapper-grouper in or from the South Atlantic EEZ; a yellowtail snapper in or from the Caribbean EEZ; and, except as specified in paragraphs (c), (d), and (e) of this section, a finfish in or from the Gulf EEZ. 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:

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(1) Bait is exempt from the requirement to be maintained with head and fins intact.

(i) For the purpose of this paragraph (d)(1), bait means—

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated;

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 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 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) In the South Atlantic EEZ, a greater amberjack on or offloaded ashore from a vessel that has a permit specified in § 622.4(a)(2)(vi) may be deheaded and eviscerated, but must otherwise be maintained in a whole condition through offloading ashore.

(f) 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.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996]

§ 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. Bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Possession limits apply to a person on a trip after the

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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.

(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.

(b) *Gulf reef fish*—(1) *Bag limits*. (i) Greater amberjack—3.

(ii) Groupers, combined, excluding jewfish—5.

(iii) Red snapper—5.

(iv) Snappers, combined, excluding red, lane, and vermilion snapper—10.

(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.

(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—10.

(iv) Gulf migratory group Spanish mackerel—

(A) Off Louisiana, Mississippi, and Alabama—10.

(B) Off Florida—10, which is the daily bag limit specified by Florida for its waters (Rule 46-23.005(1), Florida Administrative Code). If Florida changes its limit, the bag limit specified in this paragraph (c)(1)(iv)(B) will be changed to conform to Florida's limit, provided such limit does not exceed 10.

(C) Off Texas—7, which is the daily bag limit specified by Texas for its waters (Rule 31-65.72(c)(4)(A), Texas Administrative Code). If Texas changes its limit, the bag limit specified in this paragraph (c)(1)(iv)(C) will be changed to conform to Texas' limit, provided such limit does not exceed 10.

(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

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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—3.

(ii) Groupers, combined, excluding jewfish and Nassau grouper, and tilefishes—5.

(iii) Hogfish in the South Atlantic off Florida—5.

(iv) Snappers, combined, excluding cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and excluding vermilion snapper—10, of which no more than 2 may be red snapper. (See § 622.32(c)(2) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

(v) Vermilion snapper—10.

(2) *Possession limits.* Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

(i) 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.

(ii) 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.

(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.

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§ 622.40 Limitations on traps and pots.

(a) *Tending*—(1) *Caribbean EEZ.* A fish trap or Caribbean spiny lobster trap in the Caribbean EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the fish trap or spiny lobster trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

(2) *Gulf EEZ.* A fish trap in the Gulf EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel with the fish trap endorsement to fish such trap or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so endorsed. Such written consent is valid solely for the removal of fish traps from the EEZ, and harvest of fish incidental to such removal, when vessel or equipment breakdown prevents the vessel with the fish trap endorsement from retrieving its traps.

(3) *South Atlantic EEZ.* A sea bass pot or golden crab trap in the South Atlantic EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot or trap or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so permitted. For golden crab only, a vessel with written consent on board must also possess a valid commercial vessel permit for golden crab.

(b) *Escape mechanisms*—(1) *Caribbean EEZ.* (i) A fish trap used or possessed in the Caribbean EEZ must have a panel located on each of two sides of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by a panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of a panel may not be smaller than the mesh size of the trap. A panel must be attached to the trap with untreated jute twine with a diameter not exceeding $\frac{1}{8}$ inch (3.2 mm). An access door may serve as one of the panels, provided it is on an

appropriate side, it is hinged only at its bottom, its only other fastening is untreated jute twine with a diameter not exceeding $\frac{1}{8}$ inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

(ii) A spiny lobster trap used or possessed in the Caribbean EEZ must contain on any vertical side or on the top a panel no smaller in diameter than the throat or entrance of the trap. The panel must be made of or attached to the trap by one of the following degradable materials:

(A) Untreated fiber of biological origin with a diameter not exceeding $\frac{1}{8}$ 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 $\frac{1}{16}$ inch (1.6 mm), that is, 16 gauge wire.

(2) *Gulf EEZ*. A fish trap used or possessed in the Gulf EEZ must have at least two escape windows on each of two sides, excluding the bottom (a total of four escape windows), that are 2 by 2 inches (5.1 by 5.1 cm) or larger. In addition, a fish trap must have a panel or access door located opposite each side of the trap that has a funnel. The opening covered by each panel or access door must be 144 in² (929 cm²) or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches (15.2 cm). The hinges and fasteners of each panel or access door must be constructed of one of the following degradable materials:

(i) Untreated jute string with a diameter not exceeding $\frac{3}{16}$ inch (4.8 mm) that is not wrapped or overlapped.

(ii) Magnesium alloy, time float releases (pop-up devices) or similar magnesium alloy fasteners.

(3) *South Atlantic EEZ*. (i) A sea bass pot that is used or possessed in the South Atlantic EEZ north of 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have 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:

(A) Untreated hemp, jute, or cotton string with a diameter not exceeding $\frac{3}{16}$ inch (4.8 mm).

(B) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners.

(C) Ungalvanized or uncoated iron wire with a diameter not exceeding $\frac{1}{16}$ inch (1.6 mm), that is, 16 gauge wire.

(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 $\frac{3}{16}$ inch (0.48 cm) in diameter.

(B) A golden crab trap constructed of material other than webbing must have an escape panel or door measuring at least 12 by 12 inches (30.5 by 30.5 cm), located on at least one side, excluding top and bottom. The hinges and 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 $\frac{3}{16}$ inch (4.8 mm) in diameter.

(c) *Construction requirements and mesh sizes*—(1) *Caribbean EEZ*. A bare-wire fish trap used or possessed in the EEZ that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ, must have a minimum mesh size of 2.0 inches (5.1 cm) in the smallest dimension measured between centers of opposite strands.

(2) *Gulf EEZ*. A fish trap used or possessed in the Gulf EEZ must meet all of

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the following mesh size requirements (based on centerline measurements between opposite wires or netting strands):

(i) A minimum of 2 in² (12.9 cm²) opening for each mesh.

(ii) One-inch (2.5-cm) minimum length for the shortest side.

(iii) Minimum distance of 1 inch (2.5 cm) between parallel sides of rectangular openings, and 1.5 inches (3.8 cm) between parallel sides of square openings and of mesh openings with more than four sides.

(iv) One and nine-tenths inches (4.8 cm) minimum distance for diagonal measures of mesh.

(3) *South Atlantic EEZ.* (i) A sea bass pot used or possessed in the South Atlantic EEZ must have mesh sizes as follows (based on centerline measurements between opposite, parallel wires or netting strands):

(A) Hexagonal mesh (chicken wire)—at least 1.5 inches (3.8 cm) between the wrapped sides;

(B) Square mesh—at least 1.5 inches (3.8 cm) between sides; or

(C) Rectangular mesh—at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides.

(ii) A golden crab trap deployed or possessed in the South Atlantic EEZ may not exceed 64 ft³ (1.8 m³) in volume in the northern zone or 48 ft³ (1.4 m³) in volume in the middle and southern zones. See § 622.17(h) for specification of the golden crab zones.

(d) *Area-specific restrictions*—(1) *Gulf EEZ.* In the Gulf EEZ, a fish trap may be pulled or tended only from official sunrise to official sunset. The operator of a vessel from which a fish trap is deployed in the Gulf EEZ must retrieve all the vessel's fish traps and return them to port on each trip. A fish trap that is not returned to port on a trip, and its attached line and buoy, may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer. The owner of such trap and/or the operator of the responsible vessel is subject to appropriate civil penalties. A buoy that floats on the surface must be attached to each fish trap, or to each end trap of traps that are connected by a line, used in the Gulf EEZ. The maximum allowable

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size for a fish trap fished in the Gulf EEZ shoreward of the 50-fathom (91.4-m) isobath is 33 ft³ (0.9 m³) in volume. Fish trap volume is determined by measuring the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom (91.4-m) isobath. The maximum number of traps that may be assigned to, possessed, or fished in the Gulf EEZ by a vessel is 100.

(2) *South Atlantic EEZ.* (i) In the South Atlantic EEZ, sea bass pots may not be used or possessed in multiple configurations, that is, two or more pots may not be attached one to another so that their overall dimensions exceed those allowed for an individual sea bass pot. This does not preclude connecting individual pots to a line, such as a "trawl" or trot line.

(ii) Rope is the only material allowed to be used for a mainline or buoy line attached to a golden crab trap, except that wire cable is allowed for these purposes through January 31, 1998.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996]

EFFECTIVE DATE NOTE: At 61 FR 43959, Aug. 27, 1996, § 622.40 was amended by revising paragraph (a)(3), effective Oct. 28, 1996. For the convenience of the user, the superseded text is set forth as follows:

§ 622.40 Limitations on traps and pots.

(a) * * *

(3) *South Atlantic EEZ.* A sea bass pot 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 aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so permitted.

* * * * *

§ 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

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harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(2) The following restrictions apply to individual aquaculture activities:

(i) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(ii) Material deposited on the aquaculture site—

(A) May not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas.

(B) Must be free of contaminants.

(C) Must be nontoxic.

(D) Must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely.

(E) Must be placed from a vessel that is anchored.

(F) In the Gulf EEZ, must be distinguishable, geologically or otherwise (for example, be indelibly marked or tagged), from the naturally occurring substrate.

(G) In the South Atlantic EEZ, must be geologically distinguishable from the naturally occurring substrate and, in addition, may be indelibly marked or tagged.

(iii) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(3) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and aquacultured live rock may be harvested only by hand. In addition, the following activities are prohibited in the South Atlantic: Chipping of aquacultured live rock in the EEZ, possession of chipped aquacultured live rock in or from the EEZ, removal of allowable octocoral or prohibited coral from aquacultured live rock in or from the EEZ, and possession of prohibited coral not attached to aquacultured live rock or allowable octocoral, while aquacultured live rock is in possession. See the definition of “Allowable octocoral” for clarification of the distinction between allowable octocoral and live rock. For the purposes of this paragraph (a)(3), chipping means breaking up reefs, ledges, or rocks into

fragments, usually by means of a chisel and hammer.

(4) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting vessel must provide the following information to the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, FL, telephone (813) 570-5344:

(i) Permit number of site to be harvested and date of harvest.

(ii) Name and official number of the vessel to be used in harvesting.

(iii) Date, port, and facility at which aquacultured live rock will be landed.

(b) *Caribbean reef fish.* A marine aquarium fish may be harvested in the Caribbean EEZ only by a hand-held dip net or by a hand-held slurp gun. For the purposes of this paragraph, a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber, and a marine aquarium fish is a Caribbean reef fish that is smaller than 5.5 inches (14.0 cm), TL.

(c) *King and Spanish mackerel*—(1) *Prohibited gear.* (i) In addition to the gear restrictions specified in § 622.31, fishing gear is prohibited for use in the Gulf, Mid-Atlantic, and South Atlantic EEZ for migratory groups of king and Spanish mackerel as follows:

(A) King mackerel, Gulf migratory group—all gear other than hook and line and run-around gillnet.

(B) Spanish mackerel, Gulf and Atlantic migratory groups—purse seines.

(ii) Except for the purse seine incidental catch allowance specified in paragraph (c)(3) of this section, a vessel in the EEZ in the area of a migratory group or having fished in the EEZ in such area with prohibited gear on board may not possess any of the species for which that gear is prohibited.

(2) *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 the EEZ, or having fished on a trip in the EEZ, with a gillnet on board that has a mesh size less than 4.75 inches (12.1 cm), stretched mesh, may possess on that trip an incidental catch of king mackerel that does not exceed 10 percent, by

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number, of the total lawfully possessed Spanish mackerel on board.

(ii) *Spanish mackerel.* The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for Spanish mackerel is 3.5 inches (8.9 cm), stretched mesh. A vessel in the EEZ, or having fished on a trip in the 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.

(3) *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)(1)(i)(B) 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 directed fishing for snapper-grouper in the South Atlantic EEZ:

(i) Vertical hook-and-line gear, including a hand-held rod or a rod attached to a vessel (“bandit” gear), in either case, with a manual, electric, or hydraulic reel.

(ii) Spearfishing gear.

(iii) Bottom longline.

(iv) Sea bass pot.

(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 paragraph (d)(3) 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) *Use of 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 on a trip with a sink net on board, may retain otherwise legal South Atlantic snapper-grouper taken on that trip with vertical hook-and-line gear or a 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.

(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.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43959, Aug. 27, 1996]

§ 622.42 Quotas.

Quotas apply for the fishing year for each species or species group. Except for the quotas for Gulf and South Atlantic coral, the quotas include species

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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*. Quotas apply to persons who fish under commercial vessel permits for Gulf reef fish, as required under § 622.4(a)(2)(v).

(1) Red snapper—4.65 million lb (2.11 million kg), round weight, apportioned in 1996 and 1997 as follows:

(i) 3.06 million lb (1.39 million kg) available February 1, 1996, and February 1, 1997; and

(ii) The remainder available September 15, 1996, and September 15, 1997.

(2) Deep-water groupers, that is, yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, speckled hind, and, after the quota for shallow-water grouper is reached, scamp, combined—1.6 million lb (0.7 million kg), round weight.

(3) Shallow-water groupers, that is, all groupers other than deep-water groupers and jewfish, including scamp before the quota for shallow-water groupers is reached, combined—9.8 million lb (4.4 million kg), round weight.

(b) *Gulf and South Atlantic coral*—(1) *Allowable octocoral*. The quota for all persons who harvest allowable octocoral in the Gulf and South Atlantic EEZ is 50,000 colonies. A colony is a continuous group of coral polyps forming a single unit.

(2) *Wild live rock in the Gulf*. The quota for all persons who harvest wild live rock in the Gulf EEZ is 500,000 lb (226,796 kg). Commencing with the fishing year that begins January 1, 1997, the quota is zero.

(c) *King and Spanish mackerel*. King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king and Spanish mackerel, as required under § 622.4(a)(2)(iv). A fish is counted against the quota for the area where it is caught when it is first sold.

(1) *Migratory groups of king mackerel*—(i) *Gulf migratory group*. The quota for the Gulf migratory group of king

mackerel is 2.50 million lb (1.13 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) *Eastern zone*—1.73 million lb (0.78 million kg), which is further divided into quotas as follows:

(1) *Florida east coast subzone*—865,000 lb (392,357 kg).

(2) *Florida west coast subzone*—865,000 lb (392,357 kg), which is further divided into quotas by gear types as follows:

(i) 432,500 lb (196,179 kg) for vessels fishing with hook-and-line gear.

(ii) 432,500 lb (196,179 kg) for vessels fishing with run-around gillnets.

(3) The Florida east coast subzone is that part of the eastern zone north of 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, and the Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat.

(B) *Western zone*—0.77 million lb (0.35 million kg).

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of king mackerel is 2.70 million lb (1.22 million kg). No more than 0.4 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel*—(i) *Gulf migratory group*. The quota for the Gulf migratory group of Spanish mackerel is 4.90 million lb (2.22 million kg).

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of Spanish mackerel is 4.70 million lb (2.13 million kg).

(d) *Royal red shrimp in the Gulf*. The quota for all persons who harvest royal red shrimp in the Gulf is 392,000 lb (177.8 mt), tail weight.

(e) *South Atlantic snapper-grouper, excluding wreckfish*. The quotas apply to persons who are not subject to the bag limits. (See § 622.39(a)(1) for applicability of the bag limits.)

(1) *Snowy grouper*—344,508 lb (156,266 kg), gutted weight, that is, eviscerated but otherwise whole.

(2) *Golden tilefish*—1,001,663 lb (454,347 kg), gutted weight, that is, eviscerated but otherwise whole.

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(f) *Wreckfish*. The quota for wreckfish applies to wreckfish shareholders, or their employees, contractors, or agents, and is 2 million lb (907,185 kg), round weight. See § 622.15 for information on the wreckfish shareholder under the ITQ system.

[61 FR 34934, July 3, 1996, as amended at 61 FR 48643, Sept. 16, 1996]

§ 622.43 Closures.

(a) *General*. When a quota specified in § 622.42 is reached, or is projected to be reached, the Assistant Administrator will file a notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, the following closure restrictions apply:

(1) *Gulf reef fish*. The bag and possession limits specified in § 622.39(b) apply to all harvest in the Gulf EEZ of the indicated species, and the sale or purchase of the indicated species taken from the Gulf EEZ is prohibited.

(2) *Gulf and South Atlantic coral*—(i) *Allowable octocoral*. Allowable octocoral may not be harvested or possessed in the Gulf or South Atlantic EEZ and the sale or purchase of allowable octocoral in or from the Gulf or South Atlantic EEZ is prohibited.

(ii) *Wild live rock in the Gulf*. Wild live rock may not be harvested or possessed in the Gulf EEZ and the sale or purchase of wild live rock in or from the Gulf EEZ is prohibited.

(3) *King and Spanish mackerel*. The closure provisions of this paragraph (a)(3) do not apply to Atlantic migratory group Spanish mackerel, which are managed under the commercial trip limits specified in § 622.44(b) in lieu of the closure provisions of this section.

(i) A person aboard a vessel for which a commercial permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv), may not fish for king or Spanish mackerel in the EEZ or retain fish 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 type, except as provided for under paragraph (a)(3)(ii) of this section.

(ii) A person aboard a vessel for which the permit indicates both commercial king and Spanish mackerel and charter vessel/headboat for coastal migratory pelagic fish may continue to retain fish under a bag and possession limit specified in § 622.39(c), provided the vessel is operating as a charter vessel or headboat.

(iii) The sale or purchase of king or Spanish mackerel of the closed species, migratory group, zone, subzone, or gear type is prohibited, including such king or Spanish mackerel taken under the bag limits.

(4) *Royal red shrimp in the Gulf*. Royal red shrimp in or from the Gulf EEZ may not be retained, and the sale or purchase of royal red shrimp taken from the Gulf EEZ is prohibited.

(5) *South Atlantic snapper-grouper, excluding wreckfish*. There are no closure provisions for South Atlantic snapper grouper, other than for wreckfish. Golden tilefish and snowy grouper, for which there are quotas, are managed under the commercial trip limits specified in § 622.44(a) in lieu of the closure provisions of this section.

(6) *Wreckfish*. Wreckfish in or from the South Atlantic EEZ may not be retained, and the sale or purchase of wreckfish taken from the South Atlantic EEZ is prohibited.

(b) *Exception to prohibition on sale/purchase*. (1) The prohibition on sale/purchase during a closure for Gulf reef fish, king and Spanish mackerel, royal red shrimp, or wreckfish in paragraph (a)(1), (a)(3)(iii), (a)(4), or (a)(6) of this section does not apply to the indicated species that were harvested, landed ashore, and bartered, traded, or 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 or wild live rock in paragraph (a)(2)(i) or (a)(2)(ii) of this section does not apply to allowable octocoral or wild live rock that was harvested and landed ashore prior to the effective date of the closure.

§ 622.44 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or

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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:

(a) *King mackerel*—(1) *Atlantic group*. (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°20.4' N. lat., which is a line directly east from the 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 500 lb (227 kg) 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 zone as follows. (See § 622.42(c)(1)(i) for specification of the eastern zone and § 622.42(c)(1)(i)(A)(3) for specifications of the subzones in the eastern zone.)

(i) *Florida east coast subzone*. In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king

and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv)—

(A) From November 1, each fishing year, until 75 percent of the subzone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day.

(B) From the date that 75 percent of the subzone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast subzone has been effected under § 622.43(a)—in amounts not exceeding 25 king mackerel per day. However, if 75 percent of the subzone's quota has not been harvested by March 1, the vessel limit remains at 50 king mackerel per day until the subzone's quota is filled or until March 31, whichever occurs first.

(ii) *Florida west coast subzone*—(A) *Gillnet gear*. (1) In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit with a gillnet endorsement has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the Florida west coast subzone's fishery for vessels fishing with run-around gillnets has been effected under § 622.43(a)—in amounts not exceeding 25,000 lb (11,340 kg) per day.

(2) In the Florida west coast subzone:

(i) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement.

(ii) King mackerel from the west coast subzone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(2)(ii).

(iii) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which such commercial permit with endorsement has been issued.

(B) *Hook-and-line gear*. In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a

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commercial permit for king and Spanish mackerel, as required by § 622.4(a)(2)(iv), and operating under the hook-and-line gear quota in § 622.42(c)(1)(i)(A)(2)(i):

(1) From July 1, each fishing year, until 75 percent of the subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 125 king mackerel per day.

(2) From the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until a closure of the west coast subzone's hook-and-line fishery has been effected under § 622.43(a)—in amounts not exceeding 50 king mackerel 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.

(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 king and 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 king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv)—

(A) From April 1 through November 30, in amounts exceeding 1,500 lb (680 kg).

(B) From December 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(1) Mondays, Wednesdays, and Fridays—unlimited.

(2) Tuesdays and Thursdays—not exceeding 1,500 lb (680 kg).

(3) Saturdays and Sundays—not exceeding 500 lb (227 kg).

(C) After 75 percent of the adjusted quota is taken until 100 percent of the adjusted quota is taken, in amounts not exceeding 1,000 lb (454 kg).

(D) After 100 percent of the adjusted quota is taken through the end of the fishing year, in amounts not exceeding 500 lb (227 kg).

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 4.45 million lb (2.02 million kg). The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or is projected to be reached.

(3) For the purpose of paragraph (b)(1)(ii) of this section, a day starts at 6 a.m., local time, and extends for 24 hours. If a vessel terminates a trip prior to 6 a.m., but retains Spanish mackerel on board after that time, the Spanish mackerel retained on board will not be considered in possession during the succeeding day, provided the vessel is not underway between 6 a.m. and the time such Spanish mackerel are unloaded, and provided such Spanish mackerel are unloaded prior to 6 p.m.

(c) *Golden tilefish and snowy grouper.* A person who fishes in the South Atlantic EEZ on a trip and who is not subject to the bag limits may not exceed the following trip limits. (See § 622.39(a) for applicability of the bag limits.)

(1) Golden tilefish (round weight or gutted weight, that is, eviscerated but otherwise whole):

(i) Until the fishing year quota specified in § 622.42(e)(2) is reached, 5,000 lb (2,268 kg).

(ii) After the fishing year quota specified in § 622.42(e)(2) is reached, 300 lb (136 kg).

(2) Snowy grouper (round weight or gutted weight, that is, eviscerated but otherwise whole):

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(i) Until the fishing year quota specified in § 622.42(e)(1) is reached, 2,500 lb (1,134 kg).

(ii) After the fishing year quota specified in § 622.42(e)(1) is reached, 300 lb (136 kg).

(d) *Gulf wild live rock*. Until the quota for wild live rock from the Gulf EEZ is reached in 1996, a daily vessel limit of twenty-five 5-gallon (19-L) buckets, or volume equivalent (16.88 ft³ (478.0 L)), applies to the harvest or possession of wild live rock in or from the Gulf EEZ, regardless of the number or duration of trips.

(e) *Gulf red snapper*. This paragraph (e) is effective through December 31, 1997.

(1) Except as provided in paragraph (e)(2) of this section, the trip limit for red snapper in or from the Gulf for a vessel that has on board a valid commercial permit for Gulf reef fish is 200 lb (91 kg), round or eviscerated weight.

(2) The trip limit for red snapper in or from the Gulf for a vessel that has on board a valid commercial permit for Gulf reef fish and a valid Gulf red snapper endorsement is 2,000 lb (907 kg), round or eviscerated weight.

(3) As a condition of a commercial vessel permit for Gulf reef fish, as required under § 622.4(a)(2)(v), without regard to where red snapper are harvested or possessed, a vessel with such permit—

(i) May not possess red snapper in or from the Gulf in excess of the appropriate vessel trip limit, as specified in paragraph (e)(1) or (e)(2) of this section.

(ii) May not transfer at sea red snapper in or from the Gulf.

[61 FR 34934, July 3, 1996, as amended at 61 FR 48415, Sept. 13, 1996; 61 FR 48851, Sept. 17, 1996]

§ 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 person may sell South Atlantic snapper-grouper harvested in the EEZ only to a dealer who has a valid permit for South Atlantic snapper-grouper, as required under § 622.4(a)(4).

(2) A person may purchase South Atlantic snapper-grouper harvested in the EEZ only from a vessel that has a valid commercial permit for South Atlantic

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snapper-grouper, as required under § 622.4(a)(2)(iv), or from a person who has a valid commercial license to sell fish in the state where the purchase occurs.

(3) Except for the sale or purchase of South Atlantic snapper-grouper harvested by a vessel that has a valid commercial permit for South Atlantic snapper-grouper, the sale or purchase of such fish is limited to the bag limits specified in § 622.39(d)(1).

(4) A warsaw grouper or speckled hind in or from the South Atlantic EEZ may not be sold or purchased.

(e) *South Atlantic wild live rock*. Wild live rock in or from the South Atlantic EEZ may not be sold or purchased. The prohibition on sale or purchase does not apply to wild live rock that was harvested and landed prior to January 1, 1996.

(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 § 622.17(a), 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.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43960, Aug. 27, 1996; 61 FR 47449, Sept. 9, 1996]

EFFECTIVE DATE NOTES:1. At 61 FR 43960, Aug. 27, 1996, § 622.45 was amended by adding paragraphs (f)(2) through (f)(4), effective Oct. 28, 1996.

2. At 61 FR 47449, Sept. 9, 1996, § 622.45 was amended by adding paragraph (g), effective Nov. 1, 1996.

§ 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 RD 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 RD 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 RD 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.

§ 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 RD may establish or modify the following management measures:

(a) *Caribbean coral reef resources.* Species for which management measures may be specified; prohibited species; harvest limitations, including quotas, trip, or daily landing limits; gear restrictions; closed seasons or areas; and marine conservation districts.

(b) *Caribbean reef fish.* Size limits, closed seasons or areas, fish trap mesh size, and the threshold level for overfishing.

(c) *Coastal migratory pelagic fish.* For cobia or for migratory groups of king or Spanish mackerel: MSY, TAC, quotas, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and initial permit requirements.

(d) *Gulf reef fish.* (1) For species or species groups: Target dates for rebuilding overfished species, TAC, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas.

(2) SMZs and the gear restrictions applicable in each.

(e) *Gulf royal red shrimp.* MSY, OY, and TAC.

(f) *South Atlantic snapper-grouper and wreckfish.* For species or species groups:

Target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), and seasonal or area closures.

(g) *South Atlantic golden crab.* MSY, ABC, TAC, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, and authority for the RD to close the fishery when a quota is reached or is projected to be reached.

[61 FR 34934, July 3, 1996, as amended at 61 FR 43960, Aug. 27, 1996]

APPENDIX A TO PART 622—SPECIES TABLES

TABLE 1 OF APPENDIX A TO PART 622—CARIBBEAN CORAL REEF RESOURCES

- I. Sponges—Phylum Porifera
 - A. Demosponges—Class Demospongiae
 - Aphimedon compressa*, Erect rope sponge
 - Chondrilla nucula*, Chicken liver sponge
 - Cynachirella alloclada*
 - Geodia neptuni*, Potato sponge
 - Haliclona* sp., Finger sponge
 - Myriastr* sp.
 - Niphates digitalis*, Pink vase sponge
 - N. erecta*, Lavender rope sponge
 - Spinosella polycifera*
 - S. vaginalis*
 - Tethya crypta*
- II. Coelenterates—Phylum Coelenterata
 - A. Hydrocorals—Class Hydrozoa
 1. Hydroids—Order Athecatae
 - Family Milleporidae
 - Millepora* spp., Fire corals
 - Family Stylasteridae
 - Stylaster roseus*, Rose lace corals
 - B. Anthozoans—Class Anthozoa
 1. Soft corals—Order Alcyonacea
 - Family Anthothelidae
 - Erythropodium caribaeorum*, Encrusting gorgonian
 - Iciligorgia schrammi*, Deepwater sea fan
 - Family Briaridae
 - Briareum asbestinum*, Corky sea finger
 - Family Clavulariidae
 - Carijoa riisei*
 - Telesto* spp.
 2. Gorgonian corals—Order Gorgonacea
 - Family Ellisellidae
 - Ellisella* spp., Sea whips
 - Family Gorgoniidae
 - Gorgonia flabellum*, Venus sea fan
 - G. mariae*, Wide-mesh sea fan
 - G. ventalina*, Common sea fan

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Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip
Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis sp.
M. flavida, Rough sea plume
M. sulphurea
Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari
3. Hard Corals—Order Scleractinia
Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agaricidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce
Leptoseris cucullata, Sunray lettuce
Family Astrocoeniidae
Stephanocoenia michelinii, Blushing star
Family Caryophyllidae
Eusmilia fastigiata, Flower coral
Tubastrea aurea, Cup coral
Family Faviidae
Cladocora arbuscula, Tube coral
Colpophyllia natans, Boulder coral
Diploria clivosa, Knobby brain coral
D. labyrinthiformis, Grooved brain
D. strigosa, Symmetrical brain
Favia fragum, Golfball coral
Manicina areolata, Rose coral
M. mayori, Tortugas rose coral
Montastrea annularis, Boulder star coral
M. cavernosa, Great star coral
Solenastrea bournoni, Smooth star coral
Family Meandrinidae
Dendogyra cylindrus, Pillar coral
Dichocoenia stellaris, Pancake star

D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isophyllastrea rigida, Rough star coral
Isophyllia sinuosa, Sinuous cactus
Mussa angulosa, Large flower coral
Mycetophyllia aliciae, Thin fungus coral
M. danae, Fat fungus coral
M. ferox, Grooved fungus
M. lamarckiana, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Oculinidae
Oculina diffusa, Ivory bush coral
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Poritidae
Porites astreoides, Mustard hill coral
P. branneri, Blue crust coral
P. divaricata, Small finger coral
P. porites, Finger coral
Family Rhizangiidae
Astrangia solitaria, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Siderastreidae
Siderastrea radians, Lesser starlet
S. siderea, Massive starlet
4. Black Corals—Order Antipatharia
Antipathes spp., Bushy black coral
Stichopathes spp., Wire coral
5. Anemones—Order Actiniaria
Aiptasia tagetes, Pale anemone
Bartholomea annulata, Corkscrew anemone
Condylactis gigantea, Giant pink-tipped anemone
Hereractis lucida, Knobby anemone
Lebrunia spp., Staghorn anemone
Stichodactyla helianthus, Sun anemone
6. Colonial Anemones—Order Zoanthidea
Zoanthus spp., Sea mat
7. False Corals—Order Corallimorpharia
Discosoma spp. (formerly *Rhodactis*), False coral
Ricordia florida, Florida false coral
III. Annelid Worms—Phylum Annelida
A. Polychaetes—Class Polychaeta
Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifica, Magnificent duster
Family Serpulidae
Spirobranchus giganteus, Christmas tree worm
IV. Mollusks—Phylum Mollusca
A. Gastropods—Class Gastropoda
Family Elysidae
Tridachia crispata, Lettuce sea slug
Family Olividae
Oliva reticularis, Netted olive
Family Ovulidae
Cyphoma gibbosum, Flamingo tongue
Family Ranellidae
Charonia tritonis, Atlantic triton trumpet
Family Strombidae, Winged conchs
Strombus spp. (except Queen conch, *S. gigas*)
B. Bivalves—Class Bivalvia
Family Limidae

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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
Alpheus armatus, Snapping shrimp
 Family Diogenidae
Paguristes spp., Hermit crabs
P. cadenati, Red reef hermit
 Family Grapsidae
Percnon gibbesi, Nimble spray crab
 Family Hippolytidae
Lysmata spp., Peppermint shrimp
Thor amboinensis, Anemone shrimp
 Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus, Green clinging
Stenorhynchus seticornis, Yellowline arrow
 Family Palaemonida
Periclimenes spp., Cleaner shrimp
 Family Squillidae, Mantis crabs
Gonodactylus spp.
Lysiosquilla spp.
 Family Stenopodidae, Coral shrimp
Stenopus hispidus, Banded shrimp
S. scutellatus, Golden shrimp
 VI. Bryozoans—Phylum Bryozoa
 VII. Echinoderms—Phylum Echinodermata
 A. Feather stars—Class Crinoidea
Analcidometra armata, Swimming crinoid
Davidaster spp., Crinoids
Nemaster spp., Crinoids
 B. Sea stars—Class Asteroidea
Astropecten spp., Sand stars
Linckia guildingii, Common comet star
Ophidiaster guildingii, Comet star
Oreaster reticulatus, Cushion sea star
 C. Brittle and basket stars—Class Ophiuroidea
Astrophyton muricatum, Giant basket star
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
O. rubicundum, Ruby brittlestar
 D. Sea Urchins—Class Echinoidea
Diadema antillarum, Long-spined urchin
Echinometra spp., Purple urchin
Eucidaris tribuloides, Pencil urchin
Lytechinus spp., Pin cushion urchin
Triplaneustes ventricosus, Sea egg
 E. Sea Cucumbers—Class Holothuroidea
Holothuria spp., Sea cucumbers
 VIII. Chordates—Phylum Chordata
 A. Tunicates—Subphylum Urochordata
 IX. Green Algae—Phylum Chlorophyta
Caulerpa spp., Green grape algae
Halimeda spp., Watercress algae
Penicillus spp., Neptune's brush

Udotea spp., Mermaid's fan
Ventricaria ventricosa, Sea pearls
 X. Red Algae—Phylum Rhodophyta
 XI. Sea grasses—Phylum Angiospermae
Halodule wrightii, Shoal grass
Halophila spp., Sea vines
Ruppia maritima, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudinum, Turtle grass

TABLE 2 OF APPENDIX A TO PART 622—
 CARIBBEAN REEF FISH

Acanthuridae—Surgeonfishes
 Ocean surgeonfish, *Acanthurus bahianus*
 Doctorfish, *Acanthurus chirurgus*
 Blue tang, *Acanthurus coeruleus*
 Antennariidae—Frogfishes
 Frogfish, *Antennarius* spp.
 Apogonidae—Cardinalfishes
 Flamefish, *Apogon maculatus*
 Conchfish, *Astrapogen stellatus*
 Aulostomidae—Trumpetfishes
 Trumpetfish, *Aulostomus maculatus*
 Balistidae—Leatherjackets
 Scrawled filefish, *Aluterus scriptus*
 Queen triggerfish, *Balistes vetula*
 Whitespotted filefish, *Cantherhines macrocerus*
 Ocean triggerfish, *Canthidermis sufflamen*
 Black durgon, *Melichthys niger*
 Sargassum triggerfish, *Xanthichthys rigens*
 Blenniidae—Combtooth blennies
 Redlip blenny, *Ophioblennius atlanticus*
 Bothidae—Lefteye flounders
 Peacock flounder, *Bothus lunatus*
 Carangidae—Jacks
 Yellow jack, *Caranx bartholomaei*
 Blue runner, *Caranx crysos*
 Horse-eye jack, *Caranx latus*
 Black jack, *Caranx lugubris*
 Bar jack, *Caranx ruber*
 Greater amberjack, *Seriola dumerili*
 Almaco jack, *Seriola rivoliana*
 Chaetodontidae—Butterflyfishes
 Longsnout butterflyfish, *Chaetodon aculeatus*
 Foureye butterflyfish, *Chaetodon capistratus*
 Spotfin butterflyfish, *Chaetodon ocellatus*
 Banded butterflyfish, *Chaetodon striatus*
 Cirrhitidae—Hawkfishes
 Redspotted hawkfish, *Amblycirrhitus pinos*
 Dactylopteridae—Flying gurnards
 Flying gurnard, *Dactylopterus volitans*
 Ehippidae—Spadefishes
 Atlantic spadefish, *Chaetodipterus faber*
 Gobiidae—Gobies
 Neon goby, *Gobiosoma oceanops*
 Rusty goby, *Priolepis hipoliti*
 Grammatidae—Basslets
 Royal gramma, *Gramma loreto*
 Haemulidae—Grunts
 Porkfish, *Anisotremus virginicus*
 Margate, *Haemulon album*
 Tomtate, *Haemulon aurolineatum*
 French grunt, *Haemulon flavolineatum*
 White grunt, *Haemulon plumieri*

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Bluestriped grunt, *Haemulon sciurus*
 Holocentridae—Squirrelfishes
 Squirrelfish, *Holocentrus adscensionis*
 Longspine squirrelfish, *Holocentrus rufus*
 Blackbar soldierfish, *Myripristis jacobus*
 Cardinal soldierfish, *Plectrypops retrospinis*
 Labridae—Wrasses
 Spanish hogfish, *Bodianus rufus*
 Creole wrasse, *Clepticus parrae*
 Yellowcheek wrasse, *Halichoeres cyanocephalus*
 Yellowhead wrasse, *Halichoeres garnoti*
 Clown wrasse, *Halichoeres maculipinna*
 Puddingwife, *Halichoeres radiatus*
 Pearly razorfish, *Hemipteronotus novacula*
 Green razorfish, *Hemipteronotus splendens*
 Hogfish, *Lachnolaimus maximus*
 Bluehead wrasse, *Thalassoma bifasciatum*
 Lutjanidae—Snappers
 Black snapper, *Apsilus dentatus*
 Queen snapper, *Etelis oculatus*
 Mutton snapper, *Lutjanus analis*
 Schoolmaster, *Lutjanus apodus*
 Blackfin snapper, *Lutjanus buccanella*
 Gray snapper, *Lutjanus griseus*
 Dog snapper, *Lutjanus jocu*
 Mahogany snapper, *Lutjanus mahogani*
 Lane snapper, *Lutjanus synagris*
 Silk snapper, *Lutjanus vivanus*
 Yellowtail snapper, *Ocyurus chrysurus*
 Wenchman, *Pristipomoides aquilonaris*
 Vermilion snapper, *Rhomboplites aurorubens*
 Malacanthidae—Tilefishes
 Blackline tilefish, *Caulolatilus cyanops*
 Sand tilefish, *Malacanthus plumieri*
 Mullidae—Goatfishes
 Yellow goatfish, *Mulloidichthys martinicus*
 Spotted goatfish, *Pseudupeneus maculatus*
 Muraenidae—Morays
 Chain moray, *Echidna catenata*
 Green moray, *Gymnothorax funebris*
 Goldentail moray, *Gymnothorax miliaris*
 Ogcocephalidae—Batfishes
 Batfish, *Ogcocephalus* spp.
 Ophichthidae—Snake eels
 Goldspotted eel, *Myrichthys ocellatus*
 Opistognathidae—Jawfishes
 Yellowhead jawfish, *Opistognathus aurifrons*
 Dusky jawfish, *Opistognathus whitehursti*
 Ostraciidae—Boxfishes
 Spotted trunkfish, *Lactophrys bicaudalis*
 Honeycomb cowfish, *Lactophrys polygonia*
 Scrawled cowfish, *Lactophrys quadricornis*
 Trunkfish, *Lactophrys trigonus*
 Smooth trunkfish, *Lactophrys triqueter*
 Pomacanthidae—Angelfishes
 Cherubfish, *Centropyge argi*
 Queen angelfish, *Holacanthus ciliaris*
 Rock beauty, *Holacanthus tricolor*
 Gray angelfish, *Pomacanthus arcuatus*
 French angelfish, *Pomacanthus paru*
 Pomacentridae—Damselfishes
 Sergeant major, *Abudefduf saxatilis*
 Blue chromis, *Chromis cyanea*
 Sunshinefish, *Chromis insolata*
 Yellowtail damselfish, *Microspathodon chrysurus*

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Dusky damselfish, *Pomacentrus fuscus*
 Beaugregory, *Pomacentrus leucostictus*
 Bicolor damselfish, *Pomacentrus partitus*
 Threespot damselfish, *Pomacentrus planifrons*
 Priacanthidae—Bigeyes
 Bigeye, *Priacanthus arenatus*
 Glasseye snapper, *Priacanthus cruentatus*
 Scaridae—Parrotfishes
 Midnight parrotfish, *Scarus coelestinus*
 Blue parrotfish, *Scarus coeruleus*
 Striped parrotfish, *Scarus croicensis*
 Rainbow parrotfish, *Scarus guacamaia*
 Princess parrotfish, *Scarus taeniopterus*
 Queen parrotfish, *Scarus vetula*
 Redband parrotfish, *Sparisoma aurofrenatum*
 Redtail parrotfish, *Sparisoma chrysopteron*
 Redfin parrotfish, *Sparisoma rubripinne*
 Stoplight parrotfish, *Sparisoma viride*
 Sciaenidae—Drums
 High-hat, *Equetus acuminatus*
 Jack knife-fish, *Equetus lanceolatus*
 Spotted drum, *Equetus punctatus*
 Scorpaenidae—Scorpionfishes
 Serranidae—Sea basses
 Rock hind, *Epinephelus adscensionis*
 Graysby, *Epinephelus cruentatus*
 Yellowedge grouper, *Epinephelus flavolimbatus*
 Coney, *Epinephelus fulvus*
 Red hind, *Epinephelus guttatus*
 Jewfish, *Epinephelus itajara*
 Red grouper, *Epinephelus morio*
 Misty grouper, *Epinephelus mystacinus*
 Nassau Grouper, *Epinephelus striatus*
 Butter hamlet, *Hypoplectrus unicolor*
 Swissguard basslet, *Liopropoma rubre*
 Yellowfin grouper, *Mycteroperca venenosa*
 Tiger grouper, *Mycteroperca tigris*
 Creole-fish, *Paranthias furcifer*
 Greater soapfish, *Rypticus saponaceus*
 Orangeback bass, *Serranus annularis*
 Lantern bass, *Serranus baldwini*
 Tobaccofish, *Serranus tabacarius*
 Harlequin bass, *Serranus tigrinus*
 Chalk bass, *Serranus tortugarum*
 Soleidae—Soles
 Caribbean tonguefish, *Symphurus arawak*
 Sparidae—Porgies
 Sea bream, *Archosargus rhomboidalis*
 Jolthead porgy, *Calamus bajonado*
 Sheephead porgy, *Calamus penna*
 Pluma, *Calamus pennatula*
 Syngnathidae—Pipefishes
 Seahorses, *Hippocampus* spp.
 Pipefishes, *Syngnathus* spp.
 Synodontidae—Lizardfishes
 Sand diver, *Synodus intermedius*
 Tetraodontidae—Puffers
 Sharpnose puffer, *Canthigaster rostrata*
 Porcupinefish, *Diodon hystrix*

 TABLE 3 OF APPENDIX A TO PART 622—GULF REEF FISH
 Balistidae—Triggerfishes
 Gray triggerfish, *Balistes capris*

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Queen triggerfish, *Balistes vetula*
 Carangidae—Jacks
 Greater amberjack, *Seriola dumerili*
 Lesser amberjack, *Seriola fasciata*
 Almaco jack, *Seriola rivoliana*
 Banded rudderfish, *Seriola zonata*
 Haemulidae—Grunts
 Tomtate, *Haemulon aurolineatum*
 White grunt, *Haemulon plumieri*
 Pigfish, *Orthopristis chrysoptera*
 Labridae—Wrasses
 Hogfish, *Lachnolaimus maximus*
 Lutjanidae—Snappers
 Queen snapper, *Etelis oculatus*
 Mutton snapper, *Lutjanus analis*
 Schoolmaster, *Lutjanus apodus*
 Blackfin snapper, *Lutjanus buccanella*
 Red snapper, *Lutjanus campechanus*
 Cubera snapper, *Lutjanus cyanopterus*
 Gray (mangrove) snapper, *Lutjanus griseus*
 Dog snapper, *Lutjanus jocu*
 Mahogany snapper, *Lutjanus mahogoni*
 Lane snapper, *Lutjanus synagris*
 Silk snapper, *Lutjanus vivanus*
 Yellowtail snapper, *Ocyurus chrysurus*
 Wenchman, *Pristipomoides aquilonaris*
 Vermilion snapper, *Rhomboplites aurorubens*
 Malacanthidae—Tilefishes
 Goldface tilefish, *Caulolatilus chrysops*
 Blackline tilefish, *Caulolatilus cyanops*
 Anchor tilefish, *Caulolatilus intermedius*
 Blue line tilefish, *Caulolatilus microps*
 Tilefish, *Lopholatilus chamaeleonticeps*
 Serranidae—Sea Basses and Groupers
 Bank sea bass, *Centropomus ocyurus*
 Rock sea bass, *Centropomus philadelphicus*
 Black sea bass, *Centropristis striata*
 Dwarf sand perch, *Diplectrum bivittatum*
 Sand perch, *Diplectrum formosum*
 Rock hind, *Epinephelus adscensionis*
 Speckled hind, *Epinephelus drummondhayi*
 Yellowedge grouper, *Epinephelus flavolimbatus*
 Red hind, *Epinephelus guttatus*
 Jewfish, *Epinephelus itajara*
 Red grouper, *Epinephelus morio*
 Misty grouper, *Epinephelus mystacinus*
 Warsaw grouper, *Epinephelus nigritus*
 Snowy grouper, *Epinephelus niveatus*
 Nassau grouper, *Epinephelus striatus*
 Black grouper, *Mycteroperca bonaci*
 Yellowmouth grouper, *Mycteroperca interstitialis*
 Gag, *Mycteroperca microlepis*
 Scamp, *Mycteroperca phenax*
 Yellowfin grouper, *Mycteroperca venenosa*
 Sparidae—Porgies
 Grass porgy, *Calamus arctifrons*
 Jolthead porgy, *Calamus bajonado*
 Knobby porgy, *Calamus nodosus*
 Littlehead porgy, *Calamus proridens*
 Pinfish, *Lagodon rhomboides*
 Red porgy, *Pagrus*

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER

Balistidae—Triggerfishes

Gray triggerfish, *Balistes capriscus*
 Queen triggerfish, *Balistes vetula*
 Ocean triggerfish, *Canthidermis sufflamen*
 Carangidae—Jacks
 Yellow jack, *Caranx bartholomaei*
 Blue runner, *Caranx crysos*
 Crevalle jack, *Caranx hippos*
 Bar jack, *Caranx ruber*
 Greater amberjack, *Seriola dumerili*
 Lesser amberjack, *Seriola fasciata*
 Almaco jack, *Seriola rivoliana*
 Banded rudderfish, *Seriola zonata*
 Ephippidae—Spadefishes
 Spadefish, *Chaetodipterus faber*
 Haemulidae—Grunts
 Black margate, *Anisotremus surinamensis*
 Porkfish, *Anisotremus virginicus*
 Margate, *Haemulon album*
 Tomtate, *Haemulon aurolineatum*
 Smallmouth grunt, *Haemulon chrysargyreum*
 French grunt, *Haemulon flavolineatum*
 Spanish grunt, *Haemulon macrostomum*
 Cottonwick, *Haemulon melanurum*
 Sailors choice, *Haemulon parrai*
 White grunt, *Haemulon plumieri*
 Blue stripe grunt, *Haemulon sciurus*
 Labridae—Wrasses
 Hogfish, *Lachnolaimus maximus*
 Puddingwife, *Halichoeres radiatus*
 Lutjanidae—Snappers
 Black snapper, *Apsilus dentatus*
 Queen snapper, *Etelis oculatus*
 Mutton snapper, *Lutjanus analis*
 Schoolmaster, *Lutjanus apodus*
 Blackfin snapper, *Lutjanus buccanella*
 Red snapper, *Lutjanus campechanus*
 Cubera snapper, *Lutjanus cyanopterus*
 Gray snapper, *Lutjanus griseus*
 Mahogany snapper, *Lutjanus mahogoni*
 Dog snapper, *Lutjanus jocu*
 Lane snapper, *Lutjanus synagris*
 Silk snapper, *Lutjanus vivanus*
 Yellowtail snapper, *Ocyurus chrysurus*
 Vermilion snapper, *Rhomboplites aurorubens*
 Malacanthidae—Tilefishes
 Blue line tilefish, *Caulolatilus microps*
 Golden tilefish, *Lopholatilus chamaeleonticeps*
 Sand tilefish, *Malacanthus plumieri*
 Percichthyidae—Temperate basses
 Wreckfish, *Polyprion americanus*
 Serranidae—Sea Basses and Groupers
 Bank sea bass, *Centropomus ocyurus*
 Rock sea bass, *Centropristis philadelphica*
 Black sea bass, *Centropristis striata*
 Rock hind, *Epinephelus adscensionis*
 Graysby, *Epinephelus cruentatus*
 Speckled hind, *Epinephelus drummondhayi*
 Yellowedge grouper, *Epinephelus flavolimbatus*
 Coney, *Epinephelus fulvus*
 Red hind, *Epinephelus guttatus*
 Jewfish, *Epinephelus itajara*
 Red grouper, *Epinephelus morio*
 Misty grouper, *Epinephelus mystacinus*
 Warsaw grouper, *Epinephelus nigritus*

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Snowy grouper, *Epinephelus niveatus*
 Nassau grouper, *Epinephelus striatus*
 Black grouper, *Mycteroperca bonaci*
 Yellowmouth grouper, *Mycteroperca*
interstitialis
 Gag, *Mycteroperca microlepis*
 Scamp, *Mycteroperca phenax*
 Tiger grouper, *Mycteroperca tigris*
 Yellowfin grouper, *Mycteroperca venenosa*
 Sparidae—Porgies

Sheepshead, *Archosargus probatocephalus*
 Grass porgy, *Calamus arctifrons*
 Jolthead porgy, *Calamus bajonado*
 Saucereye porgy, *Calamus*
 Whitebone porgy, *Calamus leucosteus*
 Knobbled porgy, *Calamus nodosus*
 Red porgy, *Pagrus*
 Longspine porgy, *Stenotomus caprinus*
 Scup, *Stenotomus chrysops*

APPENDIX B TO PART 622—GULF AREAS

TABLE 1 OF APPENDIX B TO PART 622.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No. and reference location ¹	North lat.	West long.
1 Seaward limit of Florida's waters north of Dry Tortugas	24°48.0'	82°48.0'
2 North of Rebecca Shoal	25°07.5'	82°34.0'
3 Off Sanibel Island—Offshore	26°26.0'	82°59.0'
4 West of Egmont Key	27°30.0'	83°21.5'
5 Off Anclote Keys—Offshore	28°10.0'	83°45.0'
6 Southeast corner of Florida Middle Ground	28°11.0'	84°00.0'
7 Southwest corner of Florida Middle Ground	28°11.0'	84°07.0'
8 West corner of Florida Middle Ground	28°26.6'	84°24.8'
9 Northwest corner of Florida Middle Ground	28°42.5'	84°24.8'
10 South of Carrabelle	29°05.0'	84°47.0'
11 South of Cape St. George	29°02.5'	85°09.0'
12 South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0'	85°30.0'
13 South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7'	85°30.0'
14 De Soto Canyon	30°06.0'	86°55.0'
15 South of Pensacola	29°46.0'	87°19.0'
16 South of Perdido Bay	29°29.0'	87°27.5'
17 East of North Pass of the Mississippi River	29°14.5'	88°28.0'
18 South of Southwest Pass of the Mississippi River	28°46.5'	89°26.0'
19 Northwest tip of Mississippi Canyon	28°38.5'	90°08.5'
20 West side of Mississippi Canyon	28°34.5'	89°59.5'
21 South of Timbalier Bay	28°22.5'	90°02.5'
22 South of Terrebonne Bay	28°10.5'	90°31.5'
23 South of Freeport	27°58.0'	95°00.0'
24 Off Matagorda Island	27°43.0'	96°02.0'
25 Off Aransas Pass	27°30.0'	96°23.5'
26 Northeast of Port Mansfield	27°00.0'	96°39.0'
27 East of Port Mansfield	26°44.0'	96°37.5'
28 Northeast of Port Isabel	26°22.0'	96°21.0'
29 U.S./Mexico EEZ boundary	26°00.5'	96°24.5'

Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.

¹ Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2 OF APPENDIX B TO PART 622.—SEAWARD COORDINATES OF THE STRESSED AREA

Point No. and reference location ¹	North lat.	West long.
1 Seaward limit of Florida's waters northeast of Dry Tortugas	24°45.5'	82°41.5'
2 North of Marquesas Keys	24°48.0'	82°06.5'
3 Off Cape Sable	25°15.0'	82°02.0'
4 Off Sanibel Island—Inshore	26°26.0'	82°29.0'
5 Off Sanibel Island—Offshore	26°26.0'	82°59.0'
6 West of Egmont Key	27°30.0'	83°21.5'
7 Off Anclote Keys—Offshore	28°10.0'	83°45.0'
8 Off Anclote Keys—Inshore	28°10.0'	83°14.0'
9 Off Deadman Bay	29°38.0'	84°00.0'
10 Seaward limit of Florida's waters east of Cape St. George	29°35.5'	84°38.6'
Thence westerly along the seaward limit of Florida's waters to:		
11 Seaward limit of Florida's waters south of Cape San Blas	29°32.2'	85°27.1'
12 Southwest of Cape San Blas	29°30.5'	85°52.0'
13 Off St. Andrew Bay	29°53.0'	86°10.0'
14 De Soto Canyon	30°06.0'	86°55.0'
15 South of Florida/Alabama border	29°34.5'	87°38.0'
16 Off Mobile Bay	29°41.0'	88°00.0'
17 South of Alabama/Mississippi border	30°01.5'	88°23.7'

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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.
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'
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

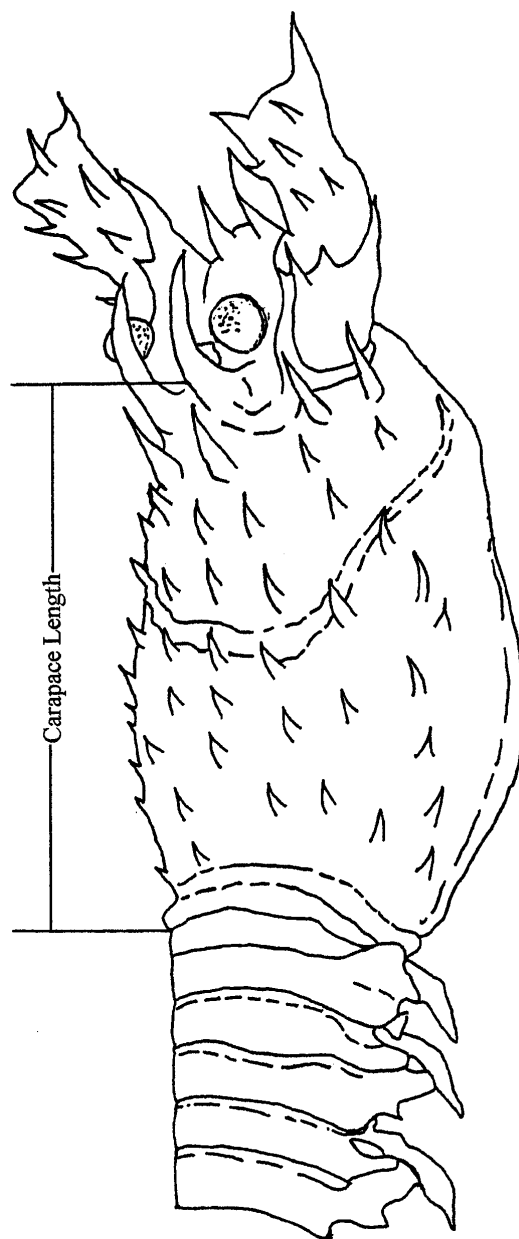


FIGURE 1 OF APPENDIX C TO PART 622—CARAPACE LENGTH

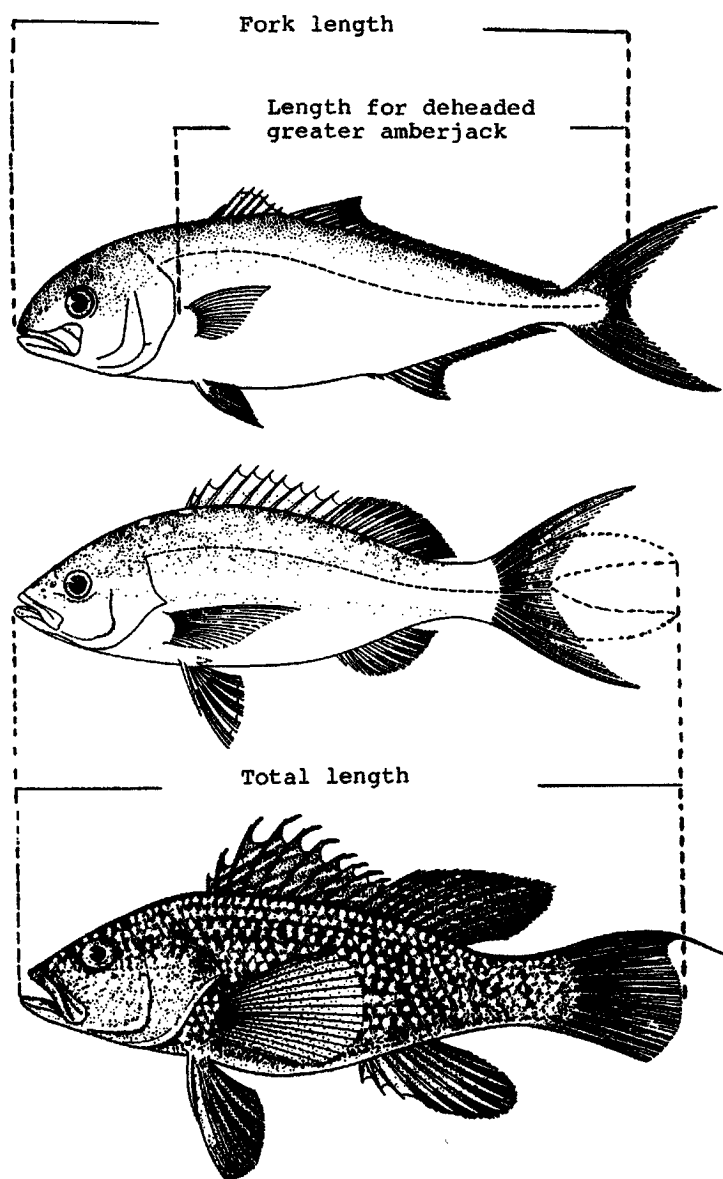


FIGURE 2 OF APPENDIX C TO PART 622—FORK LENGTH, TOTAL LENGTH, AND LENGTH FOR DEHEADED GREATER AMBERJACK

PART 628—ATLANTIC BLUEFISH FISHERY

Subpart A—General Provisions

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- 628.20 Fishing year.
628.21 Possession limit.
628.22 Catch monitoring, commercial controls, and gear restrictions.
628.23 Closure of fishery.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 55 FR 18733, May 4, 1990, unless otherwise noted.

Subpart A—General Provisions

§ 628.1 Purpose and scope.

The regulations in this part implement the Fishery Management Plan for the Bluefish Fishery, which was prepared and adopted by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission in cooperation with the New England and South Atlantic Fishery Management Councils. These regulations govern the conservation and management of Atlantic bluefish in the EEZ.

§ 628.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bluefish means *Pomatomus saltatrix*. Bluefish, for the purposes of this part, refers to bluefish in the Atlantic EEZ from the eastern coast of Florida to Maine.

Charter or party boat means any vessel that carries passengers for hire to engage in fishing.

Commission means the Atlantic States Marine Fisheries Commission.

Committee means the Bluefish FMP Review and Monitoring Committee of the Council.

Council means the Mid-Atlantic Fishery Management Council.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Bluefish Fishery and any amendments thereto.

Fishing 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.

NEFC means the Northeast Fisheries Center, NMFS, Water Street, Woods Hole, MA 02543.

Pair trawl means a net attached to and towed by two vessels.

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.

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

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, telephone 508-281-9243, or a designee.

Regulated fishery means any fishery of the United States which is regulated under the Magnuson Act.

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 $\frac{1}{4}$ the length of the net or with an opening greater than $\frac{1}{4}$ the length of the net if the opening is obstructed in any fashion.

Vessel length means that length specified on State registration or U.S. Coast Guard documentation.

§ 628.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Additional regulations governing fishing for bluefish by foreign vessels in the EEZ are set forth in 50 CFR part 611, subparts A and C.

§ 628.4 Permits and fees.

(a) *General.* (1) Any person selling bluefish harvested in the EEZ must have either a valid permit issued under this part or a valid State of landing permit to sell bluefish.

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(2) Any person who applies for a permit under this section, or who uses a valid state permit to sell fish harvested from the EEZ, must agree as a condition of using either permit that his/her bluefish catch and gear (without regard to whether fishing occurs in the EEZ or landward of the EEZ, and without regard to where such bluefish or gear are possessed, taken, or landed) will be subject to all the requirements of this part. All such catch and gear will remain subject to any applicable State or local requirements. If a requirement of this part and a conservation measure required by a state or local law differ, any person issued a permit under this section or using a valid State permit to sell bluefish harvested from the EEZ must comply with the more restrictive requirement.

(b) *Application.* (1) An application for a permit under this part must be signed by the applicant on an appropriate form obtained from the Regional Director and submitted at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide all the following information:

(i) The name, mailing address, including zip code, and telephone number of the applicant;

(ii) The height, weight, hair color, and eye color of an individual applicant;

(iii) If the applicant represents a corporation, the certificate of incorporation;

(iv) Percentage of annual income derived from the sale of bluefish; and

(v) Any other information required by the Regional Director.

(3) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 21 days following the date of notification, the application will be discarded.

(4) Any change in the information specified in paragraph (b)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change.

(c) *Fees.* The Regional Director may charge a fee consistent with the Mag-

nuson Act for the issuance of the federal permit.

(d) *Issuance.* The Regional Director will issue a permit to the applicant no later than 30 days from the receipt of a completed application.

(e) *Duration.* A permit will continue in effect until December 31 of each year unless it is revoked, suspended, or modified under 15 CFR part 904.

(f) *Alteration.* No person may alter, erase, or mutilate any permit. Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the fishing permit number assigned. An application for a replacement permit will not be considered a new application. The Regional Director may charge a fee consistent with the Magnuson Act for the issuance of the replacement permit.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit will be valid only for the person for which it is issued.

(i) *Display.* A person issued a permit under this section must be able to present the permit for inspection when requested by an authorized officer.

(j) *Suspension and revocation.* Subpart D of 15 CFR part 904 (Civil Procedures) governs the imposition of sanctions against a permit issued under this part.

§ 628.5 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Possess in or harvest from the EEZ Atlantic bluefish in excess of the daily possession limit specified in § 628.21, unless that person has a permit meeting the requirements of § 628.4(a);

(b) Possess, have custody or control of, ship, receive, barter, trade, transport, offer for sale, sell, purchase, import, or export any bluefish taken, retained, or landed in violation of the Magnuson Act, or any regulation or permit issued under the Magnuson Act;

(c) Fish under a permit meeting the requirements of § 628.4(a) in violation of a notice of restriction published under § 628.22;

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(d) Fish in the EEZ under a permit meeting the requirements of § 628.4(a) during a closure under § 628.23;

(e) Fail to report to the Regional Director within 15 days, any change in the information in the application for a permit under § 628.4;

(f) Fail to present any permit meeting the requirements of § 628.4(a) upon request of an authorized officer;

(g) Sell any Atlantic bluefish harvested from the EEZ unless that person has a permit that meets the requirements of § 628.4(a);

(h) Make any false statement, written or oral, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of any Atlantic bluefish; or

(i) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 628.6 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 628.7 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 628.20 Fishing year.

The fishing year is from January 1 through December 31.

§ 628.21 Possession limit.

(a) *Possession limit.* (1) No person shall possess more than ten bluefish unless he/she has a permit meeting the requirements of § 628.4(a).

(2) Bluefish caught while in possession of a permit meeting the requirements of § 628.4(a) must be kept separate from the pooled catch and in the possession of the permit holder at all times.

(3) If Atlantic bluefish are filleted into two or more sections, such fillets shall be deemed to be whole Atlantic bluefish using a ratio of 1:2 (two fillets to one whole fish). If Atlantic bluefish are filleted into a single (butterfly) fillet, such fillets shall be deemed to be whole Atlantic bluefish.

(4) Atlantic bluefish harvested from party and charter boats or other ves-

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sels carrying more than one person may be commingled. Compliance with the daily possession limit will be determined by dividing the number of Atlantic bluefish on board by the number of persons on board, provided, however, that if a person or persons on board are fishing under a permit meeting the requirements of § 628.4(a), his/her catch shall not be counted for determining compliance with the possession limit if it is maintained in the possession of such person(s). 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/or operator.

(b) *Adjustment of the possession limit.* The Secretary may adjust the possession limit within a range of 0 to 15 Atlantic bluefish based on a recommendation of the Council and Commission. The Secretary will publish a notice of any proposed adjustment, together with the basis for such adjustment in the FEDERAL REGISTER. The public may comment on the adjustment for 15 days after the date of the publication. After consideration of public comments, the Secretary may publish a notice of any adjustment in the possession limit in the FEDERAL REGISTER.

§ 628.22 Catch monitoring, commercial controls, and gear restrictions.

(a) The Committee will review bluefish catch statistics, a projection of the commercial share for the next fishing year, and the most recent stock assessment prior to August 15th of each year. The Committee will report to the Council and the Commission.

(b) The Council and the Commission will review the report of the Committee. If the report indicates that the commercial catch for the next fishing year will equal or exceed 20 percent of the total catch (recreational catch plus commercial landings) of Atlantic bluefish, the Council and Commission will propose the commercial controls to be implemented at the start of the upcoming year. If the report indicates that the commercial catch will be greater than 17 percent but less than 20 percent of the total catch of Atlantic bluefish, or that the commercial share for the last full year is 50 percent greater than

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the previous year's commercial share, the Council and Commission will determine whether commercial controls are necessary. In making such a determination the Council and Commission will consider:

- (1) The most recent catch data;
- (2) Trends in the fishery; and
- (3) Any other relevant factors.

(c) If the catch in the commercial fishery is projected to equal or exceed the 20 percent limit during the upcoming year, then a State allocation system will be implemented. This will entail the use of landings data from the most recent 10-year period for each State, to determine the average percentage of each State's coastwide commercial landings. These percentages will be used to determine the amount of the coastwide quota allocated to each State. Quotas will apply to landings in each State, regardless of where the bluefish were caught.

(d) If whole Atlantic bluefish are processed into fillets at sea, then fillet weight will be converted to whole weight at the State of landing by multiplying fillet weight by 2.5. If whole Atlantic bluefish are headed and gutted at sea, then the conversion is accomplished by multiplying headed/gutted weight by 1.5.

(e) If the Council concludes that the increase in the commercial catch is attributable to the use of purse seines, pair trawls, or encircling (runaround) gillnets, then it will propose restrictions applicable to that gear type. In determining what restrictions are necessary to control the catch of Atlantic bluefish by commercial fishermen using these gear, the Council may consider:

- (1) Trip limits;
- (2) Area closures;
- (3) Banning the use of these gear types; or
- (4) Any other measures it deems appropriate.

(f) The Regional Director will review any gear restriction(s) proposed by the Council. If the Regional Director concurs that the proposed gear restrictions are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director will recommend that the Secretary publish a notice of

the proposed restriction in the FEDERAL REGISTER with a 30-day public comment period. After consideration of public comments, the Secretary may publish a notice in the FEDERAL REGISTER specifying the final restriction(s).

(g) The Secretary may rescind a notice of restriction in the FEDERAL REGISTER if he finds, based on the advice of the Council through the process set forth in paragraphs (a) and (b) of this section, that the restriction is no longer necessary.

§ 628.23 Closure of fishery.

The Regional Director shall close the commercial fishery for Atlantic bluefish in the EEZ if the commercial fisheries for Atlantic bluefish have been closed in all Atlantic coastal States.

PART 630—ATLANTIC SWORDFISH FISHERY

Subpart A—General Provisions

Sec.

- 630.1 Purpose and scope.
- 630.2 Definitions.
- 630.3 Relation to other laws.
- 630.4 Permits and fees.
- 630.5 Recordkeeping and reporting.
- 630.6 Vessel identification.
- 630.7 Prohibitions.
- 630.8 Facilitation of enforcement.
- 630.9 Penalties.
- 630.10 At-sea observer coverage.

Subpart B—Management Measures

- 630.20 Fishing year.
- 630.21 Restrictions on transfer, off-loading, and sale.
- 630.22 Gear restrictions.
- 630.23 Harvest limitations.
- 630.24 Quotas.
- 630.25 Closures and bycatch limits.
- 630.26 Specifically authorized activities.

Subpart C—Restrictions on Swordfish Imports

- 630.40 Applicability.

Subpart D—Donation Program

- 630.50 Purpose.
- 630.51 Participation.
- 630.52 Termination.

FIGURES—PART 630

FIGURE 1—CLEITHRUM TO KEEL (CK) MEASUREMENT OF SWORDFISH.

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AUTHORITY: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

SOURCE: 50 FR 33956, Aug. 22, 1985, unless otherwise noted.

Subpart A—General Provisions

§ 630.1 Purpose and scope.

(a) The purpose of this part is to implement—

(1) The Fishery Management Plan for the Atlantic Swordfish Fishery under the Magnuson Act; and

(2) The recommendations of the International Commission for the Conservation of Atlantic Tunas, as they relate to conservation and management of swordfish, under the Atlantic Tunas Convention Act.

(b) This part governs the conservation and management of the North Atlantic swordfish stock.

(c) Regulations governing fishing by vessels other than vessels of the United States shoreward of the outer boundary of the EEZ are published at 50 CFR part 611 subpart A, and §§611.60 and 611.61.

[56 FR 65016, Dec. 13, 1991]

§ 630.2 Definitions.

In addition to the definitions in the Magnuson Act and in §620.2 of this chapter, the terms used in this part have the following meanings:

Carcass or dressed means a fish that has been gutted and the head and fins have been removed, but is otherwise in whole condition.

Dealer means the person in the United States who first receives, by way of purchase, barter, or trade, swordfish harvested from the Atlantic Ocean.

Drift gillnet, sometimes called a drift entanglement net or drift net, means a flat net, unattached to the ocean bottom, whether or not it is attached to a vessel, designed to be suspended vertically in the water to entangle the head or other body parts of fish that attempt to pass through the meshes.

Ganglion means one of the lines that bear hooks and which is attached at intervals along the main line of a longline. (Synonymous with leader.)

Handline gear means a fishing line set and pulled by hand that remains attached to a fishing vessel during fishing.

Land or landed means to arrive in port or at a dock, berth, beach, seawall, or ramp.

North Atlantic swordfish stock means those swordfish in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude. The North Atlantic swordfish stock is the management unit for these regulations.

Pelagic longline means a type of fishing gear consisting of a length of line suspended horizontally in the water above the bottom from lines attached to surface floats and to which gangions and hooks are attached.

Recreational fishery means the harvest of swordfish from a vessel with only rod and reel fishing gear aboard.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432; telephone 813-570-5301, or a designee.

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

Science and Research Director means the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee.

Swordfish means a fish of the species *Xiphias gladius*.

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a port, dock, berth, beach, seawall, or ramp and that terminates with return to a port, dock, berth, beach, seawall, or ramp.

Trip limit means the total allowable take from a single trip as defined in this section.

Whole, when referring to swordfish, means a fish that is not gutted and the head and fins are intact.

[50 FR 33956, Aug. 22, 1985; 50 FR 35563, Sept. 3, 1985, as amended at 53 FR 24655, June 29, 1988; 53 FR 27694, July 22, 1988; 55 FR 35645, Aug. 31, 1990; 56 FR 65016, Dec. 13, 1991; 60 FR 46778, Sept. 8, 1995]

§ 630.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in §620.3 of this chapter and paragraph (b) of this section.

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(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 a longline or gillnet swordfish fishery in the Atlantic Ocean (including the Gulf of Mexico and Caribbean Sea) 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 50 CFR part 229.

[56 FR 59222, Nov. 25, 1991]

§ 630.4 Permits and fees.

(a) *Applicability*—(1) *Annual vessel permits*. (i) Except as provided by paragraph (a)(1)(ii) of this section, the owner of a vessel of the United States—

(A) That fishes for or possesses swordfish in or from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude, or

(B) That takes such swordfish as bycatch, whether or not retained—must have an annual vessel permit.

(ii) The owner of a vessel that fishes for or possesses swordfish in or from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude—

(A) In the recreational fishery, or

(B) Shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands with only handline gear aboard—is exempt from the requirement to have a permit.

(2) *Annual dealer permits*. A dealer who receives swordfish harvested or possessed by a vessel of the United States must have an annual dealer permit.

(b) *Application for an annual vessel permit*. (1) An application for an annual vessel permit under this section must be signed by the owner and submitted to the Regional Director. The application must be submitted at least 30 days prior to the date on which the applicant desires to have the permit made effective. An application form is available from the Regional Director and must contain the following information:

(i) Vessel owner's name, mailing address, and telephone number;

(ii) If the vessel owner is a corporation or a partnership, the names, addresses, and dates of birth of the two principal shareholders or partners;

(iii) Vessel's name, official number, home port, net tonnage, length, and type and amount of gear used;

(iv) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(v) Any other information requested by the Regional Director that may be necessary for the issuance or administration of the permit.

(2) The application must be accompanied by a copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(c) *Application for an annual dealer permit*. (1) An application for a dealer permit must be submitted and signed by the dealer or an officer of a corporation acting as a dealer. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of each state wholesaler's license held by the dealer;

(ii) Business name, mailing address including zip code of the principal office of the business, and employer identification number, if one has been assigned by the Internal Revenue Service;

(iii) The address of each physical facility at a fixed location where the business receives fish;

(iv) Name, official capacity in the business, mailing address including zip code, telephone number, social security number, and date of birth of the applicant; and

(v) If the applicant is a corporation or partnership, the names, addresses, and dates of birth of the two principal shareholders or partners.

(d) *Fees*. A fee is charged for each annual vessel permit issued under paragraph (b) of this section and for each annual dealer permit issued under paragraph (c) of this section. The amount of the fees is calculated, at least annually, in accordance with the

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procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service, and may not exceed such costs. Applicable fees are specified with the application form and must be remitted with each application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 630.5.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 90 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the remainder of the period for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* (1) A vessel permit issued under paragraph (b) of 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.

(2) A dealer permit issued under paragraph (c) of this section may be transferred upon sale of the dealer's business. However, such transferred permit remains valid for a period not exceeding 30 days after sale of the dealer's business. A person purchasing a permitted dealership who desires to conduct activities for which a permit is required after that 30 day period must apply promptly for a permit in accordance with the provisions of paragraph (c) of this section.

(h) *Display.* A vessel permit issued under paragraph (b) of this section must be carried on board the fishing vessel and such vessel must be identified as provided for in § 630.6. A dealer permit issued under paragraph (c) of this section must be available on the dealer's premises. The operator of a

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fishing vessel or a dealer must present the permit for inspection upon 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.

(l) *Change in application information.* The owner of a vessel with a permit or a dealer with a permit must notify the Regional Director within 30 days after any change in the application information required by paragraph (b) or (c) of this section. The permit is void if any change in the information is not reported within 30 days.

[56 FR 65016, Dec. 13, 1991]

§ 630.5 Recordkeeping and reporting.

(a) *Fishing vessel reports.* (1) The owner and operator of a vessel for which a vessel permit has been issued under § 630.4 must ensure that a daily logbook form is maintained of the vessel's swordfishing effort, catch, and disposition on logbook forms available from the Science and Research Director. Such forms must be submitted to the Science and Research Director postmarked not later than the 7th day after sale of the swordfish off-loaded from a trip. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the logbook forms. Logbooks must be kept on board the vessel at all times.

(2) The owner or operator of a vessel for which a vessel permit has been issued under § 630.4 must insure that copies of tally sheets are submitted for all swordfish off-loaded and for other species off-loaded with the swordfish, including, but not limited to, shark, yellowfin tuna, bigeye tuna, and albacore. Each tally sheet must show the dealer

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to whom swordfish and other species were transferred, the date transferred, and the carcass weight of each swordfish transferred and of each of the other species for which individual carcass weights are normally recorded, including, but not limited to, shark, yellowfin tuna, bigeye tuna, and albacore. For species not individually weighed, tally sheets must record total weights by market category. Copies of tally sheets must be submitted with the log-book forms required under paragraph (a)(1) of this section.

(b) *Dealer reports.* (1) A dealer who has been issued a dealer permit under § 630.4 must submit a report to the Science and Research Director twice each month. A report form is available from the Science and Research Director. The following information must be included in each report:

- (i) Name, address, and permit number of the dealer;
- (ii) Names and official numbers of fishing vessels from which swordfish were received;
- (iii) Dates of receipt of swordfish; and
- (iv) Listed by each port and county where swordfish were off-loaded from fishing vessels:

(A) Total weight (pounds) by market category for swordfish, and for other species received with the swordfish, including, but not limited to, shark, yellowfin tuna, bigeye tuna, and albacore; and

(B) Price per pound or total value paid by market category for swordfish and other species, to the extent that such price information is known at the time of reporting.

(2) A report of swordfish and other applicable species received by a dealer on the 1st through the 15th days of each month must be submitted to the Science and Research Director postmarked not later than the 20th day of that month. A report of swordfish received by a dealer on the 16th through the last day of each month must be submitted to the Science and Research Director postmarked not later than the 5th day of the following month. If no swordfish were received during a reporting period, a report so stating must be submitted postmarked as specified for that respective reporting period.

(3) The reporting requirement of paragraph (b)(1) of this section may be satisfied by providing a copy of each appropriate weigh-out sheet and/or sales record, provided such weigh-out sheet and/or sales record, by itself or combined with the form available from the Science and Research Director, includes all of the required information.

(4) For the purposes of paragraph (b) of this section, for a swordfish off-loaded from a fishing vessel in an Atlantic coastal state from Maine through Virginia, Science and Research Director means the Science and Research Director, Northeast Fisheries Science Center, NMFS, Woods Hole, MA 02543, telephone 617-548-5123, or a designee. For a swordfish off-loaded from a fishing vessel in an Atlantic coastal state from Maine through Virginia, in lieu of providing a required report to the Science and Research Director by mail, as specified in paragraph (b)(2) of this section, a dealer may provide a report to a state or Federal fishery port agent designated by the Science and Research Director. Reports so provided must be delivered to such port agent not later than the prescribed post mark date for submitting each such report.

[56 FR 65017, Dec. 13, 1991, as amended at 61 FR 27307, May 31, 1996]

§ 630.6 Vessel identification.

(a) *Official number.* A vessel for which a permit is required by § 630.4 must display its official number—

(1) 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;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches in height for vessels over 65 feet in length and at least 10 inches in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, its fishing gear, or anything carried aboard obstructs the

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view of the official number from any enforcement vessel or aircraft.

[50 FR 33956, Aug. 22, 1985, as amended at 53 FR 27694, July 22, 1988]

§ 630.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for, possess, retain, or land swordfish without a valid permit aboard a vessel when such permit is required under § 630.4(a)(1).

(b) Purchase, sell, barter, or trade or attempt to purchase, sell, barter, or trade a swordfish taken by a vessel that does not have a valid permit when such permit is required under § 630.4(a)(1) and as specified in § 630.21(b).

(c) Sell, barter, or trade or attempt to sell, barter, or trade a swordfish to a dealer who does not have an annual dealer permit required under § 630.4(a)(2).

(d) As a dealer, purchase, barter, or trade or attempt to purchase, barter, or trade a swordfish without an annual dealer permit, as specified in §§ 630.4(a)(2) and 630.21(c).

(e) Falsify information required on an application for a permit submitted under § 630.4 (b) or (c).

(f) Fail to display a permit, as required by § 630.4(h).

(g) Falsify or fail to maintain or submit information required to be maintained or submitted, as specified in § 630.5 (a) or (b).

(h) Falsify or fail to affix and maintain vessel markings, as specified in § 630.6.

(i) Fail to embark an observer on a trip when selected, as specified in § 630.10(a).

(j) Falsify or fail to provide requested information regarding a vessel's trip, as specified in § 630.10(b).

(k) Assault, resist, oppose, impede, harass, intimidate, or interfere with an NMFS-approved observer aboard a vessel.

(l) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(m) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 630.10(c).

(n) Transfer a swordfish at sea from or to a fishing vessel, as specified in § 630.21(a).

(o) Sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter a swordfish harvested in the recreational fishery, as specified in § 630.21(d).

(p) Fish for swordfish with a drift gillnet that is 2.5 kilometers or more in length or possess a swordfish aboard a vessel possessing such drift gillnet, as specified in § 630.22.

(q) Possess on board a vessel a swordfish that is smaller than the minimum size specified in § 630.23(a).

(r) Possess or land a swordfish in other than whole or dressed form, as specified in § 630.23(c).

(s) During a closure of the drift gillnet, longline, or harpoon fisheries under § 630.25(a)(1) or (b), aboard a vessel using or having aboard the specified gear, fish for swordfish, or possess or land swordfish in excess of the bycatch limits, as specified in § 630.25(c).

(t) Aboard a vessel using or having aboard gear other than drift gillnet, longline, or harpoon, fish for swordfish, or possess or land swordfish in excess of the bycatch limit, as specified in § 630.25(d).

(u) During a closure of the bycatch fishery under § 630.25(a)(2), fish for, possess, or land swordfish, as specified in § 630.25(e).

(v) Interfere with, obstruct, delay, or prevent by any means, a lawful investigation or search in the process of enforcing this part.

(w) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a swordfish.

(x) Violate any provision of this part, the Magnuson Act, the Atlantic Tunas Convention Act, or any regulations or permits issued under the Magnuson Act or the Atlantic Tunas Convention Act.

(y) Purchase, sell, trade, or barter, or attempt to purchase, sell, trade, or barter, any swordfish or part thereof that is subject to the donation program in subpart D of this part, as specified at

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§ 630.51(b)(9), § 630.51(c)(4), or § 630.51(d)(5).

(z) Exceed the vessel trip limits specified in § 630.23.

[56 FR 65018, Dec. 13, 1991, as amended at 57 FR 34265, Aug. 4, 1992; 59 FR 55064, Nov. 3, 1994; 60 FR 46778, Sept. 8, 1995; 61 FR 27307, May 31, 1996]

§ 630.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 630.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

§ 630.10 At-sea observer coverage.

(a) If a vessel's trip is selected by the Science and Research Director for observer coverage, the owner or operator of such vessel must accommodate an NMFS-approved observer.

(b) When notified in writing by the Science and Research Director that his vessel has been selected to carry an NMFS-approved observer, an owner or operator of a vessel for which a vessel permit has been issued under § 630.4 must advise the Science and Research Director in writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time); and

(2) Expected landing information (port, dock, and date).

(c) An owner or operator of a vessel on which an 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; and

(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.

[56 FR 65018, Dec. 13, 1991]

Subpart B—Management Measures

SOURCE: 56 FR 65019, Dec. 13, 1991, unless otherwise noted.

§ 630.20 Fishing Year.

The fishing year is June 1 through July 31.

[61 FR 27307, May 31, 1996]

§ 630.21 Restrictions on transfer, off-loading, and sale.

(a) A swordfish harvested from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude may not be transferred at sea, regardless of where the transfer takes place; and in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude a swordfish may not be transferred at sea regardless of where the swordfish was harvested.

(b) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude may be initially sold, traded, or bartered or attempted to be sold, traded, or bartered only by an owner or operator of a vessel that has been issued a vessel permit under § 630.4, except that a swordfish that is off-loaded in Puerto Rico or the U.S. Virgin Islands from a non-permitted vessel that fished exclusively shoreward of the outer boundary of the EEZ around Puerto Rico and the U.S. Virgin Islands with only handline gear aboard may be sold, traded, or bartered.

(c) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude may be initially purchased, traded, or bartered or attempted to be purchased, traded, or bartered only by a dealer having a dealer permit issued under § 630.4.

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(d) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude in the recreational fishery may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

§ 630.22 Gear restrictions.

A drift gillnet with a total length of 2.5 kilometers or more may not be used to fish for swordfish. A vessel using or having aboard a drift gillnet with a total length of 2.5 kilometers or more may not possess a swordfish.

§ 630.23 Harvest limitations.

(a) *Minimum size.* The minimum allowable size for possession on board a fishing vessel for a swordfish taken from the management unit is 29 inches (73 cm) carcass length, measured along the body contour (i.e., a curved measurement) from the cleithrum to the anterior portion of the caudal keel (CK measurement) or, if swordfish are weighed, 33 lb (15 kg) dressed weight. The cleithrum is the semicircular bony structure that forms the posterior edge of the gill opening. Measurement must be made at the point on the cleithrum that provides the shortest possible CK measurement (Figure 1 to part 630).

(b) *Carcass condition.* A swordfish possessed in the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, north of 5°N. latitude must be in whole or dressed form, and a swordfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state must be maintained in whole or dressed form through off-loading, except such swordfish as are damaged by shark bites. A shark-bit swordfish for which the remainder of the carcass is less than the minimum size limit specified in paragraph (a) of this section may not be landed.

(c) *Vessel trip limits.* In 1996, vessels issued a swordfish permit under § 630.4 may not land from, or possess during, a single trip more than 31,600 lb (14,334 kg) dressed weight of swordfish, unless

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a closure has been effected under § 630.25.

[57 FR 57369, Dec. 4, 1992, as amended at 60 FR 46778, Sept. 8, 1995; 61 FR 27307, May 31, 1996]

§ 630.24 Quotas.

(a) *Applicability.* A swordfish harvested from the North Atlantic swordfish stock by a vessel of the United States in other than the recreational fishery is counted against the directed-fishery gear quota or the by catch quota. A swordfish harvested by drift gillnet, longline, or harpoon and landed before the effective date of a closure for that gear, done pursuant to § 630.25(a)(1), is counted against the applicable directed-fishery gear quota. After a gear closure, a swordfish landed by a vessel using or possessing gear for which a bycatch is allowed under § 630.25(c) is counted against the bycatch allocation specified in paragraph (c) of this section. Notwithstanding the above, a swordfish harvested by a vessel using or possessing gear other than drift gillnet, longline, harpoon, or rod and reel is counted against the bycatch quota specified in paragraph (c) of this section at all times.

(b) *Directed-fishery quota.*

(1) The directed fishery quota for the period January 1, 1996, through May 31, 1996, is 1,021 mt dressed weight for the longline fishery, 22.5 mt dressed weight for the drift gillnet fishery, and 106 mt dressed weight for the bycatch fishery.

(2) The annual quota for the directed fishery for swordfish is 2,371 mt dressed weight, divided into two semiannual quotas as follows:

(i) For the semiannual period June 1 through November 30:

(A) 23.45 mt dressed weight, that may be harvested by drift gillnet.

(B) 1,162.05 mt dressed weight that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1064.44 mt dressed weight, may be landed in this category.

(ii) For the semiannual period December 1 through May 31:

(A) 23.45 mt dressed weight that may be harvested by drift gillnet.

(B) 1,162.05 mt dressed weight that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1064.44 mt dressed weight may be landed in this category.

(3) Notwithstanding any other provision of this part, the sub-quotas for the drift gillnet fishery for January 1 - November 30, 1996, are available as follows:

(i) For the period January 1 through June 30, 22.5 mt dressed weight; and

(ii) For the period July 1 through November 30, 23.45 mt dressed weight.

(4) A swordfish will be deemed to have been harvested by a drift gillnet when it is aboard, or off-loaded in an Atlantic, Gulf of Mexico, or Caribbean coastal state from, a vessel using or having aboard a drift gillnet or when it is aboard, or off-loaded in an Atlantic, Gulf of Mexico, or Caribbean coastal state from, a vessel which used or had aboard a drift gillnet during its current or most recent fishing trip.

(c) *Bycatch quota.* The annual bycatch quota for swordfish is 560,000 pounds (254,014 kg), dressed weight.

(d) *Adjustments to annual quotas.*

(1) NMFS will reevaluate the annual total allowable catch, the annual directed-fishery quota, the annual bycatch quota, bycatch limits in the non-directed fishery, and the harpoon gear set-aside each year. For the purpose of this evaluation, NMFS will consider the best available scientific information regarding the following factors:

(i) Swordfish stock abundance assessments;

(ii) Swordfish stock age and size composition;

(iii) Catch and effort in the swordfish fishery; and

(iv) Consistency with ICCAT recommendations.

(2) NMFS may, at its discretion, convene a panel of scientists with expertise in swordfish stock assessment for the purpose of providing recommendations for adjustments to annual quotas.

(3) NMFS will prepare a report of its evaluations, a regulatory impact review, and an environmental assessment.

(4) Any adjustments to the 12-month directed-fishery quota will be apportioned equally between the June 1

through November 30 and December 1 through May 31 semiannual periods.

(5) NMFS will announce any adjustments to the annual quotas by publication of a proposed rule in the FEDERAL REGISTER, providing for a minimum of a 30-day comment period. The report of evaluations and any regulatory impact review and environmental assessment will be made available to the public. The Assistant Administrator will take into consideration all information received during this comment period and will publish a final rule in the FEDERAL REGISTER.

(e) NMFS may adjust the December 1 through May 31 semiannual directed-fishery quota and gear quotas to reflect actual catches during the June 1 through November 30 semiannual period, provided that the 12-month directed-fishery and gear quotas are not exceeded.

(f) *Inseason adjustments to the bycatch and directed fishery quotas.* (1) If NMFS determines that the annual bycatch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed-fishery quotas pursuant to the requirements and procedures in paragraphs (g) and (h) of this section.

(2) If NMFS determines that it is necessary to close the directed fishery, any estimated overharvest or underharvest directed-fishery quota available immediately prior to that closure will be applied to the annual bycatch quota and will be used to adjust the annual bycatch quota accordingly.

(g) *Adjustments to gear quotas.* If NMFS determines that the annual directed-fishery or bycatch quotas must be adjusted pursuant to paragraphs (d) and (f) of this section, the annual or semi-annual gear quotas will be adjusted so that the new gear quotas represent the same proportion (percentage) of the adjusted quota as they did of the quota before adjustment.

(h) *Notice of adjustments.* (1) NMFS will announce a proposed adjustment in management measures pursuant to paragraph (e), (f), or (g) of this section by publication of a proposed rule in the FEDERAL REGISTER. The proposed rule will provide for public comment unless NMFS finds for good cause that such

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public comment is impracticable, unnecessary, or contrary to the public interest. NMFS will take into consideration all information received during the comment period and will publish the approved adjustment in management measures as a final rule in the FEDERAL REGISTER.

(2) If NMFS finds for good cause that public comment on an adjustment in management measures pursuant to paragraph (e), (f), or (g) of this section is impracticable, unnecessary, or contrary to the public interest, such adjustment will be published as an interim final rule with a 15-day public comment period commencing on the date of publication.

[56 FR 65019, Dec. 13, 1991, as amended at 57 FR 34266, Aug. 4, 1992; 58 FR 33569, June 18, 1993; 60 FR 46778, Sept. 8, 1995; 60 FR 51934, Oct. 4, 1995; 61 FR 27307, May 31, 1996]

§ 630.25 Closures and bycatch limits.

(a) *Notice of closure.* (1) When a directed-fishery annual, semi-annual, or gear quota specified in § 630.24 is reached, or is projected to be reached, NMFS will publish a notice in the FEDERAL REGISTER to close the entire directed fishery for fish from the North Atlantic swordfish stock, the drift gillnet fishery, or the harpoon and longline fisheries, as appropriate. The effective date of such notice will be at least 14 days after the date such notice is filed at the Office of the Federal Register. The closure will remain in effect until an additional directed-fishery or gear quota becomes available.

(2) When the bycatch quota specified in § 630.24(c) is reached, or is projected to be reached, NMFS will publish a notice in the FEDERAL REGISTER to prohibit further possession or retention of Atlantic swordfish by vessels of the United States. The effective date of such notice will be at least 14 days after the date such notice is filed at the Office of the Federal Register. The closure will remain in effect until a new annual bycatch quota becomes available.

(b) *Special set-aside for harpoon gear.* The procedures of paragraph (a)(1) of this section notwithstanding, during the June 1 through November 30 semi-annual period, swordfish not exceeding 21,500 lb (9,752 kg), dressed weight, may

be set aside for the harpoon segment of the fishery. If NMFS determines that the harpoon and longline quota in this semi-annual period will be harvested before the harpoon segment of the fishery has had an opportunity to harvest the set-aside amount, the longline segment of the fishery will be closed and the harpoon segment will remain open until the set-aside amount is reached. The basis for such determination by NMFS will be published in the FEDERAL REGISTER in the closure notice.

(c) *Bycatch limits during a directed-fishery closure.* (1) During a closure of the drift gillnet fishery, aboard a vessel using or having aboard a drift gillnet—

(i) A person may not fish for swordfish from the North Atlantic swordfish stock; and

(ii) No more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

(2) During a closure of the longline fishery, aboard a vessel using or having aboard a longline and not having aboard harpoon gear—

(i) A person may not fish for swordfish from the North Atlantic swordfish stock; and

(ii) No more than 15 swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. The Assistant Administrator may modify or change the bycatch limits upon publication of notice in the FEDERAL REGISTER pursuant to the requirements and procedures in paragraphs (a)(1) and (a)(2) of this section. Changes in the bycatch limits will be based upon the length of the directed fishery closure as well as the estimated catch per vessel in the non-directed fishery.

(3) During a closure of the harpoon fishery, aboard a vessel using or having aboard harpoon gear—

(i) A person may not fish for swordfish from the North Atlantic swordfish stock; and

(ii) No swordfish may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea,

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north of 5°N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

(d) *Bycatch limits in the non-directed fishery.* Aboard a vessel using or having aboard gear other than drift gillnet, harpoon, or longline, other than a vessel in the recreational fishery—

(1) A person may not fish for swordfish from the North Atlantic swordfish stock;

(2) Except as specified in paragraph (d)(3) of this section, no more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state; and

(3) Aboard a vessel in the squid trawl fishery, no more than five swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. For the purposes of this paragraph (d)(3), a vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawl gear aboard and squid constitute not less than 75 percent by weight of the total fish aboard or off-loaded from the vessel.

(e) *Limits during a bycatch closure.* During a closure of the bycatch fishery under paragraph (a)(2) of this section, the provisions of paragraphs (c) and (d) of this section notwithstanding, aboard a fishing vessel, other than a vessel in the recreational fishery—

(1) A person may not fish for swordfish from the North Atlantic swordfish stock; and

(2) No swordfish may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

[56 FR 65019, Dec. 13, 1991, as amended at 57 FR 34266, Aug. 4, 1992; 60 FR 46778, Sept. 8, 1995; 61 FR 27308, May 31, 1996; 61 FR 34746, July 3, 1996]

§ 630.26 Specifically authorized activities.

NMFS may authorize for the acquisition of information and data, activities

that are otherwise prohibited by these regulations.

Subpart C—Restrictions on Swordfish Imports

§ 630.40 Applicability.

The policies and procedures contained in 50 CFR 285.80 through 285.86, which implement the provisions of section 6(c) of the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*, with respect to import controls and which specify procedures for the establishment of restrictions on imports of tuna, apply to swordfish from the North Atlantic swordfish stock.

Subpart D—Donation Program

SOURCE: 59 FR 55064, Nov. 3, 1994, unless otherwise noted.

§ 630.50 Purpose.

This subpart implements a program under which swordfish from the North Atlantic swordfish stock that are retained in excess of the trip allowance for undersized swordfish specified in § 630.23(b) must be retained for donation through the Second Harvest National Foodbank Network to the needy. This program is intended to obtain additional information regarding the harvest, mortality, and biological characteristics of swordfish less than the minimum size limit and to avoid waste of swordfish that would otherwise be discarded dead.

§ 630.51 Participation.

(a) *General.* Owners of vessels and dealers permitted under § 630.4 may volunteer to participate in the swordfish donation program by contacting the Chief, Highly Migratory Species Division, Office of Fisheries Conservation and Management, NMFS, 1335 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713-2347, facsimile (301) 588-4967. The Chief, Highly Migratory Species Division, will select owners of vessels and dealers who may participate in the donation program and will keep selected vessel owners advised of the selected dealers.

(1) Factors that will be considered in the selection process include:

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(i) History of voluntary participation in NMFS cooperative scientific programs;

(ii) Whether both vessel and dealer volunteers can be matched in an area throughout the year (including truck routes) to ensure distribution of donated fish;

(iii) Representative coverage of the fishery, to the extent possible; and

(iv) Compliance record of volunteers. Specifically, any person who has been issued a Notice of Violation and Assessment (NOVA) for violating any provision of the Magnuson Act (16 U.S.C. 1802 *et seq.*), the Lacey Act (16 U.S.C. 3371 *et seq.*), or the ATCA (16 U.S.C. 971 *et seq.*), or who is currently under investigation for such a violation, may be excluded from the program.

(2) Selected dealers will also be advised of the selected vessel owners and of authorized Second Harvest recipients of donated swordfish.

(3) Second Harvest is the Second Harvest National Foodbank Network, 116 South Michigan Avenue, Suite 4, Chicago, IL 60603-6001. Second Harvest affiliates are Certified Affiliate Food Banks throughout the United States that have a contract with Second Harvest and are officially part of their National Foodbank Network. Agents of Second Harvest are the individual charities that distribute or serve food to the needy from the Affiliate Food Banks, or a business designated by letter from Second Harvest to transport donated food between the foodbank and the charity.

(b) *Vessels.* The owner, or their operator, of a vessel that has been selected to participate in the donation program and so notified in writing by the Chief, Highly Migratory Species Division, may retain swordfish from the North Atlantic swordfish stock that are in excess of the trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. No person may land a swordfish in excess of the trip allowance for undersized swordfish other than in accordance with these terms and conditions; any such landing constitutes a violation of the prohibition specified in § 630.7(q).

(1) The vessel's selection letter from the Chief, Highly Migratory Species

Division, must be carried on board the fishing vessel and the operator must present it for inspection upon the request of an authorized officer.

(2) The vessel's owner or operator must release any swordfish that is less than the minimum allowable size specified in § 630.23(a) and that is alive when brought aboard the vessel, in a manner that will ensure maximum probability of survival. If caught by hook, such fish must be released by cutting the line near the hook without removing the swordfish from the water. The owner or operator must make a reasonable effort to tag each swordfish released under this paragraph (b)(2). In addition, participants are encouraged to tag all released small bluefin tuna, big eye tuna, yellowfin tuna and sharks where possible. Tags will be provided by the Science and Research Director. A record of each tag and release must be maintained and submitted to the Science and Research Director on forms provided with the tags.

(3) The vessel's owner or operator must retain any swordfish that is dead when brought aboard the vessel.

(4) The vessel's owner or operator must tag any swordfish that is retained under the donation program of this subpart prior to its off-loading from a vessel at the facility of a selected dealer, using a non-reusable, individually numbered donation tag provided by the Chief, Highly Migratory Species Division. The donation tag is not to be removed by the vessel crew, dealer, or Second Harvest until the carcass is processed.

(5) All tags assigned to a vessel by NMFS Highly Migratory Species Division, used or unused, must be accounted for by the owner/operator at the request of any authorized officer.

(6) The vessel's owner or operator must off-load any swordfish that is retained under the donation program of this subpart only at a specified facility of a dealer who has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program. Off-loading must begin between the hours of 8 a.m. and 6 p.m. local time. An owner or operator must notify the Chief, NMFS Office of Enforcement, by telephone at numbers given in the vessel owner's selection

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letter, and a selected dealer, at least 24 hours prior to off-loading swordfish under the donation program, unless stated otherwise in the vessel owner's selection letter.

(7) The Assistant Administrator, upon consulting with industry representatives and NMFS Office of Enforcement, may change the requirements for off-loading by notification in the FEDERAL REGISTER.

(8) All swordfish harvested during a trip by a vessel participating in this pilot program must be off-loaded at the same facility to a dealer participating in this donation program.

(9) No vessel owner or operator may sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish or any part thereof that is retained under the donation program of this subpart.

(c) *Dealers.* A dealer who has been selected and so notified in writing by the Chief, Highly Migratory Species Division, to participate in the donation program may receive and retain swordfish from the North Atlantic swordfish stock that are in excess of a vessel's trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. Possession of an undersized swordfish other than in accordance with these terms and conditions constitutes a violation of the prohibition specified in § 620.7(a) of this chapter.

(1) Dealers must have available on their premises, or facility, the dealer selection letter from the Chief, Highly Migratory Species Division, and must present it for inspection upon the request of an authorized officer.

(2) A dealer may receive swordfish in excess of a vessel's trip allowance for undersized swordfish only from a vessel that has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program.

(3) A swordfish that is received under the donation program must be kept separate from other swordfish possessed by the dealer. The donation tag on such swordfish may not be removed.

(4) No dealer may sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish, or any part thereof, that is retained under the donation program of this subpart.

(5) A dealer may transfer any swordfish that is received under the donation program only to Second Harvest, and such swordfish may be transported only by Second Harvest or their designated agent. The dealer must obtain the receipt specified in paragraph (d)(3) of this section from Second Harvest or their designated agent. A copy of the receipt must be furnished by the dealer to the harvesting vessel.

(6) The dealer must include individual swordfish tag numbers along with the associated individual carcass weights of swordfish received under the donation program in the twice-monthly reports required by § 630.5(b).

(d) *Second Harvest.* Second Harvest, or its affiliates or agents, may receive and distribute swordfish from the North Atlantic swordfish stock that are in excess of the trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. Possession of a swordfish other than in accordance with these terms and conditions constitutes a violation of the prohibition specified in § 620.7(a) of this chapter.

(1) Second Harvest may receive swordfish that are in excess of the trip allowance for undersized swordfish only from a dealer who has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program.

(2) Second Harvest may receive only undersized swordfish with donation tags attached.

(3) Upon receiving swordfish under the donation program, Second Harvest must provide a bill of lading receipt that shows, or has affixed, individual carcass weights and associated tag numbers of swordfish received, the names and permit number(s) of the vessel(s) that harvested the swordfish, the name and permit number of the dealer, and the date of receipt. Such receipt must be distributed as follows: Original and one copy (for the vessel owner or operator) to the dealer, one copy to the Chief, Highly Migratory Species Division, and one copy retained by Second Harvest to accompany the carcass shipment until it is processed.

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(4) All tags received by Second Harvest affiliates or agents must be returned to Second Harvest and accounted for by Second Harvest at the request of any authorized officer, or Chief, Highly Migratory Species Division.

(5) Second Harvest, its affiliates or agents, may not sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish or any part thereof that is retained under the donation program of this subpart.

(e) *Duration of selection.* A selection letter remains valid for the period specified therein, provided the permit issued to the participating vessel or dealer under §630.4 remains valid, except that such selection letter may be revoked by the Chief, Highly Migratory Species Division—

(1) Upon the request of the participating vessel owner or dealer;

(2) Upon issuance of a Notice of Violation and Assessment against the par-

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ticipating vessel owner or dealer for a violation of the Magnuson Act (16 U.S.C. 1802 *et seq.*), the Lacey Act (16 U.S.C. 3371 *et seq.*), or the ATCA (16 U.S.C. 971 *et seq.*); or

(3) For actions not consistent with the requirements of the pilot program of this subpart.

(f) *Transfer.* A selection letter issued under this subpart is not transferable or assignable. Such letter is valid only for the vessel or dealer for which it was issued.

§ 630.52 Termination.

Upon a finding by the Assistant Administrator that the intended purposes of the program are not being achieved, or that the program is no longer in conformance with the recommendations of the International Commission for the Conservation of Atlantic Tunas, the Assistant Administrator may terminate the program by notification in the FEDERAL REGISTER.

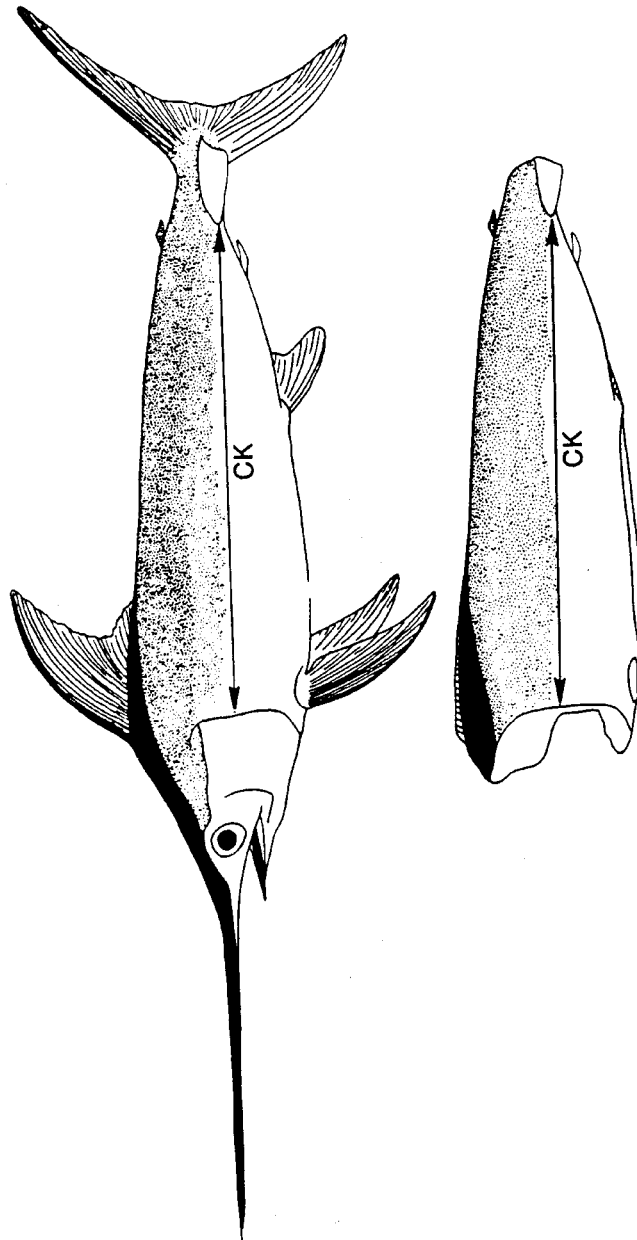


Figure 1. Cleithrum to keel (CK) measurement of swordfish.

[56 FR 65021, Dec. 13, 1991]

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PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Subpart A—General Provisions

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FIGURES—PART 640

FIGURE 1—CARAPACE LENGTH

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 640.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson Act.

(b) This part governs conservation and management of spiny lobster and slipper (Spanish) lobster in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico.

(c) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobsters, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from the requirements of this part 640, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

[57 FR 56518, Nov. 30, 1992]

§ 640.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bully net means a circular frame attached at right angles to the end of a pole and supporting a conical bag of webbing. The webbing is usually held up by means of a cord which is released when the net is dropped over a lobster.

Carapace length means the measurement of the carapace (head, body, or front section) of a spiny lobster from the anteriormost edge (front) of the groove between the horns directly above the eyes, along the middorsal line (middle of the back), to the rear edge of the top part of the carapace, excluding any translucent membrane.

Commercial fishing means any fishing or fishing activities which result in the harvest of any marine or freshwater organisms, one or more of which (or parts thereof) is sold, traded, or bartered.

Hoop net means a frame, circular or otherwise, supporting a shallow bag of webbing and suspended by a line and bridles. The net is baited and lowered to the ocean bottom, to be raised rapidly at a later time to prevent the escape of lobster.

Live well means a shaded container used for holding live lobsters aboard a vessel in which aerated seawater is continuously circulated from the sea. Circulation of seawater at a rate that replaces the water at least every 8 minutes meets the requirement for aeration.

Off Florida means the area from the Florida coast to the outer limit of the EEZ between the Georgia/Florida boundary (30°42'45.6"N. latitude) and the Alabama/Florida boundary (87°31'06"W. longitude).

Off the Gulf states, other than Florida means the area from the coast to the outer limit of the EEZ between the Texas/Mexico border to the Alabama/Florida boundary (87°31'06"W. long.).

Off Monroe County, Florida means the area from the Florida coast to the outer limit of the EEZ between a line extending directly east from the Dade/Monroe County, Florida boundary

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(25°20.4'N. latitude) and a line extending directly west from the Monroe/Collier County, Florida boundary (25°48.0'N. latitude).

Off the southern Atlantic states, other than Florida means the area from the coast to the outer limit of the EEZ between the Virginia/North Carolina boundary (36°34'55" N. lat.) to the Georgia/Florida boundary (30°42'45.6" N. lat.).

Recreational fishing means fishing or fishing activities which result in the harvest of fish, none of which (or parts thereof) is sold, traded, or bartered.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone 813-570-5301; or a designee.

Slipper (Spanish) lobster means the species *Scyllarides nodifer*.

Spiny lobster means the species *Panulirus argus*.

Tail length means the lengthwise measurement of the entire tail (segmented portion), not including any protruding muscle tissue, of a spiny lobster along the top middorsal line (middle of the back) to the rearmost extremity. The measurement is made with the tail in a flat, straight position with the tip of the tail closed.

Trip means a fishing trip, regardless of number of days' duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 17196, May 16, 1988; 53 FR 24655, June 29, 1988; 53 FR 38294, Sept. 30, 1988; 55 FR 26448, June 28, 1990; 57 FR 56518, Nov. 30, 1992; 58 FR 38979, July 21, 1993; 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995]

§ 640.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) The regulations in this part apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico and South Atlantic EEZ.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 24655, June 29, 1988]

§ 640.4 Permits and fees.

(a) *Applicability*—(1) *Licenses, certificates, and permits*—(i) *EEZ off Florida and spiny lobster landed in Florida*. For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested or possessed in the EEZ off Florida, or harvested in the EEZ other than off Florida and landed from a fishing vessel in Florida, or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, such person must have the licenses and certificates specified to be a "commercial harvester," as defined in Rule 46-24.002(2), Florida Administrative Code, in effect as of June 1, 1994. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904-487-0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

(ii) *EEZ other than off Florida*. For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested in the EEZ other than off Florida or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, a Federal vessel permit must be issued to the harvesting vessel and must be on board. However, see paragraph (a)(1)(i) of this section for the licenses and certificates required for a person to possess or land spiny lobster harvested in the EEZ other than off Florida and subsequently possessed in the EEZ off Florida or landed from a fishing vessel in Florida.

(2) *Tail-separation permits*. For a person to possess aboard a fishing vessel a separated spiny lobster tail in or from the EEZ, a tail-separation permit must be issued to the vessel and must be on board.

(3) *Corporation/partnership-owned vessels.* For a vessel owned by a corporation or partnership to be eligible for a Federal vessel permit specified in paragraph (a)(1)(ii) of this section, the earned income qualification specified in paragraph (b)(2)(vi) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(4) *Operator-qualified permits.* A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Applications for permits.* (1) An application for a Federal vessel and/or tail-separation permit must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address including zip code, telephone number, social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, provide the employer identification number, if one has been assigned by the Internal Revenue Service, and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) If the owner does not meet the earned income qualification specified in paragraph (b)(2)(vi) of this section and the operator does meet that qualification, the name, mailing address including zip code, telephone number, social security number, and date of birth of the operator.

(v) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the

Regional Director and included on the application form.

(vi) A sworn statement by the applicant for a vessel permit certifying that at least 10 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, during the calendar year preceding the application.

(vii) Documentation supporting the statement of income, if required under paragraph (b)(3) of this section.

(viii) If a tail-separation permit is desired, a sworn statement by the applicant certifying that his or her fishing activity—

(A) Is routinely conducted in the EEZ on trips of 48 hours or more; and

(B) Necessitates the separation of carapace and tail to maintain a quality product.

(ix) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (h) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

(c) *Change in application information.* The owner or operator of a vessel with a permit must notify the Regional Director within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with

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each application form. The appropriate fee must accompany each application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the applicant meets the earned income requirement specified in paragraph (b)(2)(vi) of this section. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued pursuant to this section is not transferable or assignable. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale.

(h) *Display.* A permit issued pursuant to this section must be carried on board the vessel, and such vessel must be identified as required by § 640.6. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the ap-

plication form, must accompany each request for a replacement permit.

[57 FR 56518, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995]

§ 640.5 Recordkeeping and reporting. [Reserved]

§ 640.6 Vessel and gear identification.

(a) *EEZ off Florida.* (1) An owner or operator of a vessel that is used to harvest spiny lobsters by traps in the EEZ off Florida must comply with the vessel and gear identification requirements applicable to the harvesting of spiny lobsters by traps in Florida's waters in sections 370.14(2)(a) and (3) and 370.142(2)(b), Florida Statutes, in effect as of July 1, 1994, and in Rule 46-24.006(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994.

(2) An owner or operator of a vessel that is used to harvest spiny lobsters by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters in Rule 46-24.006(6), Florida Administrative Code, in effect as of June 1, 1994.

(3) The incorporation by reference in paragraphs (a)(1) and (a)(2) of this section of sections 370.14(2)(a) and (3) and 370.142(2)(b), Florida Statutes, and Rule 46-24.006(3), (4), (5), and (6), Florida Administrative Code, was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904-487-0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

(b) *EEZ other than off Florida.* (1) The owner or operator of a vessel that is used to harvest spiny lobsters in the EEZ other than off Florida, must meet the following vessel and gear identification requirements:

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(i) The vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number must be permanently and conspicuously displayed horizontally on the uppermost structural portion of the vessel in numbers at least 10 inches (25.4 cm) high so as to be readily identifiable from the air and water;

(ii) If the vessel uses spiny lobster traps in the EEZ, other than off Florida—

(A) The vessel's color code, as assigned by Florida or, if a color code has not been assigned by Florida, as assigned by the Regional Director, must be permanently and conspicuously displayed above the number specified in paragraph (b)(1)(i) of this section so as to be readily identifiable from the air and water, such color code being in the form of a circle at least 20 inches (50.8 cm) in diameter on a background of colors contrasting to those contained in the assigned color code;

(B) A buoy or timed-release buoy of such strength and buoyancy to float must be attached to each spiny lobster trap or at each end of a string of traps;

(C) A buoy used to mark spiny lobster traps must bear the vessel's assigned color code and be of such color, hue, and brilliancy as to be easily distinguished, seen, and located;

(D) A buoy used to mark spiny lobster traps must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number in numbers at least 2 inches (5.08 cm) high; and

(E) A spiny lobster trap must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number permanently and legibly affixed.

(2) A spiny lobster trap in the EEZ, other than off Florida, will be presumed to be the property of the most recently documented owner. Upon the sale or transfer of a spiny lobster trap used in the EEZ, other than off Florida, within 5 days of acquiring ownership, the person acquiring ownership must notify the Florida Division of Law Enforcement of the Department of Environmental Protection, for a trap

that bears a Florida crawfish license or trap number, or the Regional Director, for a trap that bears a Federal vessel permit number, as to the number of traps purchased, the vendor, and the crawfish license or trap number, or Federal vessel permit number, currently displayed on the traps, and must request issuance of a crawfish license or trap number, or Federal vessel permit, if the acquiring owner does not possess such license or trap number or permit.

(c) *Unmarked traps and buoys.* An unmarked spiny lobster trap or buoy in the EEZ is illegal gear. Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties.

[57 FR 56519, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994; 60 FR 41830, Aug. 14, 1995]

§ 640.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster in or from the EEZ without a required license, certificate, or permit, as specified in § 640.4(a)(1).

(b) Falsify information specified in § 640.4(b)(2) on an application for a permit.

(c) Fail to display a permit, as specified in § 640.4(h).

(d) Falsify or fail to display and maintain vessel and gear identification, as required by § 640.6 (a) and (b).

(e) Possess a spiny lobster trap in the EEZ at a time not authorized, as specified in § 640.20(b)(3)(i) and (b)(3)(ii).

(f) Possess a spiny lobster in or from the EEZ at a time not authorized, as specified in § 640.20(b)(4).

(g) Fail to return immediately to the water a berried spiny lobster or slipper lobster; strip eggs from or otherwise molest a berried spiny lobster or slipper lobster; or possess a spiny lobster or slipper lobster, or part thereof, from which eggs, swimmerettes, or pleopods

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have been removed or stripped; as specified in § 640.21(a).

(h) Possess or fail to return immediately to the water unharmed a spiny lobster smaller than the minimum size limits specified in § 640.21 (b)(1) and (b)(3), except as provided in § 640.21(c).

(i) Harvest or attempt to harvest a spiny lobster by diving without having and using in the water a measuring device, or fail to release an undersized spiny lobster in the water, as specified in § 640.21(b)(2).

(j) Possess an undersized spiny lobster for use as an attractant in a trap in quantities or under conditions not authorized in § 640.21(c).

(k) Possess a separated spiny lobster tail, except as specified in § 640.21(d).

(l) Possess a spiny lobster harvested by prohibited gear or methods; or possess on board a fishing vessel any dynamite or similar explosive substance; as specified in § 640.20(b) and § 640.22 (a)(1) and (a)(3).

(m) Use or possess in the EEZ a spiny lobster trap that does not meet the requirements specified in § 640.22(b)(1).

(n) Pull or tend a spiny lobster trap other than during daylight hours, as specified in § 640.22(b)(2).

(o) Pull or tend another person's spiny lobster trap, except as authorized in § 640.22(b)(3).

(p) Possess spiny lobsters in or from the EEZ in an amount exceeding the daily bag and possession limit specified in § 640.23 (a), (b)(1), or (b)(2) except as authorized in § 640.23(b)(3) and (b)(4).

(q) Possess spiny lobsters aboard a vessel that uses or has on board a net or trawl in an amount exceeding the limits, as specified in § 640.23(b)(4).

(r) Operate a vessel that fishes for or possesses spiny lobster in or from the EEZ with spiny lobster aboard in an amount exceeding the cumulative bag and possession limit, as specified in § 640.23(d).

(s) Transfer or receive at sea spiny lobster in or from the EEZ caught under the bag and possession limits, as specified in § 640.23(e).

(t) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

(u) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a spiny lobster.

[57 FR 56520, Nov 30, 1992, as amended at 58 FR 38979, July 21, 1993; 58 FR 61845, Nov. 23, 1993; 59 FR 53119, Oct. 21, 1994; 60 FR 41831, Aug. 14, 1995]

§ 640.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 640.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

SOURCE: 57 FR 56520, Nov. 30, 1992, unless otherwise noted.

§ 640.20 Seasons.

(a) *EEZ off the southern Atlantic states, other than Florida.* In the EEZ off the southern Atlantic states, other than Florida, there are no seasonal restrictions on the harvest of spiny lobster or on the possession of traps.

(b) *EEZ off Florida and off the Gulf states, other than Florida—(1) Commercial and recreational fishing season.* The commercial and recreational fishing season for spiny lobster in the EEZ off Florida and the EEZ off the Gulf states, other than Florida, begins on August 6 and ends on March 31.

(2) *Special recreational fishing seasons—(i) EEZ off Florida.* There is a 2-day special recreational fishing season in the EEZ off Florida on the last Wednesday and successive Thursday of July each year during which fishing for spiny lobster is limited to diving or use of a bully net or hoop net. (See § 640.22(a) for general prohibitions on gear and methods.) In the EEZ off Monroe County, Florida, no person may harvest spiny lobster by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, during this 2-day special recreational fishing season.

(ii) *EEZ off the Gulf states, other than Florida.* There is a 2-day special recreational fishing season in the EEZ off

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the Gulf states, other than Florida, during the last Saturday and successive Sunday of July each year during which fishing for spiny lobster may be conducted by authorized gear and methods other than traps. (See § 640.22(a) for general prohibitions on gear and methods.)

(3) *Possession of traps.* (i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 46-24.005(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994, apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904-487-0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

(ii) In the EEZ off the Gulf states, other than Florida, a spiny lobster trap may be placed in the water prior to the commercial and recreational fishing season, which is specified in paragraph (b)(1) of this section beginning on August 1 and must be removed from the water after such season not later than April 5.

(iii) A spiny lobster trap, buoy, or rope in the EEZ off Florida or in the EEZ off the Gulf states, other than Florida, during periods not authorized in paragraphs (b)(3)(i) and (b)(3)(ii) of this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(4) *Possession of spiny lobsters.* In the EEZ off Florida and the Gulf states, a whole or a part of a spiny lobster subject to these regulations may only be possessed during the commercial and

recreational fishing season and the special recreational fishing season specified in § 640.20, unless accompanied by proof of lawful harvest in the waters of a foreign nation. Consistent with the provisions of paragraphs (b)(3)(i) and (ii) of this section, a spiny lobster in a trap in this area will not be deemed to be possessed provided such spiny lobster is returned immediately to the water unharmed when a trap is removed from the water between March 31 and April 15.

(c) *Primacy of seasonal restrictions in the EEZ off Florida.* The seasonal restrictions applicable in the EEZ off Florida apply to all spiny lobsters and traps in the EEZ off Florida, without regard to harvest or use elsewhere, unless accompanied by proof of lawful harvest elsewhere.

[60 FR 41831, Aug. 14, 1995]

§ 640.21 Harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) spiny lobster or slipper lobster in or from the EEZ must be returned immediately to the water unharmed. If found in a trap in the EEZ, a berried spiny lobster or slipper lobster may not be retained in the trap. A berried spiny lobster or slipper lobster in or from the EEZ may not be stripped of its eggs or otherwise molested. The possession of a spiny lobster or slipper lobster, or part thereof, in or from the EEZ from which eggs, swimmerettes, or pleopods have been removed or stripped is prohibited.

(b) *Minimum size limits.* (1) Except as provided in paragraph (c) of this section—

(i) No person may possess a spiny lobster in or from the EEZ with a carapace length of 3.0 inches (7.62 cm) or less; and

(ii) A spiny lobster, harvested in the EEZ by means other than diving, with a carapace length of 3.0 inches (7.62 cm) or less must be returned immediately to the water unharmed.

(2) No person may harvest or attempt to harvest a spiny lobster by diving in the EEZ unless he or she possesses, while in the water, a measuring device capable of measuring the carapace length. A spiny lobster captured by a diver must be measured in the water using such measuring device and, if the spiny lobster has a carapace length of

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3.0 inches (7.62 cm) or less, it must be released unharmed immediately without removal from the water.

(3) Aboard a vessel authorized under paragraph (d) of this section to possess a separated spiny lobster tail, no person may possess in or from the EEZ a separated spiny lobster tail with a tail length less than 5.5 inches (13.97 cm).

(c) *Undersized attractants.* A live spiny lobster under the minimum size limit specified in paragraph (b)(1) of this section that is harvested in the EEZ by a trap may be retained aboard the harvesting vessel for future use as an attractant in a trap provided it is held in a live well aboard the vessel. No more than fifty undersized spiny lobsters, or one per trap aboard the vessel, whichever is greater, may be retained aboard for use as attractants. The live well must provide a minimum of $\frac{3}{4}$ gallons (1.7 liters) of seawater per spiny lobster. An undersized spiny lobster so retained must be released to the water alive and unharmed immediately upon leaving the trap lines and prior to one hour after official sunset each day.

(d) *Tail separation.* The possession aboard a fishing vessel of a separated spiny lobster tail in or from the EEZ is authorized only when the possession is incidental to fishing exclusively in the EEZ on a trip of 48 hours or more and a Federal tail-separation permit specified in § 640.4(a)(2) has been issued to and is on board the vessel.

[57 FR 56520, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994]

§ 640.22 Gear and diving restrictions.

(a) *Prohibited gear and methods.* (1) A spiny lobster may not be taken in the EEZ with a spear, hook, or similar device, or gear containing such devices. In the EEZ, the possession of a speared, pierced, or punctured spiny lobster is *prima facie* evidence that prohibited gear was used to take such lobster. Hook, as used in this paragraph (a)(1), does not include a hook in a hook-and-line fishery for species other than spiny lobster; and possession of a spiny lobster that has been speared, pierced, or punctured by such hook is not considered evidence that prohibited gear was used to take the spiny lobster, provided no prohibited gear is on board the vessel.

(2) A spiny lobster may not be taken in a directed fishery by the use of a net or trawl. See § 640.23(d) for the bycatch limits applicable to a vessel that uses or has on board a net or trawl.

(3) Poisons and explosives may not be used to take a spiny lobster or slipper lobster in the EEZ. For the purposes of this paragraph (a)(3), chlorine, bleach, and similar substances, which are used to flush a spiny lobster out of rocks or coral, are poisons. A vessel in the spiny lobster or slipper lobster fishery may not possess on board in the EEZ any dynamite or similar explosive substance.

(b) *Traps.* (1) In the EEZ, a spiny lobster trap may be no larger in dimension than 3 feet by 2 feet by 2 feet (91.4 cm by 61.0 cm by 61.0 cm), or the volume equivalent. A trap constructed of material other than wood must have a panel constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap. Such panel must be located in the upper half of the sides or on top of the trap, so that, when removed, there will be an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.

(2) A spiny lobster trap in the EEZ may be pulled or tended during daylight hours only, that is, from 1 hour before official sunrise to 1 hour after official sunset.

(3) A spiny lobster trap in the EEZ may be pulled or tended only by the owner's vessel, or by a vessel for which permission to pull or work traps belonging to another person has been granted—

(i) For traps in the EEZ off Florida, by the Florida Division of Law Enforcement, Department of Environmental Protection, in accordance with the procedures in Rule 46-24.006(7), Florida Administrative Code, in effect as of June 1, 1994. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904-487-0554. Copies may be inspected at the Office of the

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Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

(ii) For traps in the EEZ, other than off Florida, by the Regional Director, as may be arranged upon written request.

[57 FR 56520, Nov. 30, 1992, as amended at 58 FR 38980, July 21, 1993; 60 FR 41831, Aug. 14, 1995]

§ 640.23 Bag/possession limits.

(a) *EEZ off the southern Atlantic states, other than Florida.* The daily bag or possession limit for spiny lobster in or from the EEZ off the southern Atlantic states, other than Florida, is two per person for commercial and recreational fishing, year-round.

(b) *EEZ off Florida and off the Gulf states, other than Florida—*(1) *Commercial and recreational fishing season.* Except as specified in paragraphs (b)(3) and (b)(4) of this section, during the commercial and recreational fishing season specified in § 640.20(b)(1), the daily bag or possession limit of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, is six per person.

(2) *Special recreational fishing seasons.* During the special recreational fishing seasons specified in § 640.20(b)(2), the daily bag or possession limit of spiny lobster—

(i) In or from the EEZ off the Gulf states, other than Florida, is six per person;

(ii) In or from the EEZ off Florida other than off Monroe County, Florida, is twelve per person; and

(iii) In or from the EEZ off Monroe County, Florida, is six per person.

(3) *Exemption from the bag/possession limit.* During the commercial and recreational fishing season specified in § 640.20(b)(1), a person is exempt from the bag and possession limit specified in paragraph (a) of this section, provided—

(i) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(ii) The vessel from which the person is operating has on board the required

licenses, certificates, or permits, as specified in § 640.4(a)(1).

(4) *Harvest by net or trawl.* During the commercial and recreational fishing season specified in § 640.20(b)(1), aboard a vessel with the required licenses, certificates, or permits specified in § 640.4(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.6 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (b)(4), the term “net or trawl” does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(5) *Diving at night.* The provisions of paragraph (b)(3) of this section notwithstanding, a person who harvests spiny lobster in the EEZ by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, is limited to the bag limit specified in paragraph (b)(1) of this section, whether or not a Federal vessel permit specified in § 640.4(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(c) *Combination of bag/possession limits.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not combine the bag or possession limits of those paragraphs or combine such bag or possession limit with a bag or possession limit applicable to state waters.

(d) *Responsibility for bag/possession limits.* The operator of a vessel that fishes for or possesses spiny lobster in or from the EEZ is responsible for the cumulative bag or possession limit specified in paragraphs (a) and (b) of this section applicable to that vessel, based on the number of persons aboard.

(e) *Transfer at sea.* A person who fishes for or possesses spiny lobster in

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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]

FIGURES—PART 640

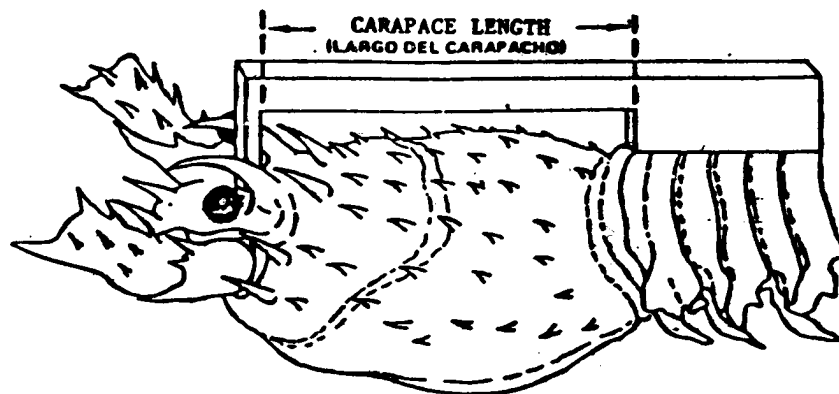


Figure 1

[47 FR 29203, July 2, 1982. Redesignated at 57 FR 56518, Nov. 30, 1992]

PART 644—ATLANTIC BILLFISHES

SOURCE: 53 FR 37769, Sept. 28, 1988, unless otherwise noted.

Subpart A—General Provisions

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- 644.2 Definitions.
- 644.3 Relation to other laws.
- 644.4 Permits and fees. [Reserved]
- 644.5 Recordkeeping and reporting.
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- 644.20 Fishing year.
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- 644.23 Incidental catch restrictions.
- 644.24 Restrictions on sale.
- 644.25 Specifically authorized activities.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 644.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Atlantic Billfishes prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils.

(b) This part governs conservation and management of billfish off the Atlantic, Gulf of Mexico, and Caribbean coastal states, and regulates the possession or sale in any state of a billfish harvested from its management unit.

[53 FR 37769, Sept. 28, 1988, as amended at 56 FR 13417, Apr. 2, 1991]

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§ 644.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Billfish means sailfish, *Istiophorus platypterus*; white marlin, *Tetrapturus albidus*; blue marlin, *Makaira nigricans*, and longbill spearfish, *Tetrapturus pfluegeri*.

Billfish tournament means any fishing competition involving billfish in which participants must register or otherwise enter or in which a prize or award is offered for catching billfish.

Councils means the following Regional Fishery Management Councils:

(a) South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407-4699;

(b) New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906;

(c) Mid-Atlantic Fishery Management Council, Federal Building, Room 2115,

300 South New Street, Dover, DE 19901-6790;

(d) Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 881, Tampa, FL 33609;

(e) Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, PR 00918-2577.

Dealer, for the purposes of this part 644, means a person, other than the consumer, who receives fish by way of purchase, barter, or trade.

Drift net, sometimes called a drift entanglement net or drift gill net, means a flat, unmoored net suspended vertically in the water that entangles the head or other body parts of fish that attempt to pass through the meshes.

EEZ, for the purposes of this part 644, means the EEZ, as defined at 50 CFR 620.2, in the Atlantic Ocean including the Gulf of Mexico and the Caribbean Sea.

Eye-fork length (EFL) means the straight-line measurement from the eye to the fork of the caudal fin, as shown in figure 1.

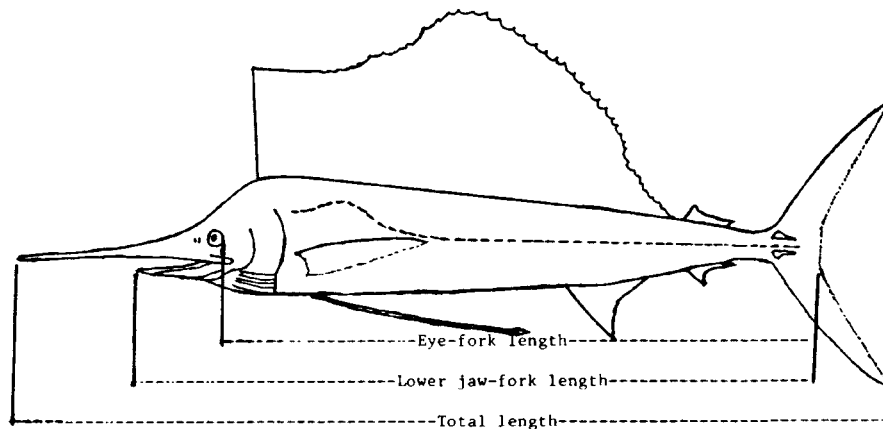


Figure 1. Billfish length measurements.

Lower jaw-fork length (LJFL) means the straight-line measurement from the tip of the lower jaw to the fork of the caudal fin, as shown in figure 1.

Management unit means—

(a) For blue marlin and white marlin, the waters of the North Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea) north of 5°N. latitude;

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(b) For sailfish, the waters of the North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea) west of 30°W. longitude; and

(c) For longbill spearfish, the waters of the entire North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea).

Pelagic longline means a type of fishing gear consisting of a length of line suspended horizontally in the water above the bottom from lines attached to surface floats and to which gangions (leaders) and hooks are attached.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone 813-570-5301, or a designee.

Related species means black marlin, *Makaira indica*; striped marlin, *Tetrapturus audax*; or shortbill spearfish, *Tetrapturus angustirostris*.

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

Science and Research Director means the Science and Research Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee.

Total length (TL) means the straight-line measurement from the tip of the upper jaw to the plane of the more extended tip of the caudal fin when in its natural position, as shown in figure 1.

[53 FR 37769, Sept. 28, 1988, as amended at 56 FR 13417, Apr. 2, 1991; 60 FR 35341, July 7, 1995]

§ 644.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Regulations governing fishing in the EEZ by vessels other than vessels of the United States appear at 50 CFR part 611, subpart A, and §§ 611.60 and 611.61.

§ 644.4 Permits and fees. [Reserved]

§ 644.5 Recordkeeping and reporting.

A person conducting a billfish tournament from a port in an Atlantic, Gulf of Mexico, or Caribbean State, and who is selected by the Science and Re-

search Director, must maintain and submit a fishing record on forms available from the Science and Research Director for each day of fishing in the tournament. Forms must be submitted so as to be received by the Science and Research Director within 10 days of the conclusion of the tournament and must be accompanied by a copy of the tournament rules.

(a) The following information must be included on each form:

- (1) Tournament name;
- (2) Recorder's name and telephone number;
- (3) Date for which the information is recorded;
- (4) Hours fished (time from first line in the water to last line out of the water);
- (5) Name of each vessel fishing that day;
- (6) For each vessel listed, the species of each billfish boated or released;
- (7) The weight and length of each billfish brought ashore;
- (8) The name, address, and signature of the tournament director; and
- (9) The date signed.

(b) In addition to the information required to be reported by paragraph (a) of this section, the following information is desired, but is not mandatory:

- (1) Prevailing weather conditions on the day reported, such as wind speed and direction, and sea height and direction; and
- (2) Whether a tag was attached before the billfish was released.

(Approved by the Office of Management and Budget under control number 0648-0031)

§ 644.6 Vessel identification. [Reserved]

§ 644.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

- (a) Falsify or fail to report information required to be submitted, as specified in § 644.5.
- (b) Possess a billfish less than the minimum size limit specified in § 644.21(a).
- (c) Fail to release a billfish in the manner specified in § 644.21(b) or § 644.23.

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(d) Possess a billfish with its head, fins, or bill removed shoreward of the outer boundary of the EEZ or through landing, as specified in § 644.21(c).

(e) Possess or retain a billfish by a vessel with a pelagic longline or drift net aboard or harvested by gear other than rod and reel, as specified in § 644.22.

(f) Purchase, barter, trade, sell, or offer for sale a billfish harvested from its management unit, as specified in § 644.24(a).

(g) Falsify information submitted in accordance with § 644.24(b).

(h) As a dealer or seafood processor, possess a billfish or related species without the documentation specified in § 644.24(b), or with incomplete or falsified documentation.

(i) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

(Information collection requirements in paragraph (g) were approved by the Office of Management and Budget under control number 0648-0216)

[53 FR 37769, Sept. 28, 1988, as amended at 54 FR 14239, Apr. 10, 1989; 56 FR 13417, Apr. 2, 1991]

§ 644.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 644.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 644.20 Fishing year.

The fishing year is January 1 through December 31.

§ 644.21 Size limits.

(a) The following minimum size limits, expressed in terms of lower jaw-fork length (LJFL), apply for the possession of billfish shoreward of the outer boundary of the EEZ, regardless of where caught:

- (1) Blue marlin—86 in.
- (2) White marlin—62 in.
- (3) Sailfish—57 in.
- (4) Longbill spearfish—no minimum size.

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(b) A billfish under the minimum size limit caught shoreward of the outer boundary of the EEZ must be released by cutting the line near the hook without removing the fish from the water.

(c) A billfish possessed aboard a fishing vessel shoreward of the outer boundary of the EEZ must have its head, fins, and bill intact, and a billfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state must have its head, fins, and bill intact through landing. Such billfish may be eviscerated but must otherwise be maintained in a whole condition.

(d) The following approximations of the minimum size limits for blue marlin, white marlin, and sailfish, expressed in terms of EFL, LJFL, TL, and whole, live weight, are provided for the convenience of fishermen. These approximations may not be substituted for the minimum size limits expressed in terms of LJFL specified in paragraph (a) of this section.

	Eye-fork length (in.)	Lower jaw-fork length (in.)	Total length (in.)	Whole, live wt. (lbs.)
Blue marlin	75	86	110	200
White marlin	53	62	81	50
Sailfish	49	57	76	30

[53 FR 37769, Sept. 28, 1988, as amended at 56 FR 13417, Apr. 2, 1991]

§ 644.22 Gear limitations.

(a) The possession or retention shoreward of the outer boundary of the EEZ of a billfish harvested by gear other than rod and reel is prohibited.

(b) The possession or retention shoreward of the outer boundary of the EEZ of a billfish by a vessel with a pelagic longline or drift net aboard is prohibited.

§ 644.23 Incidental catch restrictions.

A billfish harvested by gear other than rod and reel shoreward of the outer boundary of the EEZ must be released in a manner that will ensure maximum probability of survival. A billfish caught by a pelagic longline shoreward of the outer boundary of the EEZ must be released by cutting the line near the hook without removing the fish from the water.

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§ 644.24 Restrictions on sale.

(a) A billfish harvested from its management unit may not be purchased, bartered, traded, sold, or offered for sale in any state.

(b) Except for a billfish or related species landed in a Pacific state and remaining in the state of landing, a billfish or related species that is possessed by a dealer or seafood processor will be presumed to be a billfish harvested from its management unit unless it is accompanied by documentation that the billfish was harvested from outside its management unit or the related species was harvested from other than the Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea). Such documentation must contain:

(1) The information specified in 50 CFR part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce.

(2) The name and home port of the vessel harvesting the billfish or related species;

(3) The port and date of offloading from the vessel harvesting the billfish or related species; and

(4) A statement signed by the dealer or seafood processor attesting that each billfish was harvested from an area other than its management unit and each related species was harvested from other than the Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea).

[56 FR 13418, Apr. 2, 1991]

§ 644.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

Subpart A—General Provisions

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- 648.5 Operator permits.
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Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

- 648.20 Maximum optimum yield (OYs).
- 648.21 Procedures for determining initial annual amounts.
- 648.22 Closure of the fishery.
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- 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.
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- 648.84 Gear-marking requirements and gear restrictions.
- 648.85 Flexible Area Action System.
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- 648.88 Open access permit restrictions.
- 648.89 Recreational and charter/party restrictions.
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- 648.100 Catch quotas and other restrictions.
- 648.101 Closures.
- 648.102 Time restrictions.
- 648.103 Minimum fish sizes.
- 648.104 Gear restrictions.
- 648.105 Possession restrictions.
- 648.106 Sea turtle conservation.

Subpart H—Management Measures for the Scup Fishery

- 648.120 Catch quotas and other restrictions.
- 648.121 Closure.
- 648.122 Season and area restrictions.
- 648.123 Gear restrictions.
- 648.124 Minimum fish sizes.
- 648.125 Possession limit.
- 648.126 Protection of threatened and endangered sea turtles.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 61 FR 34968, July 3, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMP) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP (Scallop FMP)); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies fishery (NE Multispecies FMP); and the summer flounder and scup fisheries (Summer Flounder and Scup FMP). These FMPs and the regulations in this part govern the conservation and management of the above named fisheries.

(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]

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§ 648.2 Definitions.

In addition to the definitions in the Magnuson Act and in §600.10 of this chapter, the terms used in this part have the following meanings:

Alewife means *Alosa pseudoharengus*.

American lobster or *lobster* means *Homarus americanus*.

American shad means *Alosa sapidissima*.

Atlantic butterfish or *butterfish* means *Peprilus triacanthus*.

Atlantic croaker means *Micropogonias undulatus*.

Atlantic mackerel or *mackerel* means *Scomber scombrus*.

Atlantic Mackerel, Squid, and Butterfish Monitoring Committee means the committee made up of staff representatives of the MAFMC and the NEFMC, and the Northeast Regional Office and NEFSC of NMFS. The MAFMC Executive Director or a designee chairs the Committee.

Atlantic salmon means *Salmo salar*.

Atlantic sea scallop or *scallop* means *Placopecten magellanicus*, throughout its range.

Black sea bass means *Centropristis striata*.

Blowfish (puffer) means any species in the family Tetraodontidae.

Bluefish means *Pomotomus saltatrix*.

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft³ (53.24 L) of surf clams or ocean quahogs in the shell.

Cage means a container with a standard unit of volumetric measurement containing 60 ft³ (1,700 L). The outside dimensions of a standard cage generally are 3 ft (91 cm) wide, 4 ft (122 cm) long, and 5 ft (152 cm) high.

Chafing gear or *cookies*, with respect to the scallop fishery, means steel, rubberized or other types of donut rings, disks, washers, twine, or other material attached to or between the steel rings of a sea scallop dredge.

Charter or *party boat* means any vessel that carries passengers for hire to engage in recreational fishing and, with respect to multispecies, that is not fishing under a DAS.

Combination vessel means a vessel that has fished in any one calendar year with scallop dredge gear and otter trawl gear during the period 1988 through 1990, and that is eligible for an

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allocation of individual DAS under the NE Multispecies FMP and has applied for or been issued a limited access scallop permit.

Commercial fishing or *fishing commercially* means fishing that is intended to, or results in, the barter, trade, transfer, or sale of fish.

Commission means the Atlantic States Marine Fisheries Commission.

Conger eel means *Conger oceanicus*.

Cunner means *Tautoglabrus adspersus*.

Council means the New England Fishery Management Council (NEFMC) for the Atlantic sea scallop and the Northeast multispecies fisheries, or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; and the summer flounder and scup fisheries.

Day(s)-at-sea (DAS), with respect to the NE multispecies and scallop fisheries, means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land; or fishes for, possesses, or lands regulated species 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.

Dredge or *dredge gear*, with respect to the scallop fishery, means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of scallops.

Dredge bottom, with respect to scallops, means the rings and links found between the bail of the dredge and the club stick, which, when fishing, would be in contact with the sea bed. This includes the triangular shaped portions of the ring bag commonly known as "diamonds."

Dredge top, with respect to the scallop fishery, means the mesh panel in the top of a dredge and immediately adjacent rings and links found between the bail of the dredge, the club stick, and the two side panels. The bail of the dredge is the rigid structure of the forward

portion of the dredge that connects to the warp and holds the dredge open. The club stick is the rigid bar at the tail of the dredge bag that is attached to the rings.

Dredge vessel, with respect to the scallop fishery, means any fishing vessel that is equipped for fishing using dredge gear and that is capable of catching scallops.

Exempted gear, with respect to the NE multispecies fishery, means gear that is deemed to be not capable of catching NE multispecies and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, purse seines, shrimp trawls (with a properly configured grate as defined under this part), and midwater trawls.

Fishing trip or *trip* means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing year means:

(1) For the scallop fishery, from March 1 through the last day of February of the following year.

(2) For the NE multispecies fishery, from May 1 through April 30 of the following year.

(3) For all other fisheries in this part, from January 1 through December 31.

FMP means fishery management plan.

Fourspot flounder means *Paralichthys oblongus*.

Gross registered tonnage (GRT) means the gross registered tonnage specified on the USCG documentation for a vessel.

Hagfish means *Myxine glutinosa*.

Handline or *handline gear* means fishing gear that is released by hand and consists of one main line to which is attached no more than two leaders for a total of no more than three hooks. Handlines are retrieved only by hand, not by mechanical means.

Harbor porpoise means *Phocoena phocoena*.

Harbor Porpoise Review Team (HPRT) means a team of scientific and technical experts appointed by the NEFMC to review, analyze, and propose harbor porpoise take mitigation alternatives.

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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).

John Dory means *Zenopsis conchifera*.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Liner means a piece of mesh or any other material rigged inside or outside the main or outer net or dredge that restricts the mesh or ring size or otherwise reduces escapement.

Link, with respect to the sea scallop fishery, means the material, usually made of a $\frac{3}{8}$ -inch (10-mm) or $\frac{7}{16}$ -inch (11-mm) diameter metal rod, that joins two adjacent rings within the ring bag of a dredge.

Loligo means *Loligo pealei* (long-finned or bone squid).

Longhorn sculpin means *Myoxocephalus octodecimspinosus*.

Longline gear means fishing gear that is or is designed to be set horizontally, either anchored, floating, or attached to a vessel, and that consists of a main or ground line with three or more gangions and hooks.

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.

Monkfish or *anglerfish* means *Lophius americanus*.

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 management measures. The team consists of staff from

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the NEFMC and the MAFMC, NMFS' Northeast Regional Office, the NEFSC, the USCG, an industry representative, and no more than two representatives from each affected coastal state appointed by the Commission.

NEFSC means the Northeast Fisheries Science Center, NMFS.

Net tonnage (NT) means the net tonnage specified on the USCG documentation for a vessel.

Nonregulated multispecies means the subset of Northeast multispecies that includes silver hake, red hake and ocean pout.

Northeast (NE) multispecies or *multispecies* means the following species:

American plaice—*Hippoglossoides platessoides*.

Atlantic cod—*Gadus morhua*.

Haddock—*Melanogrammus aeglefinus*.

Ocean pout—*Macrozoarces americanus*.

Pollock—*Pollachius virens*.

Redfish—*Sebastes marinus*.

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 ferrugineus*.

Northern shrimp means *Pandalus borealis*.

Ocean quahog means the species *Arctica islandica*.

Offload or *offloading* means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel. For purposes of the surf clam and ocean quahog fishery, it means to separate physically a cage from a vessel, such as by removing the sling or wire used to remove the cage from the harvesting vessel.

Operator means the master, captain, or other individual on board a fishing vessel, who is in charge of that vessel's operations.

Out of the multispecies fishery or *DAS program* means the period of time during which a vessel is absent from port and 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 for the purpose of, or that is capable of, catching NE multispecies.

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Pelagic hook or longline gear means fishing gear that is not fixed, nor designed to be fixed, nor anchored to the bottom and that consists of monofilament main line (as opposed to a cable main line) to which gangions are attached.

Personal use, with respect to the surf clam or ocean quahog fishery, means harvest of surf clams or ocean quahogs for use as bait, for human consumption, or for other purposes (not including sale or barter) in amounts not to exceed 2 bu (106.48 L) per person per fishing trip.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Prior to leaving port, with respect to the call-in notification system for NE multispecies, means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

Processor means a person who receives surf clams or ocean quahogs for a commercial purpose and removes them from a cage.

Purse seine gear means an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear, or any net designed to be, or capable of being, used in such fashion.

Recreational fishing means fishing that is not intended to, nor results in the barter, trade, or sale of fish.

Recreational fishing vessel, with respect to the scup fishery, means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are considered recreational fishing vessels for purposes of the scup minimum size requirement.

Regional Director means the Director, Northeast Region, NMFS, or a designee.

Regulated species means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake.

Reporting month means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.

Re-rig or re-rigged means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for a species in the applicable fishery.

Rigged hooks means hooks that are baited, or only need to be baited, in order to be fished. Unsecured, unbaited hooks and gangions are not considered to be rigged.

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

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.

Sea Scallop Plan Development Team (PDT) means a team of technical experts appointed by the NEFMC.

Sea raven means *Hemitripteris americanus*.

Searobin means any species of the family Triglidae.

Shucking or to shuck means opening or to open a scallop, surf clam, or ocean quahog and removing the meat or the adductor muscle from the shell.

Shucking machine means any mechanical device that automatically removes the meat or the adductor muscle from a scallop, surf clam, or ocean quahog shell.

Sink gillnet or bottom-tending gillnet means with respect to the NE multispecies fishery, any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Skate means any species of the family Rajidae.

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Smooth dogfish means *Mustelis canis*.

Sorting machine means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

Spiny dogfish means *Squalus acanthias*.

Spot means *Leiostomus xanthurus*.

Square mesh, with respect to the NE multispecies fishery, means mesh in which the horizontal bars of the mesh run perpendicular to the long axis of the net so when the net is placed under a strain the mesh remains open to a square-like shape. Square mesh can be formed by hanging diamond mesh "on the square," if the resulting mesh conforms with the above description of square mesh.

Squid means *Loligo pealei* or *Illex illecebrosus*.

Standard tote means a box typically constructed of plastic, designed to hold 100 lb (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 L, or a volume of not more than 4,320 cubic in (2.5 cubic ft or 70.79 cubic cm).

Substantially similar harvesting capacity means the same or less GRT and vessel length.

Summer flounder means *Paralichthys dentatus*.

Summer Flounder Monitoring Committee means a committee made up of staff representatives of the MAFMC, NEFMC, and SAFMC, the NMFS Northeast Regional Office, the NEFSC, the Southeast Science Center, and the Commission. The MAFMC Executive Director or a designee chairs the committee.

Surf clams means Atlantic surf clams of the species *Spisula solidissima*.

Swordfish means *Xiphias gladius*.

Target total allowable catch (TAC) means the annual domestic harvest targets for regulated species.

Tautog (blackfish) means *Tautoga onitis*.

Tied up to the dock, with respect to NE multispecies, means to tie-up at a dock, on a mooring, or in a harbor.

Tilefish means *Lopholatilus chamaeleonticeps*.

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

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Transfer means to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel.

Trawl sweep means the total length of the footrope on a trawl net that is directly attached to the webbing of a net.

Upon returning to port, for purposes of the call-in notification system for the NE multispecies fishery, means the first point when a vessel ties up at a dock or mooring in a port at the end of a fishing trip.

Vessel length means the length specified on the USCG documentation for a vessel or on the state registration for a vessel not required to be documented under title 46 U.S.C., if the state length is verified by an authorized officer or NMFS official.

Vessel Tracking System (VTS) means a vessel tracking system as set forth in § 648.9 and approved by NMFS for use by scallop and NE multispecies vessels, as required by this part.

VTS unit means a device installed on board a vessel used for vessel tracking and transmitting the vessel's position as required by this part.

Weakfish means *Cynoscion regalis*.

Whiting means *Merluccius bilinearis*.

[61 FR 34968, July 3, 1996, as amended at 61 FR 39910, July 31, 1996; 61 FR 43424, Aug. 23, 1996; 61 FR 49277, Sept. 19, 1996]

§ 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 vessel permit information.* (1) *NE multispecies vessels.* 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

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of this part provided that there is a receipt for the purchase of those frames on board the vessel.

(i) *Limited access multispecies permits—*
(A) *Eligibility.* To be eligible to apply for a limited access multispecies permit, as specified in § 648.82, in 1996 and thereafter, a vessel must have been issued a limited access multispecies permit for the preceding year, must be replacing a vessel that was issued a limited access multispecies permit for the preceding year, or must qualify for a 1996 limited access multispecies hook-gear permit under this paragraph (a)(1)(i). Vessels qualifying for 1996 limited access multispecies hook-gear permits are qualified only for that limited access permit category. A vessel is eligible for a 1996 limited access multispecies hook-gear permit, provided:

(1) The vessel was issued a 1995 open access multispecies hook-gear permit and the owner or operator of the vessel submitted to the Regional Director, no later than January 26, 1996, fishing log reports dated between June 1, 1994, and June 1, 1995, when fishing with hook gear under the open access hook-gear permit, documenting landings of at least 500 lb (226.8 kg) of NE multispecies finfish, or its equivalent in numbers of fish; or

(2) The vessel is replacing such a vessel.

(B) *Application/renewal restrictions.* Owners of vessels must apply for a limited access multispecies hook-gear permit before September 1, 1996, to receive an automatic mailing of an application to renew their permit in 1997 and to be assured that their permit application will be processed within 30 days. Vessel owners applying after December 31, 1996, will be ineligible to apply for an initial limited access multispecies hook-gear permit. To renew or apply for a limited access multispecies permit, a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access multispecies permit in any year bars the renewal of the permit in subsequent years.

(C) *Qualification restriction.* Unless the Regional Director determines to the contrary, no more than one vessel may qualify, at any one time, for a limited

access permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Director will determine who is entitled to qualify for the permit and the DAS allocation according to paragraph (a)(1)(i)(D) of this section.

(D) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(E) *Replacement vessels.* To be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any 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 that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(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 that was initially issued a limited access permit as of the date the initial vessel applied for such permit. For purposes of this paragraph (a)(1)(i)(E)(2), a vessel not required to be documented under title 46 U.S.C. will be considered to be 5 NT. For undocumented vessels, GRT does not apply.

(F) *Upgraded vessel.* A vessel may be upgraded, whether through refitting or replacement, and still be eligible for or be eligible to retain or renew a limited access permit, only if the upgrade complies with the following:

(1) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a limited access permit as of the

date the initial vessel applied for such permit.

(2) The vessel's length, GRT, and NT may be increased, whether through re-fitting or replacement, only once. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the respective specification of the vessel initially issued a limited access permit as of the date the initial vessel applied for such permit. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(G) *Consolidation restriction.* Limited access permits and DAS allocations may not be combined or consolidated.

(H) *Appeal of denial of permit.* (1) *Eligibility.* Any applicant eligible to apply for an initial limited access multispecies hook-gear permit who is denied such permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(i) The information used by the Regional Director was based on mistaken or incorrect data.

(ii) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(iii) The applicant has new or additional information.

(2) *Appeal review.* The Regional Director 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 Director 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 shall become the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Director. The hearing officer shall make findings and a recommendation to the Regional Director which shall be advisory only. Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the ap-

peal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(3) *Status of vessels pending appeal.* A vessel denied a limited access multispecies hook-gear permit may fish under the limited access multispecies hook-gear category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Director authorizing the vessel to fish under the limited access hook-gear category. The Regional Director 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 Director 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.

(1) *Limited access permit restrictions.* (1) A vessel may be issued a limited access multispecies permit in only one category during a fishing year. Vessels may not change limited access multispecies permit categories during the fishing year, except as provided in paragraph (a)(1)(i)(1)(2) of this section. A vessel issued a limited access multispecies hook-gear permit may not change its limited access permit category at any time.

(2) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(1)(1) of this section. In 1996, a vessel owner has one opportunity to request a change in permit category by submitting an application to the Regional Director by August 14, 1996. If a complete application is not submitted by that date, the vessel must fish only in the DAS program assigned for the remainder of the 1996 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. For 1997 and beyond, the owner of a limited access multispecies vessel eligible to request a change

in permit category must elect a category prior to the start of each fishing year and will have one opportunity to request a change in permit category by submitting an application to the Regional Director within 45 days of issuance of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

(3) With the exception of combination vessels, sea scallop dredge vessels are not eligible for limited access multispecies permits.

(J) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History (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 and current CPH preserves the eligibility of the applicant to apply for or renew 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. A CPH must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. 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. 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. An application for a CPH must be received by the Regional Director by the beginning of the fishing year for which it is required. Information requirements for the CPH application are the same as those for a limited access permit with any request for information about the vessel being appli-

cable 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 this paragraph (a)(1)(i)(J).

(K) *Abandonment or voluntary relinquishment of permits.* If a vessel's limited access permit for a particular fishery is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access permit for that fishery may be re-issued or renewed based on that vessel's history or to any vessel relying on that vessel's history.

(L) *Restriction on permit splitting.* A limited access multispecies permit 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.

(ii) *Open access permits.* A vessel of the United States that has not been issued a limited access multispecies permit is eligible for and may be issued an open access multispecies handgear, charter/party or nonregulated multispecies permit and may fish for, possess and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess 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 Director at any time.

(2) *Atlantic sea scallop vessels*—Any vessel of the United States that fishes for, possesses, or lands Atlantic sea scallops in quantities greater than 40 lb (18.14 kg) shucked, or 5 bu (176.2 L) of in-shell scallops per trip, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid scallop permit.

(i) *Limited access scallop permits.* Any vessel of the United States that possesses or lands more than 400 lb (181.44

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kg) of shucked, or the equivalent amount of in-shell scallops (50 bu (176.2 L)) per trip, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

(A) *Eligibility.* To be eligible to apply for a limited access scallop permit, a vessel must have been issued a limited access scallop permit for the preceding year, or the vessel must be replacing a vessel that has been issued a limited access scallop permit for the preceding year.

(B) *Application/renewal restrictions.* To renew or apply for a limited access scallop permit, a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access scallop permit in any year bars the renewal of the permit in subsequent years.

(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) *Percentage ownership restrictions.* (I) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel if the issuance of the permit will result in the vessel owner, or any person who is a shareholder or partner of the vessel owner, having an ownership interest in limited access scallop vessels in excess of 5 percent of the number of all limited access scallop vessels at the time of permit application.

(2) Vessel owners who were initially issued a 1994 limited access scallop permit, or were issued or renewed a limited access scallop permit for a vessel in 1995 and thereafter in compliance with the ownership restrictions in paragraph (a)(2)(i)(H)(I) of this section, are eligible to renew such permit(s), regardless of whether the renewal of the permits will result in the 5 percent ownership restriction being exceeded.

(3) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(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 for that vessel prior to the start of each fishing year and will have one opportunity to request a change in permit category by submitting an application to the Regional Director within 45 days of issuance 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.

(ii) *General scallop permit.* Any vessel of the United States that is not in possession of a limited access scallop permit, and that possesses, or lands per trip, more than 40 lb (18.14 kg) and less than or including 400 lb (181.44 kg) of shucked meats, or the equivalent amount of in-shell scallops (5 and 50 bu (176.2 L and 176.2 L), respectively), except vessels that fish exclusively in state waters for scallops, must carry on board a valid general scallop permit.

(3) *Summer flounder vessels.* Any vessel of the United States that fishes for or retains summer flounder in the EEZ must have been issued and carry on board a valid summer flounder permit, except for vessels other than party or charter vessels that observe the possession limit set forth in § 648.105.

(i) *Moratorium permits (applicable through 1997).* (A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain summer flounder in excess of the possession limit in § 648.105 in the EEZ, a vessel must have

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been issued a summer flounder moratorium permit in a previous year or be replacing a vessel that was issued a moratorium permit for a previous year.

(B) *Application/renewal restriction.* No one may apply for a summer flounder moratorium permit for a vessel after:

(1) The owner retires the vessel from the fishery.

(2) The vessel fails to land any summer flounder at least once within any 52-consecutive-week period.

(C) *Replacement vessels.* To be eligible for a moratorium permit, the replacement vessel must be replacing a vessel of substantially similar harvesting capacity that is judged unseaworthy by the USCG, for reasons other than lack of maintenance, or that involuntarily left the fishery during the moratorium. Both the entering and replaced vessels must be owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(ii) *Party and charter boat permits.* Any party or charter boat is eligible for a permit to fish for summer flounder, other than a summer flounder moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits specified in § 648.105.

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.104(b)(1) must apply to the Regional Director under paragraph (c) of this section at least 7 days prior to the date they wish the permit to become effective. The applicant must mark "Exemption Permit Request" on the permit application at the top. A permit issued under this paragraph (a)(3)(iii) does not meet the requirements of paragraph (a)(3)(i) of this section, but is subject to the other provisions of this section. Persons issued an exemption permit must surrender it to the Regional Director at least 1 day prior to the date they wish to fish not subject to the exemption. The Regional Director may impose temporary additional procedural requirements by publishing a notification in the FEDERAL REGISTER.

(4) *Surf clam and ocean quahog vessels.*—Any vessel of the United States that fishes for surf clams or ocean quahogs, except vessels taking surf clams and ocean quahogs for personal use or fishing exclusively within state waters, must have been issued and carry on board a valid surf clam or ocean quahog permit, respectively.

(5) *Mackerel, squid, and butterfish vessels.*—Beginning on January 1, 1997, any vessel of the United States, including party or charter vessels, that fishes for, possesses, or lands mackerel, squid, or butterfish in or from the EEZ, must have been issued and carry on board a valid *Loligo* and butterfish moratorium permit, incidental catch permit, mackerel and *Illex* permit or party charter permit. This requirement does not apply to recreational fishing vessels. Until January 1, 1997, vessels that have been issued 1995 Federal mackerel, squid, and butterfish permits and are not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land mackerel, squid, or butterfish in or from the EEZ.

(i) *Loligo squid and butterfish moratorium permits.* (A) *Eligibility.* A vessel is eligible for a moratorium permit to fish for and retain *Loligo* squid or butterfish in excess of the incidental catch allowance specified in paragraph (a)(5)(i) of this section, if it meets any of the following criteria:

(1) The vessel landed and sold at least 20,000 lb (9.07 mt) of *Loligo* squid or butterfish in any 30 consecutive day period between August 13, 1981, and August 13, 1993.

(2) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(3)(i)(C) of this section.

(B) *Application/renewal restrictions.* No one may apply for an initial *Loligo* squid and butterfish moratorium permit for a vessel after:

(1) May 2, 1997.

(2) The owner retires the vessel from the fishery.

(C) *Replacement vessels.* See paragraph (a)(3)(i)(C) of this section.

(D) *Appeal of denial of permit.* (1) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the

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Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (a)(5)(i)(A)(1) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director's decision was made in error.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(3) The hearing officer shall make a recommendation to the Regional Director.

(4) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(ii) *Incidental catch permits.* Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo squid* or butterflyfish as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Director, based upon a recommendation by the Council, following the procedure set forth in § 648.21.

(iii) *Mackerel and *Illex squid* permits.* Any vessel of the United States may obtain a permit under this section to fish for or retain Atlantic mackerel or *Illex squid* in or from the EEZ.

(iv) *Party and charter boat permits.* The owner of any party or charter boat must obtain a permit to fish for or retain in or from the EEZ mackerel, squid, or butterflyfish while carrying passengers for hire.

(6) *Scup vessels.* Beginning on January 1, 1997, and subject to the eligibility requirements specified in paragraphs (a)(6)(i) and (a)(6)(ii) of this section, the owner of a vessel of the United States, including a party or charter vessel, must obtain a permit issued under this part to fish for or retain scup for sale, barter or trade, in or from the EEZ north of 35°15.3' N. lat. Any vessel, other than a party or charter boat, that observes the possession limit restrictions established pursuant to, and the prohibition on sale specified in, § 648.125 is exempt from the permit requirement.

(i) *Moratorium permit—(A) Eligibility.* A vessel is eligible for a moratorium permit to fish for and retain scup for sale if it meets any of the following criteria:

(1) The vessel landed and sold scup between January 26, 1988, and January 26, 1993; or

(2) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(3)(i)(C) of this section.

(B) *Application/renewal restrictions.* (1) No one may apply for an initial scup moratorium permit after August 25, 1997.

(2) No one may apply for a scup moratorium permit after the owner retires the vessel from the fishery.

(C) *Replacement vessels.* See paragraph (a)(3)(i)(C) of this section.

(D) *Appeal of denial of permit.* (1) Any applicant denied a scup moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (a)(6)(i)(A)(1) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director's decision was made in error.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(3) The hearing officer shall make a recommendation to the Regional Director.

(4) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(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.

(b) *Permit conditions.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements

under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium permit must also agree not to land summer flounder in any state after the Regional Director has published a notification in the FEDERAL REGISTER stating that the commercial quota for that state has been harvested, and that no commercial quota is available. A state not receiving an allocation of summer flounder is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of a scup moratorium permit must also agree not to land scup after the Regional Director has published a notification in the FEDERAL REGISTER stating that the commercial quota has been harvested. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operator permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Director allows an individual to comply with the less restrictive state minimum size requirement, so long as fishing is conducted exclusively within state waters.

(c) *Vessel permit applications*—(1) *General*. Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of

the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director 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 Director to determine whether the vessel meets the applicable eligibility requirements specified in this section.

(2) *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 Director: Vessel name; owner name, 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 carry (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, names of all owners having a 25-percent interest or more; the name and signature of the owner or the owner's authorized representative; and permit number of any current or, if expired,

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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 May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit before May 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1 year of the date of when the contract for the replacement engine was signed.

(B) If the length, GRT, or NT was changed or a contract to change the length, GRT, or NT been entered into prior to May 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 when the contract for the upgrade was signed.

(iii) An application for a multispecies permit must also contain a copy of the vendor installation receipt from a NMFS certified VTS vendor as described in § 648.9, if the vessel has been issued a limited access multispecies Combination Vessel permit or individual DAS category permit, or if the applicant elects to use a VTS unit, although not required.

(iv) An application for a limited access scallop permit must also contain the following information:

(A) For every person named by applicants for limited access scallop permits pursuant to paragraph (c)(2)(i) of this section, the names of all other vessels in which that person has an ownership interest and for which a limited access scallop permit has been issued or applied for.

(B) If applying for full-time or part-time limited access scallop permit, or if opting to use a VTS unit, though not required, a copy of the vendor installation receipt from a NMFS-approved VTS vendor as described in § 648.9.

(C) If applying to fish under the small dredge program set forth under § 648.51(e), an annual declaration into the program.

(v) An application for a surf clam and ocean quahog permit must also contain the pump horsepower.

(d) *Fees.* The Regional Director 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 Director, 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 Director 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 Director by the applicable deadline set forth in this section;

(iii) The applicant and applicant's vessel failed to meet all applicable eligibility requirements set forth in this section;

(iv) The applicant applying for a limited access multispecies combination vessel or individual DAS permit, a full-time or part-time limited access scallop permit, or electing to use a VTS, has failed to meet all of the VTS 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

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executed application for any permit under this part, the Regional Director 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 paragraph (c)(2) of this section must be submitted by the applicant in writing to the Regional Director 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 Director as specified in paragraph (f) of this section. However, the Regional Director may authorize the continuation of a permit if the new owner so requests. Applications for permit continuations must be addressed to the Regional Director.

(i) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(j) *Reissuance.* Permits may be issued by the Regional Director when requested in writing by the owner, stating the need for reissuance, the name of the vessel, and the fishing permit number assigned. An application for a reissued 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.* Permits issued under this part are not transferable or assignable. A permit will be valid only for the fishing vessel and owner for which it is issued.

(l) *Display.* The permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit shall be subject to inspection upon request by any authorized official.

(m) *Sanctions.* The Assistant Administrator may suspend, revoke, or modify, any permit issued or sought under

this section. Procedures governing enforcement-related permit sanctions or denials are found at subpart D of 15 CFR part 904.

[61 FR 34968, July 3, 1996, as amended at 61 FR 39910, July 31, 1996; 61 FR 43424, Aug. 23, 1996; 61 FR 49277, Sept. 19, 1996]

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, and, as of January 1, 1997, mackerel, squid or butterfish, or scup, harvested in or from the EEZ, or issued a permit for these species under this part, must have and carry on board a valid operator's permit issued under this section. An operator permit issued pursuant to part 649 shall satisfy 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 Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director 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

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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 Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional); and signature of the applicant. The applicant must also provide two recent (no more than 1 year old), color, passport-size photographs.

(e) *Fees.* Same as § 648.4(d).

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director 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 Director 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 Director as specified in paragraph (k) of this section.

(i) *Reissuance.* Reissued permits, for otherwise valid permits, may be issued by the Regional Director 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 Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director 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]

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, sea scallop, summer flounder, surf clam and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued and have in their possession a permit for such species issued under this section. As of January 1, 1997, all mackerel, squid, or butterfish dealers and all scup dealers must have been issued and have in their possession a valid dealers permit for those species.

(b) *Dealer/processor permit applications.* Same as § 648.5(b).

(c) *Information requirements.* Applications must contain at least the following information, and any other information required by the Regional Director: Company name, place(s) of business (principal place of business if applying for a surf clam and ocean quahog permit), mailing address(es) and

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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.

(d) *Fees*. Same as § 648.4(d).

(e) *Issuance*. Except as provided in subpart D of 15 CFR part 904, the Regional Director 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 Director 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 Director as required by paragraph (j) of this section.

(h) *Reissuance*. Reissued permits, for otherwise valid permits, may be issued by the Regional Director 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]

§ 648.7 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Weekly report*. Federally-permitted dealers must send by mail to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by the Regional Director a report of fish purchases, except that surf clam and ocean quahog dealers or processors are required only to report surf clam and ocean quahog purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Director, must be provided in the report:

(i) Summer flounder, scallop, NE multispecies, and, as of January 1, 1997, mackerel, squid or butterfish, and scup dealers must provide: Name and mailing address of dealer, dealer number, name and permit number of the vessels from which fish are landed or received, dates of purchases, pounds by species, price by species, and port landed. If no fish are purchased during the week, a report so stating must be submitted. All report forms must be signed by the dealer or other authorized individual.

(ii) Surf clam and ocean quahog processors and dealers must provide: Date of purchase or receipt; name, permit number and mailing address; number of bushels by species; cage tag numbers; allocation permit number; vessel name and permit number; price per bushel by species. Dealers must also report disposition of surf clams or ocean quahogs, including name and permit number of recipients. Processors must also report size distribution and meat yield per bushel by species.

(2) *Annual report*. All persons required to submit reports under paragraph (a)(1) of this section are required to submit the following information on an

annual basis, on forms supplied by the Regional Director:

(i) Summer flounder, scallop, NE multispecies, and, as of January 1, 1997, mackerel, squid, or butterfish, and scup dealers must complete the "Employment Data" section of the Annual Processed Products Reports; completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

(ii) Surf clam and ocean quahog processors and dealers must provide the average number of processing plant employees during each month of the year just ended; average number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended; plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; an estimate, for the next year, of such processing capacities; and total payroll for surf clam and ocean quahog processing, by month. If the plant processing capacities described in this paragraph (a)(2)(ii) change more than 10 percent during any year, the processor shall promptly notify the Regional Director.

(b) *Vessel owners*—(1) *Fishing Vessel Log Reports*—(i) *Owners of vessels issued a moratorium permit for summer flounder, mackerel, squid, or butterfish, or scup, or a permit for sea scallop, or multispecies.* The owner or operator of any vessel issued a moratorium vessel permit for summer flounder, or, as of January 1, 1997, for mackerel, squid, or butterfish, or scup, or a permit for sea scallops, or NE multispecies, must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners or operators may submit reports electronically, for example by using a VTS or other media. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit

number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds, by species, of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

(ii) *Surf clam and ocean quahog vessel owners and operators.* The owner or operator of any vessel conducting any surf clam and ocean quahog fishing operations, except those conducted exclusively in waters of a state that requires cage tags or when he/she has surrendered the surf clam and ocean quahog fishing vessel permit, shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director, showing at least: Name and permit number of the vessel, total amount in bushels of each species taken, date(s) caught, time at sea, duration of fishing time, locality fished, crew size, crew share by percentage, landing port, date sold, price per bushel, buyer, tag numbers from cages used, quantity of surf clams and ocean quahogs discarded, and allocation permit number.

(iii) *Owners of party and charter boats.* The owner of any party or charter boat issued a summer flounder or scup permit other than a moratorium permit and carrying passengers for hire shall maintain on board the vessel, and submit, an accurate daily fishing log report for each charter or party fishing trip that lands summer flounder or scup, unless such a vessel is also issued a moratorium permit for summer flounder, a permit for sea scallops or multispecies, or, as of January 1, 1997, a moratorium permit for mackerel, squid, or butterfish, or scup, in which case a fishing log report is required for each trip regardless of species retained. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, for example, by using a VTS or other media. At least the following information, and any other information required by the

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Regional Director, must be provided: Vessel name; USGC documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers; gear fished; quantity and size of gear; chart area fished; average depth; latitude/longitude (or loran station and bearings); average tow time duration; count, by species, of all species landed or discarded; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out, except for information required but not yet ascertainable, before offloading or landing has begun. All information must be filled out before starting the next fishing trip. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surf clams or ocean quahogs. Log reports required by paragraph (b)(1)(iii) of this section must be filled out, except for information required but not yet ascertainable, before offloading or landing has begun. All information required in paragraph (b)(1)(iii) of this section must be filled out for each fishing trip by the end of each fishing trip.

(d) *Inspection.* All persons required to submit reports under this section, upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based. At any time during or after a trip, owners and operators must make immediately available for inspection the fishing log reports currently in use, or to be submitted.

(e) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. Copies of fishing log reports must be retained and available for review for 1 year after the date of the last entry on the log. Dealers must retain required reports and records at their principal place of business.

(f) *Submitting reports—(1) Dealer or processor reports.* Weekly dealer or processor reports must be received or postmarked, if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit. If no fish or fish product was purchased during a week, a report so stating must be submitted. Annual reports for a calendar year must be submitted to NMFS Statistics, and must be postmarked by February 10 of the following year. Contact the Regional Director for the address of NMFS Statistics.

(2) *Fishing vessel log reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal fisheries permit. If no fishing trip is made during a month, a report so stating must be submitted. Annual reports must be submitted to NMFS Statistics and must be postmarked by February 10 of the following year.

(3) *At-sea purchasers, receivers, or processors.* All persons purchasing, receiving, or processing any summer flounder, or, as of January 1, 1997, mackerel, squid, or butterfish, or scup, at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1) or (a)(2) of this section, as applicable, and provide those reports to the Regional Director or a designee on the same frequency basis.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996]

§ 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.

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The official number is the USCG documentation number or the vessel's state registration number for vessels not required to be documented under title 46 U.S.C.

(b) *Numerals.* Except as provided in paragraph (d) of this section, the official number must be displayed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in USCG or state records.

(c) *Duties of owner.* The owner of each vessel subject to this part shall ensure that—

(1) The vessel's name and official number are kept clearly legible and in good repair.

(2) No part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(d) *Non-permanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the above requirements.

(e) *New Jersey surf clam or ocean quahog vessels.* Instead of complying with paragraph (a) of this section, surf clam or ocean quahog vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that state.

§ 648.9 VTS requirements.

(a) *Approval.* The Regional Director will annually approve VTSs that meet the minimum performance criteria specified in paragraph (b) of this section. Any changes to the performance criteria will be published annually in the FEDERAL REGISTER and a list of approved VTSs will be published in the FEDERAL REGISTER upon addition or deletion of a VTS from the list. In the event that a VTS is deleted from the list, vessel owners that purchased a

VTS unit that is part of that VTS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by the Regional Director.

(b) *Minimum VTS performance criteria.* The basic required features of the VTS are as follows:

(1) The VTS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person aboard a fishing vessel or by the vessel owner.

(2) The VTS shall be fully automatic and operational at all times, regardless of weather and environmental conditions.

(3) The VTS shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nm offshore and shall provide position accuracy to within 400 m (1,300 ft).

(4) The VTS shall be capable of transmitting and storing information including vessel identification, date, time, and latitude/longitude.

(5) The VTS shall provide accurate hourly position transmissions every day of the year. In addition, the VTS shall allow polling of individual vessels or any set of vessels at any time and receive position reports in real time. For the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

(6) The VTS shall be capable of providing network message communications between the vessel and shore. The VTS shall allow NMFS to initiate communications or data transfer at any time.

(7) The VTS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in ASCII text in a file format acceptable to NMFS.

(8) The VTS shall be capable of providing vessel locations relative to

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international boundaries and fishery management areas.

(9) The VTS vendor shall be capable of archiving vessel position histories for a minimum of 1 year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc.).

(c) *Operating requirements.* All required VTS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(d) *Presumption.* If a VTS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or NE multispecies fishery, as applicable, or was not at sea.

(e) *Replacement.* Should a VTS unit require replacement, a vessel owner must submit documentation to the Regional Director, within 3 days of instal-

lation and prior to the vessel's next trip, verifying that the new VTS unit is an operational approved system as described under paragraph (a)(1) of this section.

(f) *Access.* As a condition to obtaining a limited access scallop or multispecies permit, all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS and location data obtained from its VTS at the time of or after its transmission to the vendor or receiver, as the case may be.

(g) *Tampering.* Tampering with a VTS, a VTS unit, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's ability to operate properly, signal, or accuracy of computing the vessel's position fix.

§ 648.10 DAS notification requirements.

(a) *VTS Demarcation Line.* The VTS 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 Director upon request):

VTS DEMARCATION LINE

Description	N. Long.	W. Lat.
1. Northern terminus point (Canada landmass)	45°03'	66°47'
2. A point east of West Quoddy Head Light	44°48.9'	66°56.1'
3. A point east of Little River Light	44°39.0'	67°10.5'
4. Whistle Buoy "8BI" (SSE of Baker Island)	44°13.6'	68°10.8'
5. Isle au Haut Light	44°03.9'	68°39.1'
6. Pemaquid Point Light	43°50.2'	69°30.4'
7. A point west of Halfway Rock	43°38.0'	70°05.0'
8. A point east of Cape Neddick Light	43°09.9'	70°34.5'
9. Merrimack River Entrance "MR" Whistle Buoy	42°48.6'	70°47.1'
10. Halibut Point Gong Buoy "1AHP"	42°42.0'	70°37.5'
11. Connecting reference point	42°40'	70°30'
12. Whistle Buoy "2" off Eastern Point	42°34.3'	70°39.8'
13. The Graves Light (Boston)	42°21.9'	70°52.2'
14. Minots Ledge Light	42°16.2'	70°45.6'
15. Farnham Rock Lighted Bell Buoy	42°05.6'	70°36.5'
16. Cape Cod Canal Bell Buoy "CC"	41°48.9'	70°27.7'
17. A point inside Cape Cod Bay	41°48.9'	70°05'
18. Race Point Lighted Bell Buoy "RP"	42°04.9'	70°16.8'
19. Peaked Hill Bar Whistle Buoy "2PH"	42°07.0'	70°06.2'
20. Connecting point, off Nauset Light	41°50'	69°53'
21. A point south of Chatham "C" Whistle Buoy	41°38'	69°55.2'
22. A point in eastern Vineyard Sound	41°30'	70°33'
23. A point east of Martha's Vineyard	41°22.2'	70°24.6'
24. A point east of Great Pt. Light, Nantucket	41°23.4'	69°57'
25. A point SE of Sankaty Head, Nantucket	41°13'	69°57'
26. A point west of Nantucket	41°15.6'	70°25.2'
27. Squibnocket Lighted Bell Buoy "1"	41°15.7'	70°46.3'
28. Wilbur Point (on Sconticut Neck)	41°35.2'	70°51.2'
29. Misham Point (on Smith Neck)	41°31.0'	70°57.2'
30. Sakonnet Entrance Lighted Whistle Buoy "SR"	41°25.7'	71°13.4'
31. Point Judith Lighted Whistle Buoy "2"	41°19.3'	71°28.6'

VTS DEMARCATION LINE—Continued

Description	N. Long.	W. Lat.
32. A point off Block Island Southeast Light	41°08.2'	71°32.1'
33. Shinnecock Inlet Lighted Whistle Buoy "SH"	40°49.0'	72°28.6'
34. Scotland Horn Buoy "S", off Sandy Hook (NJ)	40°26.5'	73°55.0'
35. Barnegat Lighted Gong Buoy "2"	39°45.5'	73°59.5'
36. A point east of Atlantic City Light	39°21.9'	74°22.7'
37. A point east of Hereford Inlet Light	39°00.4'	74°46'
38. A point east of Cape Henlopen Light	38°47'	75°04'
39. A point east of Fenwick Island Light	38°27.1'	75°02'
40. A point NE of Assateague Island (VA)	38°00'	75°13'
41. Wachapreague Inlet Lighted Whistle Buoy "A"	37°35.0'	75°33.7'
42. A point NE of Cape Henry	36°55.6'	75°58.5'
43. A point east of Currituck Beach Light	36°22.6'	75°48'
44. Oregon Inlet (NC) Whistle Buoy	35°48.5'	75°30'
45. Wimple Shoals, east of Chicamacomico	35°36'	75°26'
46. A point SE of Cape Hatteras Light	35°12.5'	75°30'
47. Hatteras Inlet Entrance Buoy "HI"	35°10'	75°46'
48. Ocracoke Inlet Whistle Buoy "OC"	35°01.5'	76°00.5'
49. A point east of Cape Lookout Light	34°36.5'	76°30'
50. Southern terminus point	34°35'	76°41'

(b) *VTS notification.* Multispecies vessels issued an individual DAS or combination permit, scallop vessels issued a full-time or part-time limited access scallop permit, or scallop vessels fishing under the small dredge program specified in § 648.51(e), or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VTS notification of this paragraph (b), unless otherwise authorized or required by the Regional Director under § 648.9(a), must have installed on board an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified in § 648.9(a). Owners of such vessels must provide documentation to the Regional Director at the time of application for a limited access permit that the vessel has an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified in § 648.9(a). If a vessel has already been issued a limited access permit without providing such documentation, the Regional Director shall allow at least 30 days for the vessel to install an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified in § 648.9(a), and to provide documentation of such installation to the Regional Director. The VTS unit shall be subject to the following requirements and presumption:

(1) Multispecies vessels issued an individual DAS or combination permit, scallop vessels issued a full-time or part-time limited access scallop permit, or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VTS notification of this paragraph (b), that have crossed the VTS Demarcation Line specified under paragraph (a) of this section, are deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop or NE multispecies fishery, as applicable, for a specific time period by notifying the Regional Director through the VTS prior to the vessel leaving port.

(2) Part-time scallop vessels may not fish in the DAS allocation program unless they declare into the scallop fishery for a specific time period by notifying the Regional Director through the VTS.

(3) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(4) DAS for vessels that are under the VTS notification requirements of this paragraph (b) are counted beginning with the first hourly location signal received showing that the vessel crossed the VTS Demarcation Line leaving port. A trip concludes and accrual of

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DAS ends with the first hourly location signal received showing that the vessel crossed the VTS Demarcation Line upon its return to port.

(5) If the VTS is not available or not functional, and if authorized by the Regional Director, a vessel owner must provide the notifications required by paragraphs (b)(1), (2), and (3) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VTS system.

(c) *Call-in notification.* Owners of vessels issued limited access multispecies permits who are participating in a DAS program and who are not required to provide notification using a VTS, owners of scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VTS notification requirements of paragraph (b) of this section, and vessels fishing pending an appeal as specified in § 648.4(a)(1)(i)(H)(3) are subject to the following requirements:

(1) Prior to the vessel leaving port, the vessel owner or authorized representative must notify the Regional Director that the vessel will be participating in the DAS program or the charter/party fishery by calling the Regional Director and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, and that the vessel is beginning a trip. For NE multispecies vessels, the port of departure also must be specified. A DAS or a vessel's participation in the charter/party fishery begins once the call has been received and a confirmation number is given by the Regional Director.

(2) The confirmation number given by the Regional Director must be kept on board for the duration of the trip and must be provided to an authorized officer upon request.

(3) Upon the vessel's return to port, the vessel owner or owner's representative must call the Regional Director and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel's name and permit number, and that the vessel has ended a trip. For NE multispecies ves-

sels, the port of landing also must be specified. A DAS ends for all but vessels fishing with gillnet gear when the call has been received and confirmation given by the Regional Director. For vessels fishing with gillnet gear, DAS continue to accrue as long as the vessel's gillnet gear remains in the water. A trip concludes and accrual of DAS ends for a gillnet vessel when the vessel returns to port with all of its gillnet gear that was in the water on board, the phone call has been received, and confirmation has been given by the Regional Director.

(4) The Regional Director will furnish a phone number for DAS notification call-ins upon request.

(5) Any vessel that possesses or lands per trip more than 400 lb (181.44 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the DAS program and call-in requirement, that possesses or lands regulated species, except as provided in § 648.83, shall be deemed in the DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (b) of this section.

(d) *Temporary authorization for use of the call-in system.* The Regional Director may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section. If use of the call-in system is authorized or required, the Regional Director shall notify affected permit holders through a letter, notification in the FEDERAL REGISTER, or other appropriate means.

(e) *Charter/party multispecies vessels.* Charter/party multispecies vessels that are not fishing under a multispecies DAS must declare into and out of the charter/party fishery, providing notification under paragraph (b) of this section, must remain in the charter/party fishery for a minimum of 24 hours after declaring into the fishery, and are subject to the restrictions in § 648.89.

(f) *Scallop vessels fishing under exemptions.* Vessels fishing under the exemptions provided by § 648.54 (a) and/or (b) must notify the Regional Director by VTS notification or through call-in notification as follows:

(1) *VTs notification.* (i) Notify the Regional Director, via their VTS, prior to the vessel's first trip under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

(ii) Notify the Regional Director, via their VTS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(2) *Call-in notification.* (i) Notify the Regional Director by calling the Regional Director and providing the following information at least 7 days prior to fishing under the exemption: Owner and caller name and address, vessel name and permit number, and beginning and ending dates of the exemption period.

(ii) Remain under the exemption for a minimum of 7 days.

(iii) If, under the exemption for a minimum of 7 days and wishing to withdraw earlier than the designated end of the exemption period, notify the Regional Director of early withdrawal from the program by calling the Regional Director, providing the vessel's name and permit number and the name and phone number of the caller, and stating that the vessel is withdrawing from the exemption. The vessel may not leave port to fish in the EEZ until 48 hours after notification of early withdrawal is received by the Regional Director.

(iv) The Regional Director will furnish a phone number for call-ins upon request.

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Director may request any vessel holding a permit for sea scallop or NE multispecies; or a moratorium permit for summer flounder; or, as of January 1, 1997, a mackerel, squid, or butterfly, or scup permit to carry a NMFS-approved sea sampler/observer. If requested by the Regional Director to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is on board, or unless the requirement is waived.

(b) If requested by the Regional Director to carry an observer or sea sam-

pler, 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 Director, 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 Director 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 Director, 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

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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 or scup moratorium permit, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder or scup, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder or scup, or other specimens taken by the vessel.

(3) Provide storage for biological specimens, including cold storage if available, and retain such specimens on board the vessel as instructed by the sea sampler/observer, until retrieved by authorized NMFS personnel.

(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 Director.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996]

§ 648.12 Experimental fishing.

The Regional Director may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies), G (summer flounder), or H (scup), of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Director shall consult with the Executive Director of the MAFMC regarding such exemptions for the mackerel, squid, or butterfish, summer flounder and scup fisheries.

(a) The Regional Director may not grant such an exemption unless he/she determines that the purpose, design,

and administration of the exemption is consistent with the objectives of the respective FMP, the provisions of the Magnuson 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 Director to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

(c) Experimental fishing for surf clams or ocean quahogs will not require an allocation permit.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996]

§ 648.13 Transfers at sea.

(a) Only vessels issued a *Loligo* and butterfish moratorium permit under § 648.4(a)(5) and vessels issued a mackerel, squid, and butterfish incidental catch permit and authorized in writing by the Regional Director to do so, may transfer or attempt to transfer *Loligo* or butterfish from one vessel to another vessel.

(b) 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 multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Director to do so, may transfer species other than regulated species from one vessel to another vessel.

(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.

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§ 648.14 Prohibitions.

(a) In addition to the general prohibitions specified in §600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fail to report to the Regional Director within 15 days any change in the information contained in an applicable vessel, operator, or dealer/processor permit application.

(2) Falsify or fail to affix and maintain vessel markings as required by §648.8.

(3) Make any false statement in connection with an application, declaration, or report under this part.

(4) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of §648.7, or submit or maintain false information in records and reports required to be kept or filed under §648.7.

(5) Alter, erase, or mutilate any permit issued under this part.

(6) Alter, erase, mutilate, duplicate or cause to be duplicated, or steal any cage tag issued under this part.

(7) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(8) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion either a NMFS-approved observer or sea sampler aboard a vessel conducting his or her duties aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part.

(9) Refuse to carry an observer or sea sampler if requested to do so by the Regional Director.

(10) To refuse reasonable assistance to either a NMFS-approved observer or sea sampler conducting his or her duties aboard a vessel.

(11) Fish for surf clams or ocean quahogs in any area closed to surf clam or ocean quahog fishing.

(12) Fish for, take, catch, harvest or land any species of fish regulated by this part in or from the EEZ, unless the vessel has a valid and appropriate

permit issued under this part and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(13) Purchase, possess or receive for a commercial purpose or attempt to purchase possess or receive for a commercial purpose any species regulated under this part unless in possession of a valid dealer permit issued under this part, except that this prohibition does not apply to species that are purchased or received from a vessel not issued a permit under this part and fishing exclusively in state waters.

(14) Produce, or cause to be produced, cage tags required under this part without written authorization from the Regional Director.

(15) Tag a cage with a tag that has been rendered null and void or with a tag that has been previously used.

(16) Tag a cage of surf clams with an ocean quahog cage tag or tag a cage of ocean quahogs with a surf clam cage tag.

(17) Possess, import, export, transfer, land, have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters by a vessel not issued a permit under this part or whose permit has been surrendered in accordance with applicable regulations.

(18) Possess an empty cage to which a cage tag required by §648.75 is affixed or possess any cage that does not contain surf clams or ocean quahogs and to which a cage tag required by §648.75 is affixed.

(19) Land or possess, after offloading, any cage holding surf clams or ocean quahogs without a cage tag or tags required by §648.75, unless the person can demonstrate the inapplicability of the presumption set forth in §648.75(t)(1)(iii).

(20) Sell null and void tags.

(21) Shuck surf clams or ocean quahogs harvested in or from the EEZ at sea, unless permitted by the Regional Director under the terms of §648.74.

(22) Receive for a commercial purpose other than transport, surf clams or ocean quahogs harvested in or from the EEZ, whether or not they are landed

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under an allocation under § 648.70, unless issued a dealer/processor permit under this part.

(23) Land unshucked surf clams or ocean quahogs harvested in or from the EEZ in containers other than cages from vessels capable of carrying cages.

(24) Offload unshucked surf clams or ocean quahogs harvested in or from the EEZ from vessels not capable of carrying cages other than directly into cages.

(25) Fish for surf clams or ocean quahogs in the EEZ without giving prior notification, or fail to comply with any of the notification requirements specified in § 648.15(b).

(26) Fish for, retain, or land both surf clams and ocean quahogs in or from the EEZ on the same trip.

(27) Fish for, retain, or land ocean quahogs in or from the EEZ on a trip designated as a surf clam fishing trip under § 648.15(b), or fish for, retain, or land surf clams in or from the EEZ on a trip designated as an ocean quahog fishing trip under § 648.15(b).

(28) Fail to offload any surf clams or ocean quahogs harvested in the EEZ from a trip discontinued pursuant to § 648.15(b) prior to commencing fishing operations in waters under the jurisdiction of any state.

(29) Land or possess any surf clams or ocean quahogs harvested in or from the EEZ in excess of, or without, an individual allocation.

(30) Transfer any surf clams or ocean quahogs harvested in or from the EEZ to any person for a commercial purpose, other than transport, without a surf clam or ocean quahog processor or dealer permit.

(31) Fish for, possess, or land NE multispecies, unless:

(i) The NE multispecies are being fished for or were harvested in or from the EEZ by a vessel holding a valid multispecies permit under this part, or a letter under § 648.4(a)(1), and the operator on board such vessel has been issued an operator's permit and has a valid permit on board the vessel;

(ii) The NE multispecies were harvested by a vessel not issued a multispecies permit that fishes for NE multispecies exclusively in state waters; or

(iii) The NE multispecies were harvested in or from the EEZ by a recreational fishing vessel.

(32) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies from one vessel to another vessel, unless both vessels have not been issued multispecies permits and both fish exclusively in state waters, or unless authorized in writing by the Regional Director.

(33) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any NE multispecies from a trip, unless the vessel is holding a multispecies permit, or a letter under § 648.4(a)(1), and is not fishing under the charter/party vessel restrictions specified in § 648.89, or unless the NE multispecies were harvested by a vessel without a multispecies permit that fishes for NE multispecies exclusively in state waters.

(34) Operate or act as an operator of a vessel fishing for or possessing NE multispecies in or from the EEZ, or holding a multispecies permit without having been issued and possessing a valid operator's permit.

(35) Fish with, use, or have on board within the area described in § 648.80(a)(1), nets of mesh whose size is smaller than the minimum mesh size specified in § 648.80(a)(2), except as provided in § 648.80(a) (3) through (6), (a)(8), (a)(9), (d), (e) and (i), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(36) Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), nets of mesh size smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80 (b)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for multispecies exclusively in state waters.

(37) 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 size specified in § 648.80(c)(2), except as provided in § 648.8 (c)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for NE

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multispecies exclusively in state waters.

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a) (2) and (d).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided by § 648.81(b)(2).

(40) Enter or be in the area described in § 648.81(c)(1), on a fishing vessel, except as provided in § 648.81 (c)(2) and (d)(2).

(41) Fail to comply with the gear-marking requirements of § 648.84.

(42) Fish within the areas described in § 648.80(a)(4) with nets of mesh smaller than the minimum size specified in § 648.80(a)(2), unless the vessel is issued and possesses on board an authorizing letter issued under § 648.80(a)(4)(i).

(43) Violate any of the provisions of § 648.80(a)(4), (5), (8), or (9). A violation of any of these paragraphs is a separate violation.

(44) Fish for, land, or possess NE multispecies harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 648.80(d), or unless the vessels that engaged in pair trawling have not been issued multispecies permits and fish for NE multispecies exclusively in state waters.

(45) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(3).

(46) Violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or fail to keep such letter on board the vessel during the period of the experiment.

(47) Fish for the species specified in § 648.80 (d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a) (2), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80 (d) or (e), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(48) Violate any provision of § 648.88.

(49) Violate any of the restrictions on fishing with scallop dredge gear specified in § 648.80(h).

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(50) Violate any of the provisions of § 648.80(i).

(51) Obstruct or constrict a net as described in § 648.80(g) (1) or (2).

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81 (f)(1) through (h)(1) during the time period specified, except as provided in § 648.81(d), (f)(2), (g)(2), and (h)(2).

(53) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) and from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.51 (a)(2)(ii) and (e)(2), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(54) Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 648.51, or with scallop dredge gear on a vessel not fishing under the scallop DAS program described in § 648.54 of this chapter, or fishing under a general scallop permit, unless said fish are caught, possessed or landed in accordance with §§ 648.80 and 648.86, or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limit specified in § 648.86 applicable to a vessel issued a multispecies permit.

(56) Possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a general or limited access scallop permit; or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(57) Fish for, possess, or land per trip, scallops in excess of 400 lb (181.44 kg) of

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shucked, or 50 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit, or a letter under § 648.4(b)(2)(viii)(F); or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(58) Fish for, possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel with an operator on board who has been issued an operator's permit and the permit is on board the vessel and is valid; or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(59) Have a shucking or sorting machine on board a vessel that shucks scallops at sea, while in possession of more than 400 lb (181.44 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(60) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer, scallops from one vessel to another, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(61) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose, any scallops from a trip whose catch is 40 lb (18.14 kg) of shucked scallops or less, or 5 bu (176.1 L) of in-shell scallops, unless the vessel has been issued a valid general or limited access scallop permit, or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(62) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, scallops taken from a fishing vessel that were harvested in or from the EEZ, unless issued, and in possession of, a valid scallop dealer's permit.

(63) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, scallops caught by a vessel other than one issued a valid limited access or general scallop permit unless the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(64) Operate or act as an operator of a vessel fishing for or possessing any species of fish regulated by this part in or from the EEZ, or issued a permit pursuant to this part, without having been issued and possessing a valid operator's permit.

(65) Possess in or harvest from the EEZ summer flounder, either in excess of the possession limit specified in § 648.105, or before or after the time period specified in § 648.102, unless the vessel was issued a summer flounder moratorium permit and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended.

(66) Possess nets or netting with mesh not meeting the minimum mesh requirement of § 648.104 if the person possesses summer flounder harvested in or from the EEZ in excess of the threshold limit of § 648.105(a).

(67) Purchase or otherwise receive, except for transport, summer flounder from the owner or operator of a vessel issued a summer flounder moratorium permit, unless in possession of a valid summer flounder dealer permit.

(68) Purchase or otherwise receive for commercial purposes summer flounder caught by other than a vessel with a summer flounder moratorium permit not subject to the possession limit of § 648.105.

(69) Purchase or otherwise receive for a commercial purpose summer flounder landed in a state after the effective date published in the FEDERAL REGISTER notifying permit holders that commercial quota is no longer available in that state.

(70) Fail to comply with any sea turtle conservation measure specified in § 648.106, including any sea turtle conservation measure implemented by notification in the FEDERAL REGISTER in accordance with § 648.106(d).

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(71) Use any vessel of the United States for taking, catching, harvesting, fishing for, or landing any Atlantic salmon taken from or in the EEZ.

(72) Transfer, directly or indirectly, or attempt to transfer to any vessel any Atlantic salmon taken in or from the EEZ.

(73) Take and retain, or land more mackerel, squid, and butterfish than specified under a notice issued under § 648.22.

(74) Possess nets or netting with mesh not meeting the minimum size requirement of § 648.23 and not stowed in accordance with the requirements of § 648.23, if in possession of *Loligo* harvested in or from the EEZ.

(75) Transfer *Loligo* or butterfish within the EEZ, unless the vessels participating in the transfer have been issued valid *Loligo* and butterfish moratorium permits or valid letters of authorization from the Regional Director.

(76) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except for transport on land, mackerel, squid, and butterfish taken from a fishing vessel unless issued, and in possession of a valid mackerel, squid, and butterfish fishery dealer permit.

(77) Purchase or otherwise receive for a commercial purpose, mackerel, squid, and butterfish caught by other than a vessel issued a mackerel, squid, and butterfish permit, unless the vessel has not been issued a permit under this part and fishes exclusively within the waters under the jurisdiction of any state.

(78) [Reserved]

(79) Violate any other provision of this part, the Magnuson Act, or any regulation, notice, or permit issued under the Magnuson Act.

(80) Possess scup in or harvested from the EEZ north of 35°15.3' N. lat. in an area closed, or before or after a season established pursuant to § 648.122.

(81) To purchase or otherwise receive for a commercial purpose scup harvested from the EEZ north of 35°15.3' N. lat., or from a vessel issued a scup moratorium permit after the effective date of the notification published in the

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(82) Land scup harvested in or from the EEZ north of 35°15.3' N. lat. after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(83) Possess scup harvested in or from the EEZ north of 35°15.3' N. lat. that do not meet the minimum fish size specified in § 648.124.

(84) Fish for, catch, or retain scup in excess of 4,000 lb (1,814 kg) in or from the EEZ north of 35°15.3' N. lat. unless the vessel meets the gear restrictions in § 648.123.

(85) Fish for, catch, or retain scup in or from the EEZ north of 35°15.3' N. lat. for sale, barter, or trade, after January 1, 1997, unless the vessel has been issued a valid moratorium permit pursuant to § 648.4(a)(6).

(86) Sell or transfer scup harvested in or from the EEZ north of 35°15.3' N. lat. after January 1, 1998, unless the vessel has been issued a valid moratorium permit pursuant to § 648.4(a)(6).

(87) Fish for, catch, or retain scup in or from the EEZ north of 35°15.3' N. lat. on board a party or charter boat after January 1, 1997, unless the vessel has been issued a valid party or charter boat permit pursuant to § 648.4(a)(6)(ii).

(88) Fish with or possess scup pots or traps in the EEZ north of 35°15.3' N. lat. that have a rectangular escape vent, any side of which is less than 2.25 inches (5.7 cm) in length.

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel holding a multispecies permit, issued an operator's permit, or issued a letter under § 648.4(a)(1)(i)(H)(3), to land, or possess on board a vessel, more than the possession limits specified in § 648.86(a), or violate any of the other provisions of § 648.86.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any person owning or operating a vessel issued a limited access multispecies permit or a letter under § 648.4(a)(1)(i)(H)(3), to do any of the following:

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(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of regulated species specified in § 648.86(c) after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(3) or § 648.89.

(2) If required by § 648.10 to have a VTS unit:

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 648.9 on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage as specified in § 648.10(a).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess, or land NE multispecies with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i) (E) and (F).

(5) Fish for, possess, or land NE multispecies with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(1)(i) (E) and (F).

(6) Fail to comply with any requirement specified in § 648.10.

(7) Possess or land per trip more than the possession limit specified under § 648.8 if the vessel has been issued a limited access multispecies permit.

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.82(b)(4), if the vessel has been issued a limited access multispecies hook-gear permit.

(9) Fail to declare, and be, out of the NE multispecies fishery as required by § 648.82(g), using the procedure described under § 648.82(h), as applicable.

(10) Land, or possess on board a vessel, more than the possession limit of winter flounder specified in § 648.86(b), or violate any of the other provisions specified of § 648.86(b).

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel issued

a multispecies handgear permit to do any of the following:

(1) Possess, at any time during a trip, or land per trip, more than the possession limit of regulated species specified in § 648.88(a), unless the regulated species were harvested by a charter or party vessel.

(2) Use, or possess on board, gear capable of harvesting NE multispecies, other than rod and reel or handline, while in possession of, or fishing for, NE multispecies.

(3) Possess or land NE multispecies during the time period specified in § 648.86(a)(2).

(e) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (d) of this section, it is unlawful for any person owning or operating a vessel issued a multispecies possession limit permit for scallops to possess or land more than the possession limit of regulated species specified at § 648.88(c) or to possess or land regulated species when not fishing under a scallop DAS.

(f) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit or a general scallop permit under § 648.4(a)(2) to land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(g) In addition to the general prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraphs (a) through (f) of this section, it is unlawful for the owner or operator of a charter or party boat issued a multispecies permit, or of a recreational vessel, as applicable, to:

(1) Fish with gear in violation of the restrictions specified in § 648.89(a).

(2) Possess cod and haddock in excess of the possession limits specified in § 648.89(c).

(3) Sell, trade, barter, or otherwise transfer, or attempt to sell, trade, barter or otherwise transfer, NE multispecies for a commercial purpose as specified in § 648.89(d).

(h) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (g) of this section, it is unlawful for any person

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owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(1) Possess, or land per trip, more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.54.

(2) Land scallops on more than one trip per calendar day after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.55.

(3) Fail to have an approved, operational, and functioning VTS unit that meets the specifications of § 648.9 on board the vessel at all times, unless the vessel is not subject to the VTS requirements specified in § 648.10.

(4) If the vessel is not subject to VTS requirements specified in § 648.10(a), fail to comply with the requirements of the call-in system specified in § 648.10(b).

(5) Combine, transfer, or consolidate DAS allocations.

(6) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits, except as provided in § 648.4(a)(2)(i)(H).

(7) Fish for, possess, or land scallops with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(2)(i) (E) or (F).

(8) Fish for, possess, or land scallops with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(2)(i) (E) or (F).

(9) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops or participate in the DAS allocation program, while in possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(2)(iii).

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(10) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(11) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that do not meet the requirements of § 648.51(a)(3).

(12) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops or participate in the DAS allocation program, while in possession of dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 648.51(b)(1).

(13) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 648.51(b)(2).

(14) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear containing rings that have minimum sizes smaller than those specified in § 648.51(b)(3).

(15) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, or participate in the DAS allocation program, while in possession of dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 648.51(b)(4)(ii).

(16) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, or participate in the DAS allocation program, while in possession of dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 648.51(b)(4).

(17) Participate in the DAS allocation program with more than the number of persons specified in § 648.51(c), including the operator, on board when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Director.

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(18) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(19) Fish under the small dredge program as specified in § 648.51(e) with more than five persons, including the operator, aboard the vessel, unless otherwise authorized by the Regional Director.

(20) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Director.

(21) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(22) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11.

(23) Fail to comply with any requirement for declaring in and out of the DAS allocation program as specified in § 648.10.

(24) Fail to comply with any requirement for participating in the DAS Exemption Program as specified in § 648.54.

(25) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(26) Fail to comply with the restriction on twine top described in § 648.51(b)(4)(iv).

(i) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit to do any of the following:

(1) Possess, or land per trip, more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops.

(2) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 648.51(b)(1).

(3) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 648.51(b)(2).

(4) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear containing rings that have minimum sizes smaller than those specified in § 648.51(b)(3).

(5) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 648.51(b)(4)(ii).

(6) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 648.51(b)(4).

(7) Fish for, or land, more than 40 lb (18.14 kg) of scallops on more than one trip per calendar day.

(j) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a summer flounder permit (including moratorium permit) to do any of the following:

(1) Possess 100 lb or more (45.4 kg or more) of summer flounder between May 1 and October 31, or 200 lb or more (90.7 kg or more) of summer flounder between November 1 and April 30, unless the vessel meets the minimum mesh size requirement specified in § 648.104(a), or is fishing in the exempted area with an exemption permit as specified in § 648.104(b)(1), or holds an exemption permit and is in transit from the exemption area with nets properly stowed as specified in § 648.104(f), or is fishing with exempted gear specified in § 648.104(b)(2).

(2) Possess summer flounder in other than a box specified in § 648.105(d) if

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fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.104(a), unless the vessel is fishing pursuant to the exemptions specified in § 648.104(b).

(3) Land summer flounder for sale in a state after the effective date of the notification in the FEDERAL REGISTER notifying permit holders that commercial quota is no longer available in that state.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(f).

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(f).

(6) Fish west or south, as appropriate, of the line specified in § 648.104(b)(1) if exempted from the minimum mesh requirement specified in § 648.104 by a summer flounder exemption permit.

(7) Sell or transfer to another person for a commercial purpose, other than transport, any summer flounder, unless the transferee has a valid summer flounder dealer permit.

(8) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a summer flounder moratorium permit.

(k) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a scup permit (including a moratorium permit) to do any of the following:

(1) Possess scup in excess of the threshold amount specified in § 648.123, unless the vessel meets the minimum mesh-size restrictions specified in § 648.123.

(2) Fail to keep scup separate from other species if fishing with nets having mesh that does not meet the minimum mesh-size restrictions specified in § 648.123(a).

(3) Land scup for sale after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(4) Possess nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

(5) Fish with nets or netting that do not meet the minimum mesh restriction or that are modified, obstructed or constricted while in possession of scup in excess of the threshold amount specified in § 648.123.

(6) As of January 1, 1997, sell or transfer to another person for a commercial purpose, other than transport on land, any scup, unless the transferee has a dealer permit issued under § 648.6.

(7) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing for scup under the terms of a moratorium permit issued pursuant to § 648.4(a)(6).

(8) Use a scup pot or trap that does not have the hinges and fasteners made of degradable materials as specified in § 648.123.

(9) Use a scup trap or pot that does not have a minimum escape vent of the size specified in § 648.123.

(10) Use roller rig trawl gear equipped with rollers greater than the size specified in § 648.123.

(11) Possess scup in, or harvested from, the EEZ in an area closed, or before or after a season established pursuant to § 648.122.

(l) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for the owner or operator of a party or charter boat issued a scup permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess scup in excess of the possession limit established pursuant to § 648.125.

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(2) Fish for scup other than during a season established pursuant to § 648.122.

(3) Sell scup or transfer scup to another person for a commercial purpose.

(4) Possess scup that do not meet the minimum fish size specified in § 648.124(b).

(m) It is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess summer flounder in excess of the possession limit established pursuant to § 648.105.

(2) Fish for summer flounder other than during a season specified pursuant to § 648.102.

(3) Sell or transfer summer flounder to another person for a commercial purpose.

(n) It is unlawful to violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or to fail to keep such letter aboard the vessel during the time period of the experimental fishing.

(o) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a surf clam and ocean quahog permit or issued a surf clam and ocean quahog allocation permit under § 648.70, to land or possess any surf clams or ocean quahogs in excess of, or without, an individual allocation, or to transfer any surf clams or ocean quahogs to any person for a commercial purpose other than transport, unless that person has a surf clam and ocean quahog processor/dealer permit.

(p) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit, to do any of the following:

(1) Possess more than the incidental catch allowance of *Loligo* or butterfish, unless issued a *Loligo* squid and butterfish fishery moratorium permit.

(2) Take, retain, or land mackerel, squid, or butterfish in excess of a trip allowance specified under § 648.22.

(3) Take, retain, or land mackerel, squid, or butterfish after a total closure specified under § 648.22.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement for *Loligo* specified in § 648.23(a), or that are modified, obstructed, or constricted, if subject to the minimum mesh requirement, unless the nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a).

(5) Transfer squid or butterfish at sea to another vessel, unless that other vessel has been issued a valid *Loligo* squid and butterfish fishery moratorium permit or a letter of authorization by the Regional Director.

(6) Fail to comply with any measures implemented pursuant to § 648.21.

(7) Carry passengers for hire while fishing commercially under a mackerel, squid, and butterfish fishery permit.

(8) Fail to carry on board a letter of authorization, if fishing in an experimental fishery pursuant to § 648.12.

(q) It is unlawful for the owner and operator of a party or charter boat issued a mackerel, squid, and butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

(1) Violate any recreational fishing measures established pursuant to § 648.21(d).

(2) Sell or transfer mackerel, squid, or butterfish to another person for a commercial purpose.

(r) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 648.11 or to fail to keep such letter on board the vessel during the period of the experiment.

(s) Any person possessing or landing per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, at or prior to the time when those scallops are received or possessed by a dealer, is subject to all of the scallop prohibitions specified in this section, unless the scallops were harvested by a vessel without a scallop

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permit that fishes for scallops exclusively in state waters. Any person, regardless of the quantity of scallops possessed or landed, is subject to the prohibitions of paragraphs (a)(4) through (7), (10), (11), (68), (69), (71), (72), (73), and (87) of this section.

(t) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any person owning or operating a vessel issued a nonregulated multispecies permit to possess or land any regulated species as defined in §648.2, or violate any applicable provisions of §648.88.

(u) For purposes of this section, the following presumptions apply:

(1) *Surf clams and ocean quahogs.* (i) Possession of surf clams or ocean quahogs on the deck of any fishing vessel in closed areas, or the presence of any part of a vessel's gear in the water in closed areas, or the presence of any part of a vessel's gear in the water more than 12 hours after an announcement closing the entire fishery becomes effective, is prima facie evidence that such vessel was fishing in violation of the provisions of the Magnuson Act and these regulations.

(ii) Surf clams or ocean quahogs landed from a trip for which notification was provided under §648.15(b) or §648.70(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation.

(iii) Surf clams or 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 such individual demonstrates that he/she has surrendered his/her surf clam and ocean quahog vessel permit issued under §648.4 and has conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under §648.70(d)(2) or §648.75(b).

(2) *Scallops.* Scallops that are possessed or landed at or prior to the time when the scallops are received by a

dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such scallops were harvested by a vessel without a scallop permit and fishing exclusively for scallops in state waters.

(3) *Summer flounder.* All summer flounder possessed aboard a party or charter boat issued a summer flounder permit are deemed to have been harvested from the EEZ.

(4) *NE multispecies.* (i) Regulated species possessed for sale that do not meet the minimum sizes specified in §648.83 for sale are deemed to have been taken or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters. This presumption does not apply to fish being sorted on deck.

(ii) Regulated species possessed for sale that do not meet the minimum sizes specified in §648.83 for sale are deemed taken from the EEZ or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters. This presumption does not apply to fish being sorted on deck.

(5) *Mackerel, squid, and butterfish.* All mackerel and butterfish possessed on board a party or charter boat issued a mackerel, squid, and butterfish fishery permit are deemed to have been harvested from the EEZ.

(6) *Scup.* All scup possessed on board a party or charter boat issued a permit under §648.4 are deemed to have been harvested from the EEZ.

[61 FR 34968, July 3, 1996, as amended at 61 FR 39910, July 31, 1996; 61 FR 43426, Aug. 23, 1996; 61 FR 53866, Oct. 16, 1996]

§ 648.15 Facilitation of enforcement.

(a) *General.* See §600.504 of this chapter.

(b) *Special notification requirements applicable to surf clam and ocean quahog vessel owners and operators.* (1) Vessel owners or operators are required to call the NMFS Office of Law Enforcement

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nearest to the point of offloading (contact the Regional Director for locations and phone numbers) and accurately provide the following information prior to the departure of their vessel from the dock to fish for surf clams or ocean quahogs in the EEZ: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port; whether the trip will be directed on surf clams or ocean quahogs; expected date, time, and location of landing; and name of the individual providing notice.

(2) Owners or operators that have given notification of a fishing trip under this paragraph (b) who decide to cancel or postpone the trip prior to departure must immediately provide notice of cancellation by telephone to the Office of Law Enforcement to which the original notification was provided. A separate notification shall be provided for the next fishing trip. Owners or operators that discontinue a fishing trip in the EEZ must immediately provide notice of discontinuance by telephone to the Office of Law Enforcement to which the original notification was provided. The owner or operator providing notice of discontinuance shall advise of any changes in landing time or port of landing. The owner or operator discontinuing a fishing trip in the EEZ must return to port and offload any surf clams or ocean quahogs prior to commencing fishing operations in the waters under the jurisdiction of any state.

(3) The vessel permits, the vessel, its gear, and catch shall be subject to inspection upon request by an authorized officer.

§ 648.16 Penalties.

See § 600.735.

Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

§ 648.20 Maximum optimum yield (OYs).

The OYs specified pursuant to § 648.21 during a fishing year may not exceed the following amounts:

(a) Mackerel—that quantity of mackerel that is less than or equal to the al-

lowable biological catch (ABC) in U.S. waters specified pursuant to § 648.21.

(b) *Loligo*—36,000 mt (79,362,000 lb).

(c) *Illex*—30,000 mt (66,135,000 lb).

(d) Butterfish—16,000 mt (35,272,000 lb).

§ 648.21 Procedures for determining initial annual amounts.

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Mackerel, Squid, and Butterfish Committee of the MAFMC: (1) Initial OY (IOY), domestic annual harvest (DAH), and domestic annual processing (DAP) for the squids; (2) IOY, DAH, DAP, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish; and (3) IOY, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for mackerel. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review available data pertaining to: Commercial and recreational landings, discards, current estimates of fishing mortality, stock status, the most recent estimates of recruitment, virtual population analysis results, levels of noncompliance by harvesters or individual states, impact of size/mesh regulations, results of a survey of domestic processors and joint venture operators of estimated mackerel processing capacity and intent to use that capacity, results of a survey of fishermen's trade associations of estimated mackerel harvesting capacity and intent to use that capacity, and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) *Squid.* (i) The ABC for any fishing year must be either the maximum OY specified in § 648.20, or a lower amount, if stock assessments indicate that the

potential yield is less than the maximum OY.

(ii) IOY is a modification of ABC based on social and economic factors.

(2) *Mackerel.* (i) Mackerel ABC must be calculated from the formula $ABC = S - C - T$, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year; S is the mackerel spawning stock size at the beginning of the year for which quotas are specified; and T, which must be equal to or greater than 900,000 mt (1,984,050,000 lb), is the spawning stock size that must be maintained in the year following the year for which quotas are specified.

(ii) IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

(iii) IOY is composed of DAH and TALFF. DAH, DAP, and JVP must be projected by reviewing data from sources specified in paragraph (a) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on the criteria set forth in the Magnuson Act, specifically section 201(e), and on the following economic factors:

(A) Total world export potential by mackerel producing countries.

(B) Total world import demand by mackerel consuming countries.

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(D) Increased/decreased revenues to the United States from foreign fees.

(E) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(F) Increased/decreased revenues to U.S. processors and exporters.

(G) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(H) Increases/decreases in U.S. processing productivity.

(I) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(3) *Butterfish.* (i) If the Monitoring Committee's review indicates that the stock cannot support a level of harvest equal to the maximum OY, the Monitoring Committee shall recommend establishing an ABC less than the maximum OY for the fishing year. This level represents the modification of maximum OY to reflect biological and ecological factors. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC must be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a DAH and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF.

(c) *Recommended measures.* Based on the review of the data described in paragraph (a) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures it determines are necessary to assure that the specifications are not exceeded from the following measures:

(1) Commercial quotas.

(2) The amount of *Loligo* and butterfish that may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5).

(3) Commercial minimum fish sizes.

(4) Commercial trip limits.

(5) Commercial seasonal quotas.

(6) Minimum mesh sizes.

(7) Commercial gear restrictions.

(8) Recreational harvest limit.

(9) Recreational minimum fish size.

(10) Recreational possession limits.

(11) Recreational season.

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee shall review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee shall recommend to the MAFMC appropriate specifications and any measures necessary to assure that

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the specifications will not be exceeded. The MAFMC shall review these recommendations and based on the recommendations and any public comment received thereon, the MAFMC shall recommend to the Regional Director appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Director shall review the recommendations, and on or about November 1 of each year, shall publish notification in the FEDERAL REGISTER proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations shall be available for inspection at the office of the Regional Director during the public comment period.

(2) On or about December 15 of each year, the Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications will not be exceeded contained in the FEDERAL REGISTER notification. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Director, in consultation with the MAFMC, during the fishing year by

publishing notification in the FEDERAL REGISTER stating the reasons for such an action and providing a 30-day comment public comment period.

§ 648.22 Closure of the fishery.

(a) *General.* The Assistant Administrator shall close the directed mackerel or *Loligo* or *Illex* squid or butterfish fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH, of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Director projects that DAH will be attained for any of the species, the Assistant Administrator shall close the fishery in the EEZ to all fishing for that species, and the incidental catches specified in paragraph (c) of this section will be prohibited.

(b) *Notification.* Upon determining that a closure is necessary, the Assistant Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure to all holders of mackerel, squid, and butterfish fishery permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of closure in the FEDERAL REGISTER.

(c) *Incidental catches.* During the closure of a directed fishery, the trip limit for the species for which the fishery is closed is 10 percent, by weight, of the total amount of fish on board for a vessel with a *Loligo*/butterfish moratorium permit or *Illex* or a mackerel commercial permit. During a period of closure of the directed fishery for *Loligo* or butterfish, the trip limit for a vessel with an incidental catch permit for those species is 10 percent, by weight, of the total amount of fish on board, or the allowed level of incidental catch specified in § 648.4(e)(2), whichever is less.

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§ 648.23 Gear restrictions.

(a) *Mesh restrictions and exemptions.* Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1 $\frac{7}{8}$ inches (48 mm) diamond mesh, inside stretch measure, applied throughout the entire net, unless they are fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Director upon request):

Point	N. Lat.	W. Long.
M1	43°58.0'	67°22.0'
M2	43°50.0'	68°35.0'
M3	43°30.0'	69°40.0'
M4	43°20.0'	70°00.0'
M5	42°45.0'	70°10.0'
M6	42°13.0'	69°55.0'
M7	41°00.0'	69°00.0'
M8	41°45.0'	68°15.0'
M9	42°10.0'	67°10.0'
M10	41°18.6'	66°24.8'
M11	40°55.5'	66°38.0'
M12	40°45.5'	68°00.0'
M13	40°37.0'	68°00.0'
M14	40°30.0'	69°00.0'
M15	40°22.7'	69°00.0'
M16	40°18.7'	69°40.0'
M17	40°21.0'	71°03.0'
M18	39°41.0'	72°32.0'
M19	38°47.0'	73°11.0'
M20	38°04.0'	74°06.0'
M21	37°08.0'	74°46.0'
M22	36°00.0'	74°52.0'
M23	35°45.0'	74°53.0'
M24	35°28.0'	74°52.0'

Vessels fishing under this exemption may not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1 $\frac{7}{8}$ inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with such minimum mesh size, when the vessel is landward of the specified coordinates.

(b) *Definition of "not available for immediate use."* A net that can be 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) *Below deck stowage.* (i) It is stored below the main working deck from which it is deployed and retrieved;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) It is fan-folded (flaked) and bound around its circumference.

(2) *On-deck stowage.* (i) It is fan-folded (flaked) and bound around its circumference;

(ii) It is securely fastened to the deck or rail of the vessel; and

(iii) The towing wires, including the leg wires, are detached from the net.

(3) *On-reel stowage.* (i) It is on a reel and its entire surface is covered with canvas or other similar material that is securely bound;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) The codend is removed and stored below deck.

(4) *Other methods of stowage.* Any other method of stowage authorized in writing by the Regional Director and published in the FEDERAL REGISTER.

(c) *Mesh obstruction or constriction.* The owner or operator of a fishing vessel shall not use any combination of mesh or liners 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 rearmost portion of the net, provided the liner extends no more than 10 meshes forward of the rearmost portion of the net.

(d) *Net obstruction or constriction.* The owner or operator of a fishing vessel shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1 $\frac{7}{8}$ inches (48 mm) diamond mesh, inside stretch measure. Net strengtheners (covers), splitting straps and/or bull ropes or wire may be used, provided they do not constrict the top of the regulated portion of the net to less than an effective mesh opening of 1 $\frac{7}{8}$ inches (48 mm), diamond mesh, inside stretch measure. Net strengtheners (covers) may not have an effective mesh opening of less than 4.5 inches (11.43 cm), diamond mesh, inside stretch measure. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of

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the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (d), head ropes are not to be considered part of the top of the regulated portion of a trawl net.

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.

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

§ 648.50 Shell-height standard.

(a) *Minimum shell height.* The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (89 mm). Shell height is a straight line measurement from the hinge to the outermost part of the shell, that is, the edge farthest away from the hinge.

(b) *Compliance and sampling.* Compliance with the minimum shell-height standard will be determined by inspection and enforcement at or after landing, including the time when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer as follows: An authorized officer will take samples of 40 scallops each, at random, from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 samples (400 scallops) be examined as a sample group. A sample group fails to

comply with the standard if more than 10 percent of all scallops sampled are less than the shell height specified. The total amount of scallops in possession will be deemed in violation of this subpart and subject to forfeiture, if the sample group fails to comply with the standard. All scallops will be subject to inspection and enforcement, in accordance with these compliance and sampling procedures, up to and including the time when a dealer receives or possesses scallops for a commercial purpose.

§ 648.51 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, trawl vessels fishing for scallops, and trawl vessels issued a limited access scallop permit under § 648.4(a)(2), while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), must comply with the following:

(1) *Maximum sweep.* The trawl sweep of nets in use by or available for immediate use, as specified in paragraph (a)(2)(iii) of this section, shall not exceed 144 ft (43.9 m) as measured by the total length of the footrope that is directly attached to the webbing of the net.

(2) *Net requirements*—(i) *Minimum mesh size.* The mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Mesh stowage.* Same as § 648.23(b).

(iii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg. The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions*—(i) *Net obstruction or constriction.* A fishing vessel may not use any device

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or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All dredge vessels fishing for or in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, and all dredge vessels issued a limited access scallop permit and fishing under the DAS Program, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg) of scallops, or less, must comply with the following restrictions:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section. However, component parts may be on board the vessel such that they do not conform with the definition of "dredge or dredge gear" in § 648.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these components parts.

(2) *Minimum mesh size.* (i) The mesh size of net material on the top of a

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scallop dredge in use by or in possession of such vessels shall not be smaller than 5.5 inches (13.97 cm).

(ii) Mesh size is measured as provided in paragraph (a)(2)(iii) of this section.

(3) *Minimum ring size.* (i) The inside ring size of a scallop dredge in use by or in possession of such vessels shall not be smaller than 3.5 inches (89 mm).

(ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions—*(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, i.e., "hangers," are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. (A copy of a diagram showing a schematic of a legal dredge ring pattern is available upon request to the Office of the Regional Director).

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions.* Vessels issued limited access scallop permits that are fishing for scallops under the

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DAS Program are also subject to the following restrictions:

(A) If a vessel is rigged with more than one dredge, or if rigged with only one dredge, such dredge is greater than 8 ft (2.44 m) in width, there must be at least seven rows of non-overlapping steel rings unobstructed by netting or any other material, between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top).

(B) For vessels rigged with only one dredge, and such dredge is less than 8 ft (2.44 m) in width, there must be at least four rows of non-overlapping steel rings unobstructed by netting or any other material between the club stick and the twine top of the dredge. (A copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Director upon request).

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Regional Director.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program or any vessel in possession of more than 400 lb (181.44 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program that shuck scallops at sea.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such a request will be placed in the appropriate category for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program

described in § 648.53, or in possession of more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not have more than one dredge on board or in use.

(3) The vessel may have no more than five people, including the operator, on board.

(f) *Restrictions on use of trawl nets—*(1) *Prohibition on use of trawl nets.* A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of, trawl nets unless such vessel has on board a valid letter of authorization or permit endorsed to fish for scallops with trawl nets.

(2) *Eligibility to use trawl nets.* (i) A vessel is eligible for a letter of authorization or a permit endorsement to fish for scallops with trawl nets if the vessel:

(A) Has not fished for scallops with a scallop dredge after December 31, 1987, and, as of July 19, 1996, has a letter of authorization or permit endorsed to fish for scallops with trawl nets;

(B) Has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, has an engine horsepower no greater than 450, and is eligible for or has been issued a 1996 limited access scallop permit (if the vessel does not obtain a letter of authorization or a permit endorsed to fish for scallops with trawl nets for the 1996–97 scallop fishing year, the vessel shall not be eligible under this provision for subsequent fishing years); or

(C) Is a replacement vessel for a vessel described in paragraph (f)(2)(i)(A) or (B) of this section.

(ii) NMFS will contact the owners of all vessels with limited access scallop permits that have not previously been issued a letter of authorization or permit endorsed to fish for scallops with trawl nets as to whether, based on information available to NMFS on July 19, 1996, their vessels are eligible under paragraph (f)(2)(i)(B) of this section for a letter of authorization or permit endorsed to fish for scallops with trawl

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nets. If a vessel owner agrees with NMFS' determination that the vessel is eligible under paragraph (f)(2)(i)(B) of this section to fish for scallops with trawl nets, the owner must, within 30 days of receipt of the determination, sign and submit to NMFS a declaration, provided by NMFS, stating that the vessel has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, and has an engine with no greater than 450 horsepower. The signed declaration shall serve as a rebuttable presumption that the vessel qualifies for a letter of authorization or permit endorsement to fish for scallops with trawl nets. Any replacement vessel must meet the limitations on fishing for scallops with scallop dredges that the vessel it is replacing met. The letter of authorization or permit endorsement must be requested by the vessel owner at the time the vessel owner initially applies for a permit for the replacement vessel.

[61 FR 34968, July 3, 1996, as amended at 61 FR 38405, July 24, 1996]

§ 648.52 Possession restrictions.

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or have used up their DAS allocations and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops, with not more than one scallop trip allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, except ves-

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sels fishing for scallops exclusively in state waters, are prohibited from possessing or landing per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels without a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

§ 648.53 DAS allocations.

(a) *Assignment to DAS categories.* For each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned in the preceding fishing year. Limited access scallop permits will indicate which category the vessel is assigned to. Vessels are prohibited from fishing for, landing per trip, or possessing more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops once their allocated number of DAS, as specified under paragraph (b) of this section, are used up.

(b) *DAS allocations.* Each vessel qualifying for one of the three categories specified in paragraph (a) of this section shall be allocated, annually, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category. A vessel whose owner/operator has declared it out of the scallop fishery pursuant to the provisions of § 648.10, or has used up its allocated DAS, may leave port without being assessed a DAS, so long as it does not possess or land more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops, and complies with the other requirements of this part. The annual allocations of DAS for each category of vessel for the fishing years indicated are as follows:

DAS category	1995-96 and 1996-97	1997-98	1998-99 and 1999-2000	2000+
Full-time	182	164	142	120
Part-time	82	66	57	48
Occasional	16	14	12	10

(c) *Adjustments in annual DAS allocations.* Adjustments or changes in annual DAS allocations, if required to meet fishing mortality reduction goals,

may be made following a reappraisal and analysis under the framework provisions specified in § 648.55.

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(d) *End-of-year carry-over.* Limited access vessels with unused DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. At no time may more than 10 DAS be carried over.

(e) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

§ 648.54 State waters exemption.

(a) *DAS exemption.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.54(c) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (c) through (f) of this section.

(b) *Gear restriction exemption*—(1) *Limited access permits.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(c) under paragraph (a) of this section is also exempt from the gear restrictions specified in § 648.51 (a), (b), and (e) (1) and (2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Director under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (c) through (f) of this section.

(2) *General permits.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in § 648.51 (a), (b), and (e) (1) and (2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Director under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of

the Scallop FMP, provided the vessel complies with paragraphs (d) through (f) of this section.

(3) *State eligibility for gear exemption.*

(i) A state is eligible to have vessels fishing exclusively landward of the outer boundary of the waters of that state exempted from the gear requirements specified in § 648.51 (a), (b), and (e) (1) and (e)(2), if it has a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(ii) The Regional Director shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(iii) Maine, New Hampshire, and Massachusetts have been determined by the Regional Director to have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. These states must immediately notify the Regional Director of any changes in their respective scallop conservation program. The Regional Director will review these changes and, if a determination is made that the state's conservation program jeopardizes the fishing mortality/effort reduction objectives of the Scallop FMP, or that the state no longer has a scallop fishery, the Regional Director shall publish a final rule in the FEDERAL REGISTER amending this paragraph (b)(3)(iii) to eliminate the exemption for that state. The Regional Director may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. In such case, the Regional Director shall publish a final rule in the FEDERAL REGISTER amending this paragraph (b)(3)(iii) to provide the exemption for such states.

(c) *Notification requirements.* Vessels fishing under the exemptions provided by paragraphs (a) and/or (b) of this section must notify the Regional Director in accordance with the provisions of § 648.10(f).

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(d) *Restriction on fishing in the EEZ.* A vessel fishing under a state water's exemption may not fish in the EEZ during that time.

(e) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership.

(f) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (a) and/or (b) of this section remains subject to all other requirements of this part.

§ 648.55 Framework adjustments to management measures.

(a) Annually, upon request from the NEFMC, but at a minimum in the years 1996 and 1999, the Regional Director will provide the NEFMC with information on the status of the scallop resource.

(b) Within 60 days of receipt of that information, the NEFMC PDT shall assess the condition of the scallop resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 648.53(b), to achieve the target fishing mortality rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response in order to meet the goals and objectives outlined in the Scallop FMP. The PDT shall report its findings and recommendations to the NEFMC. In its report to the NEFMC, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

(c) After receiving the PDT findings and recommendations, the NEFMC shall determine whether adjustments to, or additional management measures are necessary to meet the goals and objectives of the Scallop FMP. After considering the PDT's findings and recommendations, or at any other time, if the NEFMC determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of

both the proposals and the analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

- (1) DAS changes.
- (2) Shell height.
- (3) Offloading window reinstatement.
- (4) Effort monitoring.
- (5) Data reporting.
- (6) Trip limits.
- (7) Gear restrictions.
- (8) Permitting restrictions.
- (9) Crew limits.
- (10) Small mesh line.
- (11) Onboard observers.
- (12) Any other management measures currently included in the FMP.

(d) After developing management actions and receiving public testimony, the NEFMC shall make a recommendation to the Regional Director. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the NEFMC recommends that the management measures should be published as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

- (1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.
- (2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.
- (3) Whether there is an immediate need to protect the resource.
- (4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.
- (e) If the NEFMC's recommendation includes adjustments or additions to

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management measures, and if, after reviewing the NEFMC's recommendation and supporting information:

(1) The Regional Director concurs with the NEFMC's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d) of this section, the action will be published in the FEDERAL REGISTER as a final rule; or

(2) The Regional Director concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Director concurs with the NEFMC recommendation, the action will be published as a final rule in the FEDERAL REGISTER; or

(3) The Regional Director does not concur, the NEFMC will be notified, in writing, of the reasons for the non-concurrence.

(f) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

§ 648.70 Annual individual allocations.

(a) *General.* (1) For each fishing year, the Regional Director shall determine the allocation of surf clams and ocean quahogs for each vessel owner issued an allocation for the preceding fishing year, by multiplying the quotas specified for each species by the Regional Director under § 648.71 by the allocation percentage, specified for that owner on the allocation permit for the preceding fishing year, adjusted to account for any transfer pursuant to paragraph (b) of this section. These allocations shall be made in the form of an allocation permit specifying for each species the allocation percentage and the allocation in bushels. Such permits shall be issued on or before December 15, to the registered holders who were assigned an allocation by November 1. The total

number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75. Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number so that allocations are specified in whole cages. An allocation permit is only valid for the entity for which it is issued.

(2) The Regional Director 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 Director, part or all of an allocation percentage may be transferred, in amounts equivalent to not less than 160 bu (8,500 L) (i.e., 5 cages) in the year in which the transfer is made, to any person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Director 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 Director 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 Director. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Director. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.75 may be transferred in quantities of not less than 5 tags at any one time, subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year and the transfer is effective upon the receipt by

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the transferee of written authorization from the Regional Director.

(3) *Review.* If the Regional Director determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

§ 648.71 Catch quotas.

(a) *Surf clams.* The amount of surf clams that may be caught annually by fishing vessels subject to these regulations will be specified by the Assistant Administrator, on or about December 1 of each year, within the range of 1.85 to 3.4 million bu (98.5 to 181 million L).

(1) *Establishing quotas.* (i) Prior to the beginning of each year, the MAFMC, following an opportunity for public comment, will recommend to the Assistant Administrator quotas and estimates of DAH and DAP within the ranges specified. In selecting the quota, the MAFMC shall consider current stock assessments, catch reports, and other relevant information concerning:

(A) Exploitable and spawning biomass relative to the OY.

(B) Fishing mortality rates relative to the OY.

(C) Magnitude of incoming recruitment.

(D) Projected effort and corresponding catches.

(E) Geographical distribution of the catch relative to the geographical distribution of the resource.

(F) Status of areas previously closed to surf clam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(ii) The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surf Clam and Ocean Quahog FMP. The Assistant Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson Act and the objectives of the Atlantic Surf Clam and Ocean Quahog FMP.

(2) *Report.* Prior to the beginning of each year, the Regional Director shall

prepare a written report, based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors according to these regulations, and other relevant data. The report will include consideration of:

(i) Exploitable biomass and spawning biomass relative to OY.

(ii) Fishing mortality rates relative to OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Status of areas previously closed to surf clams fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(vi) Geographical distribution of the catch relative to the geographical distribution of the resource.

(3) *Public review.* Based on the information presented in the report, and in consultation with the MAFMC, the Assistant Administrator shall propose an annual surf clam quota and an annual ocean quahog quota and shall publish them in the FEDERAL REGISTER. Comments on the proposed annual quotas may be submitted to the Regional Director within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the FEDERAL REGISTER on or about December 1 of each year.

(b) *Ocean quahogs.* The amount of ocean quahogs that may be caught by fishing vessels subject to these regulations shall be specified annually by the Assistant Administrator, on or about December 1, within the range of 4 to 6 million bu (213 to 319.4 million L), following the same procedures set forth in paragraph (a) of this section for surf clams.

§ 648.72 Minimum surf clam size.

(a) *Minimum length.* The minimum length for surf clams is 4.75 inches (12.065 cm).

(b) *Determination of compliance.* No more than 50 surf clams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surf clams in any inspected cage of surf clams are less than 4.75 inches (12.065 cm) in

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length, all cages landed by the same vessel from the same trip are deemed to be in violation of the minimum size restriction.

(c) *Suspension.* Upon the recommendation of the MAFMC, the Regional Director may suspend annually, by publication in the FEDERAL REGISTER, the minimum shell-height standard, unless discard, catch, and survey data indicate that 30 percent of the surf clams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell height is not attributable to beds where the growth of individual surf clams has been reduced because of density dependent factors.

(d) *Measurement.* Length is measured at the longest dimension of the surf clam shell.

§ 648.73 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Assistant Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Assistant Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Assistant Administrator in accordance with paragraph (c) of this section. The areas closed are:

(1) *Boston Foul Ground.* The waste disposal site known as the "Boston Foul Ground" and located at 42°25'36" N. lat., 70°35'00" W. long., with a radius of 1 nm in every direction from that point.

(2) *New York Bight.* The polluted area and waste disposal site known as the "New York Bight Closure" and located at 40°25'04" N. lat., 73°42'38" W. long., and with a radius of 6 nm in every direction from that point, extending farther 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 toward Atlantic Beach Light in New York to the limit of state territorial waters of New York; and a line from a 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 dump 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.

(b) *Areas closed because of small surf clams.* Areas may be closed because they contain small surf clams.

(1) *Closure.* The Assistant Administrator may close an area to surf clams and ocean quahog fishing if he/she determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surf clams of which:

(i) Sixty percent or more are smaller than the minimum size (4.5 inches (11.43 cm)); and

(ii) Not more than 15 percent are larger than 5.5 inches (13.97 cm) in size.

(2) *Reopening.* The Assistant Administrator may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he/she determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches (12.065 cm); or

(ii) The yield or rate of growth of the dominant shell-height class in the area to be reopened would be significantly enhanced through selective, controlled, or limited harvest of surf clams in the area.

(c) *Procedure.* (1) The Regional Director may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Assistant Administrator shall publish notification in the FEDERAL REGISTER of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening may be submitted to the Regional Director within 30 days after publication. The Assistant Administrator shall consider all comments and publish the final notification of closure or reopening, and any restrictions on harvest, in the FEDERAL REGISTER. Any adjustment to harvest restrictions in a reopened area shall be made by notification in the FEDERAL REGISTER. The Regional Director shall

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send notice of any action under this paragraph (c)(1) to each surf clam and ocean quahog processor and to each surf clam and ocean quahog permit holder.

(2) If the Regional Director 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.

§ 648.74 Shucking at sea.

(a) *Observers.* (1) The Regional Director may allow the shucking of surf clams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surf clams and ocean quahogs harvested in the shell prior to shucking.

(2) Any vessel owner may apply in writing to the Regional Director to shuck surf clams or ocean quahogs at sea. The application shall specify: Name and address of the applicant, permit number of the vessel, method of calculating the amount of surf clams or ocean quahogs harvested in the shell, vessel dimensions and accommodations, and length of fishing trip.

(3) The Regional Director shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(4) Any observer shall certify at the end of each trip the amount of surf clams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(b) *Conversion factor.* (1) Based on the recommendation of the MAFMC, the Regional Director may allow shucking at sea of surf clams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for

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shucked meats to calculate accurately the amount of surf clams or ocean quahogs harvested in the shell.

(2) The Regional Director 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 Director may publish final notification in the FEDERAL REGISTER specifying the conversion factor.

(3) If the Regional Director makes the determination specified in paragraph (b)(1) of this section, he/she may authorize the vessel owner to shuck surf clams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

§ 648.75 Cage identification.

(a) *Tagging.* Before offloading, all cages that contain surf clams or ocean quahogs must be tagged with tags acquired annually under paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage for every 60 ft³ (1,700 L), or portion thereof, of the cage. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for collection or disposal as specified by the Regional Director.

(b) *Issuance.* The Regional Director will issue a supply of tags to each individual vessel owner qualifying for an allocation under § 648.70 prior to the beginning of each fishing year or he/she may specify, in the FEDERAL REGISTER, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's allocation. Each tag represents 32 bu (1,700 L) of allocation.

(c) *Expiration.* Tags will expire at the end of the fishing year for which they are issued, or if rendered null and void in accordance with 15 CFR part 904.

(d) *Return.* Tags that have been rendered null and void must be returned to the Regional Director, if possible.

(e) *Loss.* Loss or theft of tags must be reported by the owner, numerically identifying the tags to the Regional Director by telephone as soon as the loss or theft is discovered and in writing

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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 Director 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 Director or a vendor with a written authorization from the Regional Director.

(g) *Transfer.* See § 648.70(b)(2).

(h) *Presumptions.* Surf clams and ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation, unless the individual demonstrates that he/she has surrendered his/her Federal vessel permit issued under § 648.4(a)(4) and conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued under § 648.75(b) or transferred under § 648.70(b).

Subpart F—Management Measures for the NE Multispecies Fishery

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, harvesting, possessing, or landing NE multispecies in or from the EEZ and all vessels holding a multispecies permit must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine/Georges Bank (GOM/GB) Regulated Mesh Area.*—(1) *Area definition.* The GOM/GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Director upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE/GEORGES BANK REGULATED MESH AREA

Point	N. Lat.	W. Long.
G1	(¹)	(¹)
G2	43°58'	67°22'
G3	42°53.1'	67°44.4'
G4	42°31'	67°28.1'
G5	41°18.6'	66°24.8'

¹The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate Ioran C bearings
G6	40°55.5'	66°38'	5930–Y–30750 and 9960–Y–43500.
G7	40°45.5'	68°00'	9960–Y–43500 and 68°00' W. lat.
G8	40°37'	68°00'	9960–Y–43450 and 68°00' W. lat.
G9	40°30'	69°00'	
NL3	40°22.7'	69°00'	
NL2	40°18.7'	69°40'	
NL1	40°50'	69°40'	
G11	40°50'	70°00'	
G12		¹ 70°00'	

¹ Northward to its intersection with the shoreline of mainland Massachusetts.

(2) *Gear restrictions.* (i) *Minimum mesh size.* Except as provided in paragraphs (a)(2) (iii) and (i) of this section, and unless otherwise restricted under paragraphs (a) (2)(ii) and (5) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine,

midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM/GB Regulated Mesh Area is 6-inch (15.24-cm) square or diamond mesh throughout the entire net. This restriction does not apply to nets

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or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft² (0.81 m²)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large-mesh vessels.* When fishing in the GOM/GB regulated mesh area, the minimum mesh size for any sink gillnet on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft² (0.81 m²)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel when fishing in the GOM/GB Regulated Mesh Area while not under the NE multispecies DAS program, but when under one of the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8), (a)(9), (d), (e), (h), and (i) of this section, is set forth in the respective paragraph specifying the exemption. Vessels that are not fishing under one of these exemptions, under the scallop state waters exemption specified in § 648.54, or under a NE multispecies DAS, are prohibited from fishing in the GOM/GB regulated mesh area.

(3) *Small Mesh Northern Shrimp Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish for, harvest, possess, or land northern shrimp in the Small Mesh Northern Shrimp Fishery Exemption Area with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(3) (i) through (iii) of this section. The Small Mesh Northern Shrimp Fishery Exemption Area is defined by straight lines connecting the following points in the order stated (copies of a map depicting

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the area are available from the Regional Director upon request):

SMALL MESH NORTHERN SHRIMP FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
SM1	41°35'	70°00'
SM2	41°35'	69°40'
SM3	42°49.5'	69°40'
SM4	43°12'	69°00'
SM5	43°41'	68°00'
G2	43°58'	67°22'; (the U.S.-Canada maritime Boundary).
G1	(¹)	(¹)

¹Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* A vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; silver hake—up to two standard totes; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraph (a)(2) of this section. The net must have a outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit out of the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the

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grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Director upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission. The northern shrimp season is December 1 through May 30, or as modified by the Commission.

(4) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Director 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'
C4	41°30'	68°30'
C3	41°12.8'	68°30'
C4	41°05'	68°20'
C5	41°55'	67°40'
C1	42°10'	68°10'

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a letter of authorization issued by the Regional Director on board and may not fish for, possess on board, or land any species of fish other than whiting, except for the following, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

(B) All nets must comply with a minimum mesh size of 3-inch (7.62 cm) square or diamond mesh applied to the first 160 meshes counted from the terminus of the net.

(C) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the FEDERAL REGISTER.

(D) When transiting through the GOM/GB Regulated Mesh Area specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section must be stowed in accordance with one of the methods specified in § 648.23(b).

(ii) *Sea sampling.* The Regional Director 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 Director following the procedures specified in § 648.90 of this part.

(5) *Stellwagen Bank/Jeffreys Ledge (SB/JL) Juvenile Protection Area.* Except as provided in paragraphs (a)(3), (d), (e), and (h) of this section, the minimum mesh size for any trawl net, Scottish seine, purse seine, or midwater trawl in use, or available for immediate use as described in § 648.23(b) by a vessel fishing in the following area is 6-inch (15.24-cm) square or diamond mesh in the last 50 bars of the codend and extension piece for vessels 45 ft (13.7 m) in length and less, and in the last 100 bars of the codend and extension piece for vessels greater than 45 ft (13.7 m) in length.

(i) The SB/JL Juvenile Protection Area (copies of a map depicting the area are available from the Regional Director upon request) is defined by straight lines connecting the following points in the order stated:

STELLWAGEN BANK JUVENILE PROTECTION AREA

Point	N. Lat.	W. Long.	Approximate Loran coordinates	
SB1	42°34.0'	70°23.5'	13737	44295
SB2	42°28.8'	70°39.0'	13861	44295
SB3	42°18.6'	70°22.5'	13810	44209
SB4	42°05.5'	70°23.3'	13880	44135
SB5	42°11.0'	70°04.0'	13737	44135
SB1	42°34.0'	70°23.5'	13737	44295

JEFFREYS LEDGE JUVENILE PROTECTION AREA

Point	N. Lat.	W. Long.	Approximate Loran coordinates	
JL1	43°12.7'	70°00.0'	13369	44445
JL2	43°09.5'	70°08.0'	13437	44445
JL3	42°57.0'	70°08.0'	13512	44384
JL4	42°52.0'	70°21.0'	13631	44384
JL5	42°41.5'	70°32.5'	13752	44352
JL6	42°34.0'	70°26.2'	13752	44300
JL7	42°55.2'	70°00.0'	13474	44362
JL1	43°12.7'	70°00.0'	13369	44445

(ii) Fishing for northern shrimp in the SB/JL Juvenile Protection Area is allowed, subject to the requirements of paragraph (a)(3) of this section.

(6) *Transiting.* (i) Vessels fishing in the Small Mesh Northern Shrimp Fishery Exemption Area and in Small Mesh Area 1/Small Mesh Area 2, as specified in paragraphs (a) (3) and (8) of this section, may transit through the SB/JL Juvenile Protection Area defined in paragraph (a)(5) of this section with nets on board that do not conform to the requirements specified in paragraph (a)(2) or (a)(5) of this section, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may transit through the Small Mesh Northern Shrimp Fishery Exemption Area defined in paragraph (a)(3) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may transit through the GOM/GB Regulated Mesh Area defined in paragraph (a)(1) of this section with nets on board with a mesh

size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Director is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(4), (a)(9), (b), and (c) of this section. Vessels may retain exempted small mesh species as provided in paragraphs (a)(4)(i), (a)(9)(i), (b)(3), and (c)(3) of this section.

(7) *Addition or deletion of exemptions.*

(i) 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 Director, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Director may take into consideration factors such as, but not limited to, juvenile mortality. A

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fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Director determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the FEDERAL REGISTER.

(ii) The NEFMC may recommend to the Regional Director, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Director to determine, without public comment, percentage catch of regulated species.

(iii) The Regional Director may, using the process described in either paragraph (a)(7)(i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) Exempted fisheries authorized under this paragraph (a)(7) are subject, at minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(7)(iii) 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.

(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.

(D) A limit on the possession of skate or skate parts in the Southern New England regulated mesh area described in paragraph (a)(10) of this section of 10 percent, by weight, of all other species on board.

(8) *Small Mesh Area 1/Small Mesh Area 2.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size specified from July 15 through October 31 when fishing in Small Mesh Area 1, and from January 1 through June 30 when fishing in Small Mesh Area 2. A vessel may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following species, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a map depicting these areas are available from the Regional Director upon request):

SMALL MESH AREA 1

Point	N. Lat.	W. Long.	Approximate Loran C bearings	
SM1	43°03'	70°27'	13600	25910
SM2	42°57'	70°22'	13600	25840
SM3	42°47'	70°32'	13720	25840
SM4	42°45'	70°29'	13710	25810
SM5	42°43'	70°32'	(¹)	25810
SM6	42°44'	70°39'	13780	(¹)
SM7	42°49'	70°43'	13780	25910
SM8	42°50'	70°41'	13760	25910
SM9	42°53'	70°43'	13760	25935
SM10	42°55'	70°40'	25935	(¹)
SM11	42°59'	70°32'	(¹)	25910
SM1	43°03'	70°27'	13600	25910

¹3-mile line

SMALL MESH AREA 2

Point	N. Lat.	W. Long.	Approximate Loran C bearings	
SM13	43°20.3'	69°59.4'	13320	44480
SM14	43°25.9'	69°45.6'	13200	44480
SM15	42°49.5'	69°40'	13387.5	44298
SM16	42°41.5'	69°40'	13430	44260
SM17	42°34.9'	70°00'	13587	44260
SM13	43°20.3'	69°59.4'	13320	44480

(9) *Nantucket Shoals dogfish fishery exemption area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(9)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Director 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 Director and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(9)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM/GB regulated mesh area, specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) The following species may be retained, with the restrictions noted, as allowable bycatch species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to two standard totes; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; 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 Director.

(ii) *Sea sampling.* The Regional Director 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.

(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 Director upon request) is that area:

(i) bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	N. Lat.	W. Long.
G5	41°18.6'	66°24.8'
G6	40°55.5'	66°38'
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'

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SOUTHERN NEW ENGLAND REGULATED MESH AREA—Continued

Point	N. Lat.	W. Long.
G12		¹ 70°00'

¹ Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(2) *Gear restrictions*—(i) *Minimum mesh size*. Except as provided in paragraphs (b)(2) (iii) and (i) of this section, and unless otherwise restricted under paragraph (b)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl, not stowed and not unavailable in use or available for immediate use in accordance with § 648.23(b) by a vessel fishing under a DAS in the multispecies DAS program in the SNE regulated mesh area, is 6-inch (15.24-cm) square or diamond mesh throughout the entire net. This restriction does not apply to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels*. When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft² (0.81 m²)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions*. The minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine in use or available for immediate use, as described under § 648.23(b), by a vessel when not fishing under the NE multispecies DAS program and when fishing in the SNE regulated mesh area is specified under the exemptions set forth in paragraphs (b)(3), (c), (e), (h),

and (i) of this section. Vessels that are not fishing in one of these exemption programs, with exempted gear (as defined under this part), or under the scallop state waters exemption specified in § 648.54, or under a NE multispecies DAS, are prohibited from fishing in the SNE regulated mesh area.

(3) *Exemptions*—(i) *Species exemptions*. Vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake, and weakfish with nets with a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with the requirements specified in paragraph (b)(3)(ii) of this section.

(ii) *Possession and net stowage requirements*. Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (b)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (b)(2)(i) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; searobins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions*. Same as paragraph (a)(7) of this section.

(c) *Mid-Atlantic (MA) Regulated Mesh Area*—(1) *Area definition.* The MA Regulated Mesh Area (copies of a map depicting this area are available from the Regional Director upon request) is that area bounded on the east by a line running from the Rhode Island shoreline along 71°47.5' W. long. to its intersection with the 3-nm line, south along the 3-nm line to Montauk Point, southwesterly along the 3-nm line to the intersection of 72°30' W. long., and south along that line to the intersection of the outer boundary of the EEZ.

(2) *Gear restrictions*—(i) *Minimum mesh size.* Except as provided in paragraphs (c)(3) and (i) of this section, and unless otherwise restricted under paragraph (c)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl not stowed or not unavailable for immediate use as described in § 648.23(b), by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified at § 648.104(a). This restriction does not apply to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft² (0.81 m²)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(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) *Additional exemptions.* The Regional Director may, using the process described in either paragraph (a)(7) (i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such a fishery shall not include white hake.

(d) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB and SB/JL Areas, the vessel has on board a letter of authorization issued by the Regional Director;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or squid in areas south of 42°20' N. lat.; and Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat.; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(e) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB and SB/JL areas, the vessel has on board an authorizing letter issued by the Regional Director;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(f) *Mesh measurements*—(1) *Gillnets.* Beginning October 15, 1996, mesh size of gillnet gear shall be measured by lining up five consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring ten consecutive measures on the diamond, inside knot to inside knot. The mesh

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shall be the average of the measurements of ten consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedged-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing—*(1) *Net obstruction or constriction.* A fishing vessel 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 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 (g)(1), head ropes are not considered part of the top of the trawl net.

(2) *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 (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(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 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, provided it has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in § 648.80 and may possess and land unlimited amounts of regulated species. Such vessels may simultaneously fish under a scallop DAS.

(i) *State waters winter flounder exemption.* Any vessel issued a multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Director 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 Director, to participate in the exemption program described by this section.

(5) The vessel does not enter or transit the EEZ.

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(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small mesh species specified under paragraphs (a)(3)(i), (a)(8)(iii), (b)(3), and (c)(3) of this section when fishing in the areas specified under paragraphs (a)(3), (a)(8), (b)(1), and (c)(1) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters may also possess and retain skate as incidental take in this fishery.

(9) The vessel complies with all other applicable requirements.

§ 648.81 Closed areas.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (d) of this section:

CLOSED AREA I		
Point	N. Lat.	W. Long.
CI1	41°30'	69°23'
CI2	40°45'	68°45'
CI3	40°45'	68°30'
CI4	41°30'	68°30'
CI1	41°30'	69°23'

(2) Paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching NE multispecies; or

(ii) Fishing with or using pelagic hook or longline gear or harpoon gear, provided that there is no retention of regulated species, and provided that

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there is no other gear on board capable of catching NE multispecies.

(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 map depicting this area is available from the Regional Director 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.
CI1	41°00'	67°20'
CI2	41°00'	66°35.8'
G5	41°18.6'	66°24.8' (the U.S.-Canada Maritime Boundary)
CI3	42°22'	67°20' (the U.S.-Canada Maritime Boundary)
CI1	41°00'	67°20'

(2) Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels fishing with gears as in paragraph (a)(2) (i) or (ii) of this section, or that are transiting the area, provided—

(i) The operator has determined that there is a compelling safety reason; and

(ii) The vessel's fishing gear is stowed in accordance with the requirements of paragraph (e) of this section.

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (d) of this section:

NANTUCKET LIGHTSHIP CLOSED AREA		
Point	N. Lat.	W. Long.
G10	40°50'	69°00'
CN1	40°20'	69°00'
CN2	40°20'	70°20'
CN3	40°50'	70°20'
G10	40°50'	69°00'

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(2) Paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gear as in paragraph (a)(2) (i) or (ii) of this section;

(ii) Fishing with or using dredge gear designed and used to take surf clams or ocean quahogs, and that have no other gear on board capable of catching NE multispecies; or

(iii) Classified as charter, party or recreational vessel, provided that—

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Director on board;

(B) Fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(d) *Transitting*. Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the NE Closure Area, the Mid-coast Closure Area, and the Massachusetts Bay Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

(e) *Gear stowage requirements*. Vessels transitting the closed areas must stow their gear as follows:

(1) *Nets*. In accordance with one of the methods specified in § 648.23(b) and capable of being shown not to have been in recent use.

(2) *Scallop dredges*. The towing wire is detached from the scallop dredge, the towing wire is reeled up onto the winch, and the dredge is secured and covered so that it is rendered unusable for fishing.

(3) *Hook gear (other than pelagic)*. All anchors and buoys are secured and all hook gear, including jigging machines, is covered.

(4) *Sink gillnet gear*. All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected.

(f) *NE Closure Area*. (1) From August 15 through September 13, no fishing vessel or person on a fishing vessel may

enter, fish, or be, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part may be, in the area known as the NE Closure Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (f)(2) of this section:

NORTHEAST CLOSURE AREA

Point	N. Lat.	W. Long.
NE1	(¹)	68°55.0'
NE2	43°29.6'	68°55.0'
NE3	44°04.4'	67°48.7'
NE4	44°06.9'	67°52.8'
NE5	44°31.2'	67°02.7'
NE6	(¹)	67°02.7'

¹ Maine shoreline.

(2) Paragraph (f)(1) of this section does not apply to persons on 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, excluding midwater trawl gear, provided that there is no other gear on board capable of catching NE multispecies; or

(iii) That are classified as charter, party, or recreational.

(g) *Mid-coast Closure Area*. (1) From November 1 through December 31, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in the area known as the Mid-coast Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (g)(2) of this section (copies of a map depicting this area are available from the Regional Director upon request):

MID-COAST CLOSURE AREA

Point	N. Lat.	W. Long.
MC1	42°30'	(¹)
MC2	42°30'	70°15'
MC3	42°40'	70°15'
MC4	42°40'	70°00'
MC5	43°00'	70°00'
MC6	43°00'	69°30'
MC7	43°15'	69°30'
MC8	43°15'	69°00'

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MID-COAST CLOSURE AREA—Continued

Point	N. Lat.	W. Long.
MC9	(²)	69°00'W

¹ Massachusetts shoreline.

² Maine shoreline.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

(h) *Massachusetts Bay Closure Area.* (1) During the period March 1 through March 30, no fishing vessel or person on a fishing vessel may enter, fish, 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 Massachusetts Bay Closure Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

MASSACHUSETTS BAY CLOSURE AREA

Point	N. Lat.	W. Long.
MB1	42°30'	(¹)
MB2	42°30'	70°30'
MB3	42°12'	70°30'
MB4	42°12'	70°00'
MB5	(²)	70°00'
MB6	42°00'	(²)
MB7	42°00'	(¹)

¹ Massachusetts shoreline.

² Cape Cod shoreline.

(2) Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

§ 648.82 Effort-control program for limited access vessels.

(a) *General.* A vessel issued an limited access multispecies permit may not fish for, possess, or land regulated species, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, unless otherwise provided in these regulations.

(b) *DAS program—permit categories, allocations and initial assignments to categories.* Beginning with the 1996 fishing year, all limited access multispecies permit holders shall be assigned to one

of the following DAS permit categories according to the criteria specified. Permit holders may request a change in permit category for the 1996 fishing year and all fishing years thereafter, as specified in § 648.4(a)(1)(i)(I)(2). Each fishing year shall begin on May 1 and extend through April 30 of the following year.

(1) *Individual DAS category—(i) DAS allocation.* A vessel fishing under the individual DAS category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the NE Multispecies FMP, for the 1996 fishing year and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* Any vessel issued a valid limited access multispecies individual DAS permit, including any vessel also issued a limited access multispecies gillnet permit, as of July 1, 1996, shall be initially assigned to the individual DAS category.

(2) *Fleet DAS category—(i) DAS allocation.* A vessel fishing under the fleet DAS category shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 88 DAS for the 1997 fishing year and beyond.

(ii) *Initial assignment.* Any vessel issued a valid fleet DAS permit, including any vessel also issued a limited access multispecies gillnet permit; limited access multispecies hook-gear permit; limited access multispecies gillnet permit that has not also been issued a DAS permit; or a limited access multispecies small vessel (less than or equal to 45 ft (13.7 m)) permit and that is larger than 20 ft (6.1 m) in length as determined by its most recent permit application, as of July 1, 1996, shall be initially assigned to the fleet DAS category.

(3) *Small vessel category—(i) DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain cod, haddock, and yellowtail flounder, combined up to 300 lb (136.1 kg) per trip without being subject to DAS restrictions. Such a vessel is not subject to a possession limit for other NE multispecies.

(ii) *Initial assignment.* A vessel issued a valid limited access multispecies permit and fishing under the small vessel category (less than or equal to 45 ft (13.7 m)) permit as of July 1, 1996, and that is 20 ft (6.1 m) or less in length as determined by the vessel's last application for a permit, shall be initially assigned to the small vessel category. Any other vessel may elect to switch into this category, as provided for in § 648.4(a)(1)(i)(2), if such vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the overall length divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Director. A copy of the verification must accompany an application for a multispecies permit.

(D) Adjustments to the small vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Director following framework procedures of § 648.90.

(4) *Hook-gear category—(i) DAS allocation.* Any vessel issued a valid limited access multispecies hook-gear permit shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 88 DAS for the 1997 fishing year, and beyond. A vessel fishing under this category in the DAS program must meet or comply with the following while fishing for, in possession of, or landing, regulated species:

(A) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel.

(B) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited.

(ii) *Initial assignment.* No vessel shall be initially assigned to the hook-gear category. Any vessel that meets the qualifications specified in § 648.4(a)(1)(ii) may apply for and obtain a permit to fish under this category.

(5) *Combination vessel category—(i) DAS allocation.* A vessel fishing under the combination vessel category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the FMP, for the 1996 fishing year and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* A vessel issued a valid limited access multispecies permit qualified to fish as a combination vessel as of July 1, 1996, shall be assigned to the combination vessel category.

(6) *Large Mesh Individual DAS category—(i) DAS allocation.* A vessel fishing under the large mesh individual DAS category shall be allocated a DAS increase of 12 percent in year one and of 36 percent in year two beyond the DAS allocations specified in paragraph (b)(1)(i) of this section (this includes the proration factor for 1996). To be eligible to fish under the large mesh individual DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7-inch (17.78-cm) diamond mesh or with trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond mesh, as described under § 648.80 (a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the large mesh

individual DAS category. Any vessel that is initially assigned to the individual DAS, fleet DAS, or small vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(2).

(7) *Large Mesh Fleet DAS category*—(i) *DAS allocation.* A vessel fishing under the large mesh fleet DAS category shall be allocated 129 DAS (155 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 120 DAS for the 1997 fishing year, and beyond. To be eligible to fish under the large mesh fleet DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7-inch (17.78-cm) diamond mesh or with trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond mesh, as described under § 648.80 (a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the large mesh fleet DAS category. Any vessel that is initially assigned to the individual DAS, fleet DAS, or small vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(2).

(c) *1996 DAS appeals.* (1) *Previously exempted vessels.* A vessel that was issued a valid 1995 limited access multispecies permit, and that has been fishing under the small vessel (less than or equal to 45 ft (13.7 m)), hook-gear, or gillnet categories, is eligible to appeal its allocation of DAS, if it has not previously done so, as described under paragraph (d)(2) of this section. Each vessel's initial allocation of DAS will be considered to be 176 DAS for purposes of this appeal (i.e., the fleet DAS category baseline prior to the 1996–1997 reductions).

(2) *Exempted gillnet vessels that held an individual DAS permit.* A vessel that was issued a valid 1995 limited access multispecies permit and that has been fishing under both the gillnet and individual DAS categories, is eligible to appeal its allocation of gillnet DAS, as described under paragraph (d)(2) of this section. Each vessel's initial allocation of DAS will be considered to be 176 DAS for purposes of this appeal (i.e., the fleet DAS category baseline prior to the 1996–1997 reductions).

(d) *Individual DAS allocations*—(1) *Calculation of a vessel's individual DAS.* The DAS assigned to a vessel for purposes of determining that vessel's annual allocation under the individual DAS program is calculated as follows:

(i) Count the total number of the vessel's NE multispecies DAS for the years 1988, 1989, and 1990. NE multispecies DAS are deemed to be the total number of days the vessel was absent from port for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used;

(ii) Exclude the year of least NE multispecies DAS; and

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS; or

(iv) If only 1 year remains, use that year's DAS.

(2) *Appeal of DAS allocation.* (i) Initial allocations of individual DAS to those vessels authorized to appeal under paragraph (c) of this section may be appealed to the Regional Director if a request to appeal is received by the Regional Director no later than July 31, 1996, or 30 days after the initial allocation is made, whichever is later. Any such appeal must be in writing and be based on one or more of the following grounds:

(A) The information used by the Regional Director was based on mistaken or incorrect data.

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

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(3) *Status of vessels pending appeal of DAS allocations.* While a vessel's individual DAS allocation is under appeal, the vessel may fish under the fleet DAS category until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for regulated species by a vessel while that vessel's initial DAS allocation is under appeal, shall be counted against any DAS allocation that the vessel may ultimately receive.

(e) *Accrual of DAS.* Same as § 648.53(e).

(f) *Good Samaritan credit.* Same as § 648.53(f).

(g) *Spawning season restrictions.* A vessel issued a valid small vessel permit under paragraph (b)(3) of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access multispecies permit must declare out and be out of the regulated NE multispecies for a 20-day period between March 1 and May 31 of each fishing year using the notification requirements specified in § 648.10. If a vessel owner has not declared and been out for a 20-day period between March 1 and May 31 of each fishing year on or before May 12 of each such year, the vessel is prohibited from fishing for, possessing or landing any regulated species after May 11 of such year for the number of days needed to fulfill the 20-day requirement.

(h) *Declaring DAS and 20-day blocks.* A vessel's owner or authorized representative shall notify the Regional Director of a vessel's participation in the DAS program and declaration of its 20-day out period of the NE multispecies fishery, using the notification requirements specified in § 648.10.

(i) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality goals, may be made by the Regional Director following the framework procedures of § 648.90.

§ 648.83 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. All other vessels are subject to the following minimum fish sizes (TL):

MINIMUM FISH SIZES (TL)

Species	Size (Inches)
Cod	19 (48.3 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.48 cm)
Redfish	9 (22.9 cm)

(2) The minimum fish size applies to the 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 fish only, after landing. Fish 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 fish parts possessed.

(b) *Exceptions.* (1) Each person aboard a vessel issued a limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) Vessels fishing exclusively with pot gear may possess multispecies frames used, or to be used, as bait that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

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(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions as specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

[61 FR 34968, July 3, 1996, as amended at 61 FR 49277, Sept. 19, 1996]

§ 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 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 official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM/GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

§ 648.85 Flexible Area Action System.

(a) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems asso-

ciated 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 Director to initiate a fact finding investigation to verify the situation and publish notification in the FEDERAL REGISTER requesting public comments in accordance with the procedures therefor in Amendment 3 to the NE Multispecies FMP.

(b) After examining the facts, the Regional Director shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(c) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

(d) Copies of the analysis and reports prepared by the Regional Director 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 Director.

(e) By the deadline set in Amendment 3 the Regional Director 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

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REGISTER and by notice sent to all vessel owners holding multispecies permits. The Regional Director shall also use other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(f) Once implemented, the Regional Director shall monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the FEDERAL REGISTER.

(g) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Director may determine that facts warrant a delayed effective date.

§ 648.86 Possession restrictions.

(a) *Haddock*—(1) *NE multispecies DAS vessels*. A vessel issued a limited access multispecies permit that is fishing under a NE multispecies DAS may land or possess on board up to 1,000 lb (453.6 kg) of haddock provided it has at least one standard tote on board. 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.

(2) *Scallop dredge vessels*. (i) No person owning or operating a scallop dredge vessel issued a multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel, from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without a multispecies permit may possess haddock in, or harvested from, the EEZ, from January 1 through June 30.

(iii) From July 1 through December 31, scallop dredge vessel or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock provided the vessel has at least one standard tote on board. Haddock on board a vessel subject to

this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Winter flounder*. A vessel issued a limited access multispecies permit that is fishing in the MA regulated mesh area and is not fishing under a NE multispecies DAS, may land, or possess on board, winter flounder up to 10 percent, by weight, of all other species on board, or 200 lb (90.7 kg), whichever is less. Winter flounder 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 in standard totes.

(c) *Other possession restrictions*. Vessels are subject to any other applicable possession limit restrictions of this part.

§ 648.87 Sink gillnet requirements to reduce harbor porpoise takes.

(a) *Areas closed to sink gillnets*. Section 648.81(f) through (h) sets forth closed area restrictions to reduce the take of harbor porpoise consistent with the harbor porpoise mortality reduction goals.

(b) *Additional areas closed to sink gillnets*. All persons owning or operating vessels must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section.

(1) *Mid-coast Closure Area*. From March 25 through April 25 and from September 15 through October 31 of each fishing year, the restrictions and requirements specified in paragraph (b) of this section apply to the Mid-coast

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Closure Area, as defined under § 648.81(g)(1).

(2) *Cape Cod South Closure Area.* From March 1 through March 30 of each fishing year, the restrictions and requirements specified in paragraph (b) of this section apply to the Cape Cod South Closure Area (copies of a chart depicting this area are available from the Regional Director upon request), which is the area bounded by straight lines connecting the following points in the order stated.

CAPE COD SOUTH CLOSURE AREA

Point	N. Lat.	W. Long.
CCS1	(1)	71°45' W
CCS2	40°40' N	71°45' W
CCS3	40°40' N	70°30' W
CCS4	(2)	70°30' W

¹ RI shoreline.

² MA shoreline.

(c) *Framework adjustment.* (1) At least annually, the Regional Director will provide the NEFMC with the best available information on the status of Gulf of Maine harbor porpoise, including estimates of abundance and estimates of bycatch in the sink gillnet fishery. Within 60 days of receipt of that information, the NEFMC's HPRT shall complete a review of the data, assess the adequacy of existing regulations, evaluate the impacts of other measures that reduce harbor porpoise take and, if necessary, recommend additional measures in light of the NEFMC's harbor porpoise mortality reduction goals. In addition, the HPRT shall make a determination on whether other conservation issues exist that require a management response to meet the goals and objectives outlined in the NE Multispecies FMP. The HPRT shall report its findings and recommendations to the NEFMC.

(2) After receiving and reviewing the HPRT's findings and recommendations, the NEFMC shall determine whether adjustments or additional management measures are necessary to meet the goals and objectives of the NE Multispecies FMP. If the NEFMC determines that adjustments or additional management measures are necessary, or at any other time in consultation with the HPRT, it shall develop and analyze appropriate management actions over

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the span of at least two NEFMC meetings.

(3) The NEFMC may request, at any time, that the HPRT review and make recommendations on any harbor porpoise take reduction measures or develop additional take reduction proposals.

(4) The NEFMC shall provide the public with advance notice of the availability of the proposals, appropriate rationale, economic and biological analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the categories specified under § 648.90(b)(1).

(5) If the NEFMC recommends that the management measures should be issued as a final rule, the NEFMC must consider at least the factors specified in § 648.90(b)(2).

(6) The Regional Director may accept, reject, or with NEFMC approval, modify the NEFMC's recommendation, including the NEFMC's recommendation to issue a final rule, as specified under § 648.90(b)(3).

[61 FR 34968, July 3, 1996, as amended at 61 FR 47828, Sept. 11, 1996]

§ 648.88 Open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access multispecies handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other NE multispecies, provided that it does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

(2) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(b) *Charter/party permit.* A vessel that has been issued a valid open access multispecies charter/party permit is subject to the restrictions on gear, recreational minimum fish sizes and prohibitions on sale specified in § 648.89,

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and any other applicable provisions of this part.

(c) *Scallop multispecies possession limit permit.* A vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

(d) A vessel issued a valid open access nonregulated multispecies permit may possess and land nonregulated multispecies. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

[61 FR 34968, July 3, 1996, as amended at 61 FR 39910, July 31, 1996]

§ 648.89 Recreational and charter/party restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line and one line per angler and must stow all other fishing gear on board the vessel as specified under §§ 648.23(b) and 648.81(e) (2), (3), and (4).

(b) *Recreational minimum fish sizes—(1) Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are subject to minimum fish sizes (TL) as follows:

MINIMUM FISH SIZES (TL)		
Species	Inches	
	1996	1997+
Cod	20 (50.8 cm)	21 (53.3 cm)
Haddock	20 (50.8 cm)	21 (53.3 cm)
Pollock	19 (48.3 cm)	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)	12 (30.5 cm)
Redfish	9 (22.9 cm)	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size speci-

fied, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Possession restrictions.* Each person on a recreational vessel may not possess more than 10 cod and/or haddock, combined, in or harvested from the EEZ.

(1) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(2) Cod and haddock harvested by recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons aboard. 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.

(3) Cod and haddock must be stored so as to be readily available for inspection.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or a recreational fishing vessels fishing in the EEZ.

§ 648.90 Framework specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for NEFMC consideration on any changes, adjustment or additions to DAS allocations, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(1) The MSMC shall review available data pertaining to: Catch and landings, DAS and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The MSMC must demonstrate through analysis and documentation that the options it develops are expected to meet the NE Multispecies FMP goals and objectives. The MSMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC may include any of the management measures in the NE Multispecies FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the NE Multispecies FMP for the 10 regulated species; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; and any other management measures currently included in the NE Multispecies FMP.

(3) The NEFMC shall review the recommended target TACs and all of the options developed by the MSMC and other relevant information, consider public comment, and develop a recommendation to meet the NE Multispecies FMP objective that is consistent with other applicable law. If the NEFMC does not submit a recommendation that meets the NE Multispecies FMP objectives and is consistent with other applicable law, the Regional Director may adopt any option developed by the MSMC, unless rejected by the NEFMC, as specified in paragraph (a)(5) of this section, provided that the option meets the NE Multispecies FMP objective and is consistent with other applicable law.

(4) Based on this review, the NEFMC shall submit a recommendation to the Regional Director of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the NE Multispecies FMP's goals and objectives. Included in the NEFMC's recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the NEFMC.

(5) If the NEFMC submits, on or before January 7, a recommendation to the Regional Director after one NEFMC meeting, and the Regional Director concurs with the recommendation, the Regional Director shall publish the NEFMC's recommendation in the FEDERAL REGISTER as a proposed rule. The FEDERAL REGISTER notification of the proposed action will provide a 30-day public comment period. The NEFMC may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b) of this section and requests that the Regional Director publish the recommendation as a final rule. If the Regional Director concurs that the NEFMC's recommendation meets the NE Multispecies FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the FEDERAL REGISTER. If the Regional Director concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(6) If the Regional Director concurs in the NEFMC's recommendation, a final rule shall be published in the FEDERAL REGISTER on or about April 1 of each year, with the exception noted in paragraph (a)(5) of this section. If the NEFMC fails to submit a recommendation to the Regional Director by February 1 that meets the FMP goals and objectives, the Regional Director may publish as a proposed rule one of the options reviewed and not rejected by the NEFMC, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Director decides to approve the option published as a proposed rule, the action will be published as a final rule in the FEDERAL REGISTER.

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(b) *Within season management action.* The NEFMC 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.

(1) *Adjustment process.* After a management action has been initiated, the NEFMC shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, and any other management measures currently included in the FMP.

(2) *NEFMC recommendation.* After developing management actions and receiving public testimony, the NEFMC shall make a recommendation to the Regional Director. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Director on whether to issue the management measures as a final rule. If the NEFMC recommends that the management measures should be issued as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Regional Director action.* If the NEFMC's recommendation includes adjustments or additions to management measures and, after reviewing the NEFMC's recommendation and supporting information:

(i) If the Regional Director concurs with the NEFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If the Regional Director concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Director concurs with the NEFMC recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If the Regional Director does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(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 Act.

Subpart G—Management Measures for the Summer Flounder Fisheries

§ 648.100 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine

the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 may not exceed 18,518,830 lb (8,400 mt), unless such fishing levels have an associated F of 0.23: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of non-compliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to assure that the F specified in paragraph (a) of this section will not be exceeded:

(1) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified F.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified F.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls.

(8) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraphs (a) (8) and (10) of this section to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to

the MAFMC measures necessary to assure that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Director measures necessary to assure that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Director shall review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish a proposed rule in the FEDERAL REGISTER by October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish a proposed rule in the FEDERAL REGISTER by February 15 to implement additional management measures for the recreational fishery, if he/she determines that such measures are necessary to assure that the applicable specified F will not be exceeded. After considering public comment, the Regional Director will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to assure that the applicable specified F will not be exceeded.

(d) *Distribution of annual quota.* (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.04756
New Hampshire	0.00046
Massachusetts	6.82046
Rhode Island	15.68298
Connecticut	2.25708
New York	7.64699
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44584

(2) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any overages of

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the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Director to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Director to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Director shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Director shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder FMP and Magnuson Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective upon the filing by NMFS of a notice of the approval of the transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Director. A state may submit a new request when it receives notice that the Regional Director has disapproved the previous request or when notice of the approval of

the transfer or combination has been filed at the Office of the Federal Register.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d) of this section.

§ 648.101 Closures.

(a) *EEZ closure.* The Regional Director shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if he/she determines that the inaction of one or more states will cause the applicable F specified in § 648.100(a) to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Director may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas.* The Regional Director 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 Director shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

§ 648.102 Time restrictions.

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 January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.100.

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§ 648.103 Minimum fish sizes.

(a) The minimum size for summer flounder is 13 inches (33 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat;

(b) The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels that do not qualify for a moratorium permit, or party and charter boats holding moratorium permits, but 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 sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in § 648.100.

§ 648.104 Gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh or 6-inch (15.2-cm) square mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluded device extension.

(2) Mesh sizes are measured by a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm inserted into the meshes under a pressure or pull of 5 kg. The mesh size is the average of the measurement of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the

lacings, running parallel to the long axis of the net.

(b) *Exemptions.* The minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit and fishing from November 1 through April 30 in the “exemption area,” which is east of the line that follows 72°30.0' W. long. until it intersects the outer boundary of the EEZ. Vessels fishing with a summer flounder exemption permit shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel’s fishing gear is stowed in a manner prescribed under § 648.100(e), so that it is not “available for immediate use” outside the exempted area. The Regional Director 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 Director makes such a determination, he/she shall publish notification in the FEDERAL REGISTER terminating the exemption for the remainder of the exemption season.

(2) Vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other nets or netting with mesh smaller than 5.5 inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm).

(ii) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.3 cm).

(iii) The mesh decreases in size throughout the body of the net to 2 inches (5 cm) or smaller towards the terminus of the net.

(3) The Regional Director 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

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the Regional Director makes such a determination, he/she shall publish a notice in the FEDERAL REGISTER terminating the exemption for the remainder of the calendar year.

(c) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (c), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined in §648.104(e), if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in §648.100(a).

(d) *Mesh obstruction or constriction.* (1) A fishing vessel may not use any mesh configuration, mesh constriction, 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."

§ 648.105 Possession restrictions.

(a) No person shall possess more than eight summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) If whole summer flounder are processed into fillets, the number of fillets will be converted to whole summer flounder at the place of landing by dividing the fillet number by two. If summer flounder are filleted into single (butterfly) fillets, each fillet is deemed to be from one whole summer flounder.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Owners and operators of otter trawl vessels issued a permit under §648.4(a)(3) that fish with or possess

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nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.104(f), may not retain 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30. Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in³ (2.5 ft³ or 70.79 cm³).

§ 648.106 Sea turtle conservation.

This section will be suspended during the effectiveness of any temporary regulations issued to regulate incidental take of sea turtles in the summer flounder under authority of the ESA under parts 217, 222, and 227 of this title. Such suspensions and temporary regulations will be issued by publication in the FEDERAL REGISTER and will be effective for a specified period of time, not to exceed 1 year.

(a) *Sea turtle handling and resuscitation.* The sea turtle handling and resuscitation requirements specified in § 227.72(e)(1) (i) and (ii) of this title apply with respect to sea turtles incidentally taken by a vessel fishing for summer flounder.

(b) *Sea turtle monitoring and assessment program.* (1) The Regional Director will establish a monitoring and assessment program, in cooperation with the MAFMC and the State of North Carolina, to measure the incidental take of sea turtles in the summer flounder fishery, monitor compliance with required conservation measures by trawlers, and predict interactions between the fishery and sea turtles to prevent turtle mortalities.

(2) A scientifically designed, observer-based monitoring program in accordance with § 648.11 may be used to gather scientific data measuring the incidental take of turtles by trawlers in the summer flounder fishery and to report turtle distribution and abundance.

(3) A cooperative sea turtle monitoring and assessment program utilizing a variety of information, including aerial and vessel surveys; onboard observers;

individually tagged turtles; physical parameters, such as sea surface temperatures, and reports from the sea turtle stranding network; and other relevant and reliable information, will assess and predict turtle distribution, abundance, movement patterns, and timing to provide information to NMFS to prevent turtle mortality caused by the summer flounder fishery.

(c) *Required use of Turtle Excluder Devices (TED).* The Regional Director will require the use of a NMFS-approved TED by any vessels engaged in summer flounder fishing operations and utilizing trawl gear on or after October 15 as necessary to protect sea turtles. The Regional Director will publish notification in the FEDERAL REGISTER with the specific time period. Descriptions of NMFS-approved TEDs can be found in § 227.72(e)(4) of this title. This requirement applies to vessels within the EEZ bounded on the north by a line along 37°05' N. lat., bounded on the south by a line along 33°35' N. lat., and bounded on the east by a line 7 nm from the shoreward boundary of the EEZ.

(d) *Closure of the fishery.* The Regional Director may close the summer flounder fishery in the EEZ, or any part thereof, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the FEDERAL REGISTER. The Regional Director shall take such action if he/she determines a closure is necessary to avoid jeopardizing the continued existence of any species listed under the ESA. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program. A closure will be applicable to those areas specified in the notification and for the period specified in the notification. The Regional Director will provide as much advance notice as possible, consistent with the requirements of the ESA, and will have the closure announced on channel 16 of the marine VHF radio. A closure may prohibit all fishing operations, may prohibit the use of certain gear, may require that gear be stowed, or may impose similar types of restrictions on

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fishing activities. The prohibitions, restrictions, and duration of the closure will be specified in the notification.

(e) *Reopening of the fishery.* (1) The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the FEDERAL REGISTER. The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, if additional sea turtle conservation measures are implemented and if projections of NMFS' sea turtle monitoring program indicate that such measures will ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(2) The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, if the sea turtle monitoring program indicates changed conditions and if projections of the sea turtle monitoring program indicate that NMFS can ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(f) *Additional sea turtle conservation measures.* (1) The Regional Director may impose additional sea turtle conservation measures, including tow-time requirements, in the EEZ, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the FEDERAL REGISTER. The Regional Director shall take such action if he/she determines further measures are necessary to avoid jeopardizing the continued existence of any species listed under the ESA or if such action would allow reopening of the summer flounder fishery in the EEZ. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program.

(2) Consistent with the procedures specified in § 648.10, the Regional Director may require that all or a certain portion of the vessels engaged in fishing for summer flounder carry observers, consistent with the requirements of § 648.10, to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures. This requirement may apply to certain types of vessels, certain areas, or during certain times of the year.

(g) *Experimental projects.* Notwithstanding paragraphs (a) through (f) of this section, the Regional Director may authorize summer flounder fishing, as a part of experimental projects to measure turtle capture rates, to monitor turtle abundance, to test alternative gear or equipment, or for other research purposes. Research must be approved by the Regional Director, and it must not be likely to jeopardize the continued existence of any species listed under the ESA. The Regional Director will impose such conditions as he/she determines necessary to ensure adequate turtle protection during experimental projects. Individual authorizations may be issued in writing. Authorizations applying to multiple vessels will be published in the FEDERAL REGISTER.

Subpart H—Management Measures for the Scup Fishery

SOURCE: 61 FR 43426, Aug. 23, 1996, unless otherwise noted.

§ 648.120 Catch quotas and other restrictions.

(a) *Annual review.* The Scup Monitoring Committee shall review the following data, subject to availability, on or before August 15 of each year. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve an exploitation rate of 47 percent in 1997, 1998, and 1999, 33 percent in 2000 and 2001, and 19 percent in 2002 and thereafter: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of

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noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Scup Monitoring Committee shall recommend the following measures to the Demersal Species Committee of the MAFMC and the Commission to assure that the exploitation rate specified in paragraph (a) of this section will not be exceeded:

(1) The coastwide commercial quota will be set from a range of 0 to the maximum allowed to achieve the specified exploitation rate.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of 0 to 50 scup to achieve the specified exploitation rate.

(5) Recreational minimum fish size set from a range of 7 inches (17.8 cm) TL to 10 inches (25.4 cm) TL.

(6) Recreational season.

(7) Restrictions on gear.

(8) Season and area closures in the commercial fishery.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC shall review these recommendations, and based on these recommendations and any public comment, recommend to the Regional Director measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Director shall review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish a proposed rule in the FEDERAL REGISTER by October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish a

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proposed rule in the FEDERAL REGISTER by February 15 to implement additional management measures for the recreational fishery, if he or she determines that such measures are necessary to assure that the specified exploitation rate will not be exceeded. After considering public comment, the Regional Director will publish a final rule in the FEDERAL REGISTER to implement the annual measures.

(d) *Additional quota measures.* The commercial quota will be implemented as a coastwide quota, applicable to that area of the EEZ from 35°15.3' N. lat. to the United States/Canada border. The MAFMC and Commission may revise the coastwide quota system to distribute and manage the annual commercial quota allocation in accordance with the procedures set forth in this section. Vessel trip limits, as well as coastwide, regional and state-by-state quotas may be considered in combination with different fractions of the fishing year. Any modification to the coastwide quota system shall be published as a proposed rule in the FEDERAL REGISTER with a 45-day public comment period. After considering public comment on the proposed rule, a final rule shall be published in the FEDERAL REGISTER to implement the appropriate modification.

§ 648.121 Closure.

The Regional Director will monitor the harvest of commercial quota based on dealer reports, state data, and other available information and shall determine the date when the commercial quota will be harvested. The Regional Director shall close the EEZ to fishing for scup by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER advising that, effective upon a specific date, the commercial quota has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup.

§ 648.122 Season and area restrictions.

If the MAFMC determines through its annual review process that seasonal

restrictions or area closures are necessary for the commercial or recreational sectors to assure that the exploitation rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in § 648.120.

§ 648.123 Gear restrictions.

(a) *Trawl vessel gear restrictions*—(1) *Minimum mesh size.* The owners or operators of otter trawlers issued a scup moratorium permit, and that possess 4,000 lb or more (1,814 kg or more) of scup, must fish with nets that have a minimum mesh size of 4 inches (10.2 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 minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension. Scup on board these vessels shall be stored separately and kept readily available for inspection.

(2) *Mesh-size measurement.* Mesh sizes will be measured according to the procedure specified in § 648.104(a)(2).

(3) *Net modification.* The owner or operator of a fishing vessel subject to the minimum mesh requirement in 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 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 (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 restriction in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on or in the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirement in paragraph (a)(1) of this section may not use a net capable of catching scup if the bars entering or exiting the knots twist around each other.

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 4,000 lb or more (1,814 kg or more) of scup and subject to the minimum mesh requirement in paragraph (a)(1) of this section, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not “available for immediate use.”

(6) *Roller gear.* The owner or operator of an otter trawl vessel issued a moratorium permit pursuant to § 648.4(a)(6) shall not use roller rig trawl gear equipped with rollers greater than 18 inches (45.7 cm) in diameter.

(7) *Procedures for changes.* The minimum net mesh and the threshold catch level at which it is required set forth in paragraph (a)(1) of this section, and the maximum roller diameter set forth in paragraph (a)(6) of this section, may be changed following the procedures in § 648.120.

(b) *Pot and trap gear restrictions.* Owners or operators of vessels subject to this part must fish with scup pots or traps that comply with the following:

(1) *Degradable hinges.* A scup pot or trap must have degradable hinges and fasteners made of one of the following degradable materials:

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(i) Untreated hemp, jute, or cotton string of $\frac{3}{16}$ inches (4.8 mm) diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(2) *Escape vents.* (i) All scup pots or traps that have a circular escape vent with a minimum of 3.1 inches (7.9 cm) in diameter, or a square escape vent with a minimum of 2.25 inches (5.7 cm) for each side, or an equivalent rectangular escape vent.

(ii) The minimum escape vent size set forth in paragraph (b)(2)(i) of this section may be revised following the procedures in § 648.120.

§ 648.124 Minimum fish sizes.

(a) The minimum size for scup is 9 inches (22.9 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(6). If such a vessel is also issued a charter and party boat permit and is carrying passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat, then the minimum size specified in paragraph (b) of this section applies.

(b) The minimum size for scup is 7 inches (17.8 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

(c) The minimum size applies to whole fish or any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in § 648.120.

§ 648.125 Possession limit.

(a) Pursuant to the procedures in § 648.120, the Regional Director may limit the number of scup that may be possessed in or harvested from the EEZ north of 35°15.3' N. lat. by persons aboard vessels that have not been issued a valid moratorium permit.

(b) If whole scup are processed into fillets, an authorized officer will convert the number of fillets to whole scup

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at the place of landing by dividing fillet number by 2. If scup are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole scup.

(c) Scup harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of scup on board by the number of persons aboard other than the captain and crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Scup and scup parts harvested by a vessel with a moratorium or charter or party boat scup permit, or in or from the EEZ north of 35°15.3' N. lat., may not be landed with the skin removed.

§ 648.126 Protection of threatened and endangered sea turtles.

This section supplements existing regulations issued to regulate incidental take of sea turtles under authority of the Endangered Species Act under 50 CFR parts 217 and 227. In addition to the measures required under those parts, NMFS will investigate the extent of take in flynet gear and if deemed appropriate, may develop and certify a Turtle Excluder Device for that gear.

PART 649—AMERICAN LOBSTER FISHERY

Subpart A—General Provisions

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Figure 1—Standard Tetrahedral Corner Radar Reflector

Figure 2—American Lobster Management Areas Established for the Purposes of Regional Lobster Management

Figure 3—Seaward Boundary Lines of the Southern New England Nearshore Areas (Area 2) and the Offshore Area (Area 3)

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 59 FR 31943, June 21, 1994, unless otherwise noted.

Subpart A—General Provisions

§ 649.1 Purpose and scope.

This part implements the Fishery Management Plan for the American Lobster Fishery (FMP), as amended by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission (ASMFC), and approved by the Assistant Administrator for Fisheries, NOAA. Red crab fishing gear, which is fished deeper than 200 fathoms (365.8 m), is gear not capable of taking lobsters, and is not subject to the provisions of this part.

§ 649.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

American lobster or lobster means the species *Homarus americanus*.

Berried female means a female American lobster bearing eggs attached to the abdominal appendages.

Carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. The carapace is the

unsegmented body shell of the American lobster.

Council means the New England Fishery Management Council.

Dealer means any person who receives American lobsters for a commercial purpose from the owner or operator of a vessel issued a valid Federal vessel permit under this part, other than exclusively for transport on land.

Dive vessel means any vessel carrying divers for a per capita fee or a charter fee.

Effort Monitoring Team (EMT) means a group of technical experts made up of representatives from the Council, NMFS, the appropriate states, and a group of American lobster industry representatives (appointed by the Council), per management area, to each EMT.

Escape vent means an opening in a lobster trap designed to allow lobster smaller than the legal minimum size to escape from the trap.

Fishery Management Plan (FMP) means the Fishery Management Plan for American Lobsters, as amended.

Ghost panel means a panel, or other mechanism, designed to allow for the escapement of lobster after a period of time if the trap has been abandoned or lost.

Gross registered tonnage means the gross registered tonnage specified on the U.S. Coast Guard documentation for a vessel.

Land means to enter port with fish on board, to begin offloading fish, or to offload fish.

Lobster pot trawl means a number of lobster traps, all attached to a single groundline.

Net tonnage means the net tonnage specified on the U.S. Coast Guard documentation for a vessel.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

Operator means the master or captain of the vessel, or other individual on board the vessel, who is in charge of that vessel's operations.

Party/charter boat means any vessel carrying fishing persons or parties for a per capita fee or for a charter fee.

Postmark means independently verifiable evidence of date of mailing, such

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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.

Recreational fishing means fishing that is not intended to, nor results in the barter, trade, or sale of fish.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats and dive boats are not considered recreational fishing vessels.

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-2298, or a designee.

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 American lobsters.

Scrubbing is the forcible removal of eggs from a berried female American lobster.

Under agreement for construction means that the keel has been laid and that there is a written agreement to construct a fishing vessel.

V-notched American lobster means any female American lobster bearing a V-shaped notch in the flipper next to and to the right of the center flipper as viewed from the rear of the lobster (underside of the lobster down and tail toward the viewer).

V-shaped notch means a straight-sided triangular cut, without setal hairs, as least 1/4 inch (0.64 cm) in depth and tapering to a point.

Whole American lobster means a lobster with an intact and measurable body (tail and carapace). A cull whole American lobster is an American lobster with one or both claws missing.

§ 649.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter.

(b) Nothing in these regulations shall supersede more restrictive state management measures for American lobsters.

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§ 649.4 Vessel permits.

(a) *1994 vessel permits.* (1) Through April 30, 1995, any vessel of the United States fishing for American lobster in the EEZ must have been issued and carry on board a valid permit required by or issued under this part. The Regional Director may, by agreement with State agencies, recognize permits or licenses issued by those agencies endorsed for fishing for lobster in the EEZ, providing that such permitting programs accurately identify persons who fish in the EEZ, and that the Regional Director can either individually, or in concert with the state agency, act to suspend the permit or license for EEZ fishing for any violation under this part.

(2) Alternate State EEZ permitting programs will be established through a letter of agreement between the Regional Director and the director of the State marine fisheries agency concerned. The letter of agreement will specify the information to be collected by the alternate EEZ permitting program and the mode and frequency of provision of that information to the Regional Director. The Regional Director will, in cooperation with the State director, arrange for notification of the existence and terms of any such agreements to the affected persons. Persons intending to fish in the EEZ should determine whether an alternate EEZ permitting program is in force for their state before applying for a Federal permit under paragraph (d) of this section.

(3) Vessel owners or operators who apply for a fishing vessel permit under this section, or for a State permit endorsed for EEZ fishing under paragraph (a)(2) of this section, must agree, as a condition of the permit, that all the vessel's lobster fishing, catch, and gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such lobster, lobster meats, or parts, or gear are possessed, taken or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable state or local requirements. If a requirement of this part and a conservation measure required by state or local law differ, any vessel owner or operator permitted to fish in the EEZ

must comply with the more restrictive requirement.

(b) *Limited access American lobster permits.* From May 1, 1995, through December 31, 1999, any vessel of the United States that fishes for, possesses, or lands American lobster in or harvested from the EEZ must have been issued and carry on board a valid Federal limited access American lobster permit. This requirement does not apply to party, charter and dive boats that possess six or fewer American lobsters, not intended for or resulting in trade, barter or sale, per person aboard the vessel at any time, or to recreational vessels, and vessels that fish exclusively in state waters for American lobsters.

(1) *Eligibility in 1995.* (i) To be eligible for a limited access permit for 1995, a vessel or the permit applicant must meet one of the following criteria:

(A) The vessel was issued a Federal American lobster permit and landed American lobster prior to March 25, 1991, while in possession of the lobster permit.

(B) To qualify for the limited access permit based on a federally endorsed state permit history, one of the following criteria must be met:

(1) The permit applicant was issued a federally endorsed state American lobster permit, and landed American lobster prior to March 25, 1991, and owned a vessel that landed American lobster prior to March 25, 1991, while in possession of the lobster permit; or

(2) The vessel was owned by a person who landed lobster prior to March 25, 1991, while in possession of a valid federally endorsed state American lobster permit, and the vessel was transferred to the current vessel owner in accordance with the exception to the presumption specified in paragraph (b)(3)(ii) of this section; or

(3) The permit applicant owned a vessel that landed American lobster prior to March 25, 1991, while under the operation of an individual with a valid federally endorsed state lobster permit; or

(4) The permit applicant owned a vessel that landed American lobster prior to March 25, 1991, while the applicant held a valid signed written lease, recognized and authorized by the issuing state, granting the rights to a federally endorsed state lobster permit.

(C) The vessel was under written agreement for construction or rerigging for directed American lobster fishing, or was under written contract for purchase as of March 25, 1991, and the applicant meets one of the eligibility criteria set forth in paragraph (b)(1)(i)(A) or (B) of this section. For the purposes of paragraph (b)(1)(i)(C) all references to March 25, 1991, in paragraph (b)(1)(i)(A) or (B) of this section should be March 25, 1992.

(D) The vessel is replacing a vessel that meets the criteria set forth in paragraph (b)(1)(i)(A), (B), or (C) of this section.

(ii) No more than one vessel may qualify, at any one time, for a limited access American lobster permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access American lobster permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access American lobster permit.

(iii) A limited access American lobster permit for 1995 will not be issued unless an application for such permit is received by the Regional Director on or before December 31, 1995.

(2) *Eligibility in 1996 and thereafter.* (i) To be eligible to renew or apply for a limited access lobster permit after 1995, a vessel or permit applicant must have been issued either a limited access lobster permit or a confirmation of permit history for the preceding year, or a vessel must be replacing a valid limited access American lobster permit or permit history confirmation from the preceding year. If more than one applicant claims eligibility to apply for a limited access American lobster permit based on one fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access permit or permit history confirmation.

(ii) Beginning January 1, 2000, any vessel of the United States that fishes for, possesses, or lands American lobster, in or harvested from the EEZ, must have been issued and carry on board a valid Federal American lobster permit. This requirement does not apply to party, charter and dive boats

that possess six or fewer American lobsters, not intended for or resulting in trade, barter, or sale, per person aboard the vessel at any time, or to recreational vessels and vessels that fish exclusively in state waters for American lobsters. The eligibility requirements for limited access permits for the years 1996 - 1999 are not applicable for obtaining an American lobster permit for the year 2000 and thereafter.

(3) *Change in ownership.* (i) The fishing and permit history of a vessel that qualifies based on issuance of a Federal lobster permit under paragraphs (b)(1)(i)(A) and (C) of this section 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 fishing and permit history for purposes of replacing the vessel.

(ii) The fishing and permit history of a vessel owner and a vessel that qualifies based on issuance of a federally endorsed state lobster permit under paragraphs (b)(1)(i)(B) and (C) of this section is presumed to remain with such owner for any transfers of the vessel before and including March 25, 1991; and for any transfers of ownership of the vessel after March 25, 1991, the fishing and permit history necessary to qualify for a limited access lobster permit under paragraphs (b)(1)(i)(B) and (C) of this section is presumed to remain with the last owner of the vessel as of or prior to March 25, 1991, 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 transferring the fishing and permit history of a vessel necessary to qualify for a limited access lobster permit under paragraph (b)(1)(i)(B) or (C) of this section to the transferee/buyer.

(4) *Notification of eligibility for a limited access permit.* (i) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the criteria in paragraph (b)(1) of this section.

(ii) If a vessel owner has not been notified that the vessel is eligible to be

issued a limited access American lobster permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access American lobster permit by submitting the information described in paragraphs (d) through (e) of this section. In the event the application is denied, the applicant may appeal as specified in paragraph (b)(5) of this section. If, through either of these procedures, the Regional Director determines that the vessel meets the eligibility criteria, a limited access American lobster permit will be issued to the vessel.

(5) *Appeal of denial of limited access American lobster permit or of permit category assignment.* (i) Any applicant denied a limited access American lobster permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director by so requesting, in writing, within 30 days of the notice of initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce.

(iv) *Recommendations to the Regional Director by a hearing officer.* A hearing officer shall be appointed by the Regional Director to review the initial decision. The hearing officer shall make findings and a recommendation to the Regional Director, which shall be advisory only.

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(v) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(vi) *Fishing during appeal.* A vessel for which an appeal has been initiated and that was issued a 1994 Federal or federally endorsed state lobster permit, may fish for American lobster in the EEZ if the appeal is pending and the vessel has on board an authorizing letter from the Regional Director. If the appeal is finally denied, the Regional Director 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.

(6) *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, may apply for and receive a Confirmation of Permit History if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a Confirmation of Permit History, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current Confirmation of Permit History preserves the eligibility of the applicant to apply for or renew 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 at § 649.4. A Confirmation of Permit History must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part based on the qualifying vessel's fishing and permit history, the Confirmation of Permit History also preserves such fishing privileges. Any decision regarding the issuance of a Confirmation of Permit History for a qualifying vessel that has applied for or been issued previously a limited access permit under this part is a final agency action subject to judi-

cial review under 5 U.S.C. 704. Applications for a Confirmation of Permit History shall be accepted by the Regional Director on or before December 31, 1995. For subsequent years, applications must be received by the end of the calendar year in which the Confirmation of Permit History expires. Information requirements for the Confirmation of Permit History application shall be the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who hold a Confirmation of Permit History and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (b) of this section.

(c) *Condition.* Vessel owners who apply for a permit under this section must agree, as a condition of the permit, that the vessel and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part. The vessel and all such fishing, catch, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(d) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for 1995 limited access American lobster permits who have not been notified of eligibility by the Regional Director shall provide information with the application sufficient for

the Regional Director to determine whether the vessel meets the eligibility requirements specified under paragraph (b)(1) of this section. Acceptable forms of proof include, but are not limited to, state weigh-out records, packout forms, and settlement sheets.

(e) *Information requirements.* In addition to applicable information required to be provided by paragraph (d) of this section, an application for a Federal American lobster permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of the vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; overall length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation; and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having more than a 25 percent interest; and name and signature of the owner or the owner's authorized representative.

(f) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook 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 (g)(1) of this section.

(g) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904 and under paragraph (b)(5) of this section, the Re-

gional Director shall issue a Federal American lobster vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received; or

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraph (b)(1)(iii) of this section; or

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraphs (b)(1) and (2) of this section; or

(iv) The applicant has failed to meet any other application requirements stated in this part.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director 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.

(h) *Expiration.* A Federal American lobster permit will expire upon the renewal date specified in the permit.

(i) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (l) of this section.

(j) *Replacement.* Replacement permits, for an otherwise valid permit, may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the Federal Fisheries Permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(k) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the vessel and owner to whom it is issued.

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(l) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Director. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(m) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(n) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(o) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(p) *Limited access American lobster permit renewal.* To renew a limited access permit in 1996 and thereafter, a completed application must be received by the Regional Director by December 31 of the year in which the permit is required. Failure to renew a limited access American lobster permit or confirmation of permit history in any year prevents the renewal of such in subsequent years.

(q) *Abandonment or voluntary relinquishment of limited access American lobster permits.* If a vessel's limited access American lobster permit or confirmation of permit history is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access American lobster permit or confirmation of permit history may be reissued or renewed based on that vessel's history.

[59 FR 31943, June 21, 1994, as amended at 60 FR 21997, May 4, 1995; 60 FR 45682, Sept. 1, 1995; 60 FR 62225, Dec. 5, 1995]

§ 649.5 Operator permits.

(a) *General.* Beginning on January 1, 1995, any operator of a vessel issued a Federal limited access American lobster permit under § 649.4(b), or any operator of a vessel of the United States that fishes for, possesses, or lands American lobsters, in or harvested from the EEZ must have been issued and carry on board a valid operator's permit issued under this section. This requirement does not apply to party, charter, and dive boats that possess six

or fewer American lobsters, not intended for or resulting in trade, barter or sale, per person aboard the vessel at any time, or to recreational vessels, and vessels that fish exclusively in state waters for American lobsters.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director 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 permitted under § 649.4(b). The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in 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 Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant

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must also provide two color passport-size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Financial 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; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application, if the criteria specified in this section are met. Upon receipt of an incomplete or improperly executed application, the Regional Director 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.* A Federal operator permit will expire upon the renewal date specified in the permit.

(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 Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal operator permit number assigned. An applicant for a replacement permit must also provide two color passport-size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. 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.

§ 649.6 Dealer permits.

(a) All dealers must have been issued, and have in their possession, a valid permit issued under this section.

(b) *Dealer application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. For 1994, a copy of an applicant's completed application will serve as a temporary permit until the applicant has received a permanent permit. The Regional Director will notify the applicant of any deficiency in the application, pursuant to this section.

(c) *Information requirements.* Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business,

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mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the Certificate of Incorporation must be included with the application. If the dealer is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense 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 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; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant, unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received. Upon receipt of an incomplete or improperly executed application, the Regional Director 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.* A Federal dealer permit will expire upon the renewal date specified in the permit.

(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 Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the appli-

cant, stating the need for replacement and the Federal dealer permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the person, or other business entity, to which it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this section must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(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.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 649.7 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part that is over 25 ft (7.6 m) in length must display its name on the port and starboard sides of its bow and, if possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part that is over 25 ft (7.6 m) in length must display its official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number for vessels not required to be documented under chapter 123 of title 46 U.S.C.

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(c) *Numerals.* The official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m), and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part must:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 649.8 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a Federal American lobster permit under § 649.4 to do any of the following:

(1) Retain on board, land, or possess at or after landing, American lobsters that fail to meet the carapace length standard specified in § 649.20(b). All American lobsters will be subject to inspection and enforcement, up to and including the time when a dealer receives or possesses American lobsters for a commercial purpose.

(2) Retain on board, land, or possess any American lobster or parts thereof in violation of the mutilation standards specified in § 649.20(c).

(3) Retain on board, possess, or land any berried female American lobster specified in § 649.20(d).

(4) Remove eggs from any berried female American lobster, land, or possess any such lobster from which eggs have been removed. No such person may land or possess any lobster that has come in contact with any substance capable of removing lobster eggs.

(5) Retain on board, land, or possess any V-notched female American lobsters throughout the range of the stock.

(6) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any gear not identified, marked, vented, and panelled in accordance with the requirements specified in § 649.21, unless such gear has been rendered unfishable.

(7) Fish for, land, or possess American lobsters after December 31, 1994, unless the operator of the vessel has been issued an operator's permit under § 649.5, and the permit is on board the vessel and is valid.

(8) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 649.4(l) or § 649.5(k).

(9) Make any false statement in connection with an application under § 649.4 or § 649.5.

(10) Fail to affix and maintain permanent markings, as required by § 649.7.

(11) Sell, transfer, or barter or attempt to sell, transfer, or barter to a dealer any American lobsters, unless the dealer has a valid Federal Dealer's Permit issued under § 649.6.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel that has not been issued a limited access American lobster permit as described under § 649.4(b), to possess on board a vessel or land American lobsters unless the vessel is a party, charter, or dive boat and there are six or fewer American lobsters per person on such boats, and the lobsters are not sold, traded or bartered, or unless the vessel is a recreational vessel or a vessel fishing for American lobsters exclusively in state waters.

(c) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) and (b) of this section, it is unlawful for any person to do any of the following:

(1) Possess on board a vessel or land American lobsters unless:

(i) The American lobsters were harvested by a vessel that has been issued and carries on board a valid Federal American lobster permit under § 649.4(a); or a valid limited access American lobster permit under § 649.4(b); or

(ii) The American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobsters exclusively in state waters; or

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(iii) The American lobsters were harvested by a party, charter, or dive vessel that possesses six or fewer American lobsters per person on board the vessel and the lobsters are not intended to be or are not traded, bartered, or sold; or

(iv) The American lobsters were harvested by a recreational fishing vessel.

(2) Sell, barter, or trade, or otherwise transfer, or attempt to sell, barter, or trade, or otherwise transfer, for a commercial purpose, any American lobsters from a vessel, unless the vessel has been issued a valid Federal American lobster permit under § 649.4, or the American lobsters were harvested by a vessel without a Federal American lobster permit that fishes for American lobsters exclusively in state waters;

(3) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, as, or in the capacity of, a dealer, American lobsters taken from or harvested by a fishing vessel issued a Federal American lobster permit, unless in possession of a valid dealer's permit issued under § 649.6;

(4) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, as, or in the capacity of, a dealer, American lobsters caught by a vessel other than one issued a valid Federal American lobster permit under § 649.4, unless the American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobsters exclusively in state waters;

(5) Beginning January 1, 1995, to be, or act as, an operator of a vessel fishing for or possessing American lobsters in or from the EEZ, or issued a Federal American lobster permit under § 649.4 (b), without having been issued and possessing a valid operator's permit issued under § 649.5.

(6) Assault, resist, oppose, impede, harass, intimidate, or interfere with either a NMFS-approved observer aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part;

(7) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvest-

ing, landing, purchase, sale, or transfer of any American lobsters;

(8) Violate any provision of this part, the Magnuson Act, or any regulation, permit, or notification issued under the Magnuson Act or these regulations;

(9) Possess or land any American lobsters harvested in or from the EEZ in violation of § 649.20; or

(10) Ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster in violation of § 649.20.

(d) Any person possessing, or landing American lobsters at or prior to the time when those American lobsters are landed, or are received or possessed by a dealer, is subject to all of the prohibitions specified in paragraphs (a), (b) and (c) of this section, unless the American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobsters exclusively in state waters; or are from a party, charter, or dive vessel that possesses or possessed six or fewer American lobsters per person aboard the vessel at any time and the lobsters are not intended for sale, trade, or barter; or are from a recreational vessel.

(e) *Presumption.* American lobsters that are possessed, or landed at or prior to the time when the American lobsters are received by a dealer, or American lobsters that are possessed by a dealer, are presumed to be harvested from the EEZ or by a vessel with a Federal lobster permit. A preponderance of all submitted evidence that such American lobsters were harvested by a vessel without a Federal American lobster permit and fishing exclusively for American lobsters in state waters will be sufficient to rebut the presumption.

(f) The possession of egg-bearing female American lobsters, V-notched female American lobsters, or American lobsters that are smaller than the minimum size set forth in § 649.20(b), will be *prima facie* evidence that such American lobsters were taken or imported in violation of these regulations. Evidence that such American lobsters were harvested by a vessel not holding a permit under this part and fishing exclusively within state or foreign waters

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will be sufficient to rebut the presumption.

[59 FR 31943, June 21, 1994, as amended at 61 FR 16883, Apr. 18, 1996]

§ 649.9 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 649.10 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 649.20 Harvesting and landing requirements.

(a) *Condition.* By being issued a Federal limited access American lobster permit, the vessel owner is subject to all measures in this subpart, regardless of where American lobsters were harvested.

(b) *Carapace length.* (1) The minimum carapace length for all American lobsters harvested in or from the EEZ is 3¼ inches (8.26 cm).

(2) The minimum carapace length for all American lobsters landed, harvested, or possessed at or after landing by vessels issued a Federal American lobster permit, is 3¼ inches (8.26 cm).

(3) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that is smaller than the minimum size specified in this paragraph (b).

(c) *Mutilation.* (1) No person may remove meat or any body appendage from any American lobster harvested in or from the EEZ before landing, or to have in possession on board any American lobster part other than whole lobsters.

(2) No owner, operator or person aboard a vessel issued a Federal American lobster permit may remove meat or any body appendage from any American lobster before landing, or to have in possession on board any American lobster part other than whole lobsters.

(d) *Berried females.* (1) Any berried female American lobster harvested in or from the EEZ must be returned to the sea immediately.

(2) Any berried female American lobster harvested or possessed by a vessel issued a Federal American lobster per-

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mit must be returned to the sea immediately.

(3) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any berried female American lobster as specified in this paragraph (d).

(e) *Scrubbing.* (1) No person may remove extruded eggs attached to the abdominal appendages from any female American lobster harvested on or from the EEZ.

(2) No owner, operator or person aboard a vessel issued a Federal American lobster permit may remove extruded eggs attached to the abdominal appendages from any female American lobster.

(3) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that bears evidence of the forcible removal of extruded eggs from its abdominal appendages as specified in this paragraph (e).

§ 649.21 Gear identification and marking, escape vent, and ghost panel requirements.

(a) *Identification.* All lobster gear deployed in the EEZ or possessed by a person whose vessel is permitted for fishing in the EEZ, and not permanently attached to the vessel, must be legibly and indelibly marked with one of the following codes of identification:

(1) A number assigned by the Regional Director; and/or

(2) Whatever positive identification marking is required by the vessel's home-port state.

(b) *Marking.* In the areas of the EEZ described in paragraph (b)(4) of this section, lobster pot trawls are to be marked as follows:

(1) Lobster pot trawls of three or fewer pots must be marked with a single buoy.

(2) Lobster pot trawls consisting of more than three pots must have a radar reflector and a single flag or pennant on the westernmost end (marking the half compass circle from magnetic south through west, to and including north), while the easternmost end (meaning the half compass circle from magnetic north through east, to and including south) of an American lobster pot trawl must be marked with a

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radar reflector only. Standard tetrahedral corner radar reflectors (see Figure 1 of this part) of at least 8 inches (20.32 cm) (both in height and width, and made from metal) must be employed.

(3) No American lobster pot trawl shall exceed 1.5 nautical miles (2.78 km) in length, as measured from buoy to buoy.

(4) Gear marking requirements apply in the following areas:

(i) *Gulf of Maine gear area.* All waters of the EEZ north of 42°20' N. lat. seaward of a line drawn 12 nautical miles (22.2 km) from the baseline of the territorial sea;

(ii) *Georges Bank gear Area.* All waters of the EEZ south of 42°20' N. lat. and east of 70°00' W. long. or the outer boundary of the territorial sea, whichever lies farther east;

(iii) *Southern New England gear Area.* All waters of the EEZ west of 70°00' W. long., east of 71°30' W. long. at a depth greater than 25 fathoms (45.72 m); and

(iv) *Mid-Atlantic gear Area.* All waters of the EEZ, west of 71°30' W. long. and north of 36°33' N. lat. at a depth greater than 40 fathoms (73.15 m).

(c) *Escape vents.* All American lobster traps deployed in the EEZ or possessed by a person whose vessel is permitted for fishing in the EEZ, as specified under § 649.4, must be constructed to include one of the following escape vents in the parlor section of the trap. The vent must be located in such a manner that it would not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use.

(1) The specifications for escape vents are as follows:

(i) A rectangular portal with an unobstructed opening not less than 1 $\frac{7}{8}$ inches (4.76 cm) by 5 $\frac{3}{4}$ inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2 $\frac{3}{8}$ inches (6.03 cm) in diameter.

(2) The Regional Director may, at the request of, or after consultation with, the Lobster Oversight Committee of the Council, approve, and publish in the FEDERAL REGISTER any other type of acceptable escape vent that the Regional Director finds to be consistent with paragraphs (c)(1)(i) and (ii) of this section.

(d) *Ghost panel.* Lobster traps not constructed entirely of wood must contain a ghost panel.

(1) The specifications of this requirement are as follows:

(i) The opening to be covered by the ghost panel must be rectangular and shall not be less than 3 $\frac{3}{4}$ inches (9.53 cm) by 3 $\frac{3}{4}$ inches (9.53 cm).

(ii) The panel must be constructed of, or fastened to the trap with, one of the following untreated materials: Wood lath, cotton, hemp, sisal or jute twine not greater than $\frac{3}{16}$ inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than $\frac{3}{32}$ inch (0.24 cm) in diameter.

(iii) The door of the trap may serve as the ghost panel, if fastened with a material specified in paragraph (d)(1)(ii) of this section.

(iv) The ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.

(2) The Regional Director may, at the request of, or after consultation with, the Lobster Oversight Committee of the Council, approve, and publish in the FEDERAL REGISTER, any other design, mechanism, material, or specification not described in the regulations in this part that serves to create an escape portal not less than 3 $\frac{3}{4}$ inches (9.53 cm) by 3 $\frac{3}{4}$ inches (9.53 cm).

(e) *Enforcement action.* Unidentified, unmarked, unvented, or improperly vented American lobster traps will be seized and disposed of in accordance with the provisions of part 219 of this title.

§ 649.22 Experimental fishing exemption.

(a) The Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the American lobster resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

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(1) Have a detrimental effect on the American lobster resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this part, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

Subpart C—Stock Rebuilding Program and Framework Adjustments to Management Measures

§ 649.41 Purpose and scope.

The purpose of this subpart is to specify the requirements and framework procedures for implementing the Stock Rebuilding Program, intended to eliminate overfishing in any resource areas.

§ 649.42 Stock rebuilding program requirements and time frame.

(a) *General.* (1) The Council has until July 20, 1995 to submit to NMFS management measures to achieve the objectives of the FMP. The measures must be designed to achieve the FMP objectives for reducing fishing mortality within 5 years for the stock in the Gulf of Maine segment of the fishery and 10 years for the Southern New England segment of the stock. Such measures may be submitted through the Magnuson Act amendment process or through the first-year area management framework specifications in § 649.43.

(2) In developing such management measures, the Council shall submit management measures to reduce fishing mortality in each of four management areas specified in paragraph (b) of this section. These management measures shall be implemented according to the first-year area management framework specifications in § 649.43.

(3) If the Council has not submitted management measures sufficient to achieve the objectives of the FMP on

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or before July 20, 1995, the Secretary shall determine, according to provisions of 16 U.S.C. 1854(c), whether to prepare an amendment to the FMP.

(b) *Management areas.* The Stock Rebuilding Program to be submitted by the Council shall be developed based on the status of stock of American lobsters and management considerations for each of the areas described and defined in this paragraph (b) (see Figures 2 and 3 of this part).

(1) *Area 1. Near-shore EEZ Waters of the Gulf of Maine.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points, in the order stated, and the territorial sea:

Point	Latitude	Longitude
A	44°04' N.	67°19' W. and northward along the irregular U.S. - Canada Maritime Boundary to the territorial sea.
B	43°03' N.	70°00' W.
C	42°14' N.	70°00' W.
D	42°08' N.	69°55' W.
E	42°06' N.	70°04' W.

(2) *Area 2. Near-shore EEZ Waters of Southern New England.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points in the order stated and the territorial sea:

Point	Latitude	Longitude
E	42°06' N.	70°04' W.
D	42°08' N.	69°55' W.
F	41°10' N.	69°06' W.
G	40°46' N.	71°34' W.
H	41°06' N.	71°43' W.
I	41°05' N.	71°49' W.

(3) *Area 3. EEZ Offshore Waters.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points, in the order stated, and westerly of the U.S. - Canada Maritime Boundary:

Point	Latitude	Longitude
A	44°04' N.	67°19' W. and northward along the irregular U.S. - Canada Maritime Boundary to the territorial sea.
B	43°03' N.	70°00' W.
C	42°14' N.	70°00' W.
D	42°08' N.	69°55' W.
F	41°10' N.	69°06' W.
G	40°46' N.	71°34' W.
J	40°13' N.	72°44' W.
K	38°39' N.	73°24' W.
L	38°12' N.	73°55' W.
M	37°12' N.	74°44' W.

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Point		Longitude
N	35°41' N.	75°10' W.
O	35°15' N.	75°28' W.

(4) *Area 4. Near-shore EEZ Waters of the Middle Atlantic.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points, in the order stated, and the territorial sea:

Point	Latitude	Longitude
I	41°05' N.	71°49' W.
H	41°06' N.	71°43' W.
G	40°46' N.	71°34' W.
J	40°13' N.	72°44' W.
K	38°39' N.	73°24' W.
L	38°12' N.	73°55' W.
M	37°12' N.	74°44' W.
N	35°41' N.	75°10' W.
O	35°15' N.	75°28' W.

(c) *Effort Management Teams (EMT).*

(1) The Council shall establish EMTs for each area specified in paragraph (b) of this section, for the purpose of making recommendations to the Council on management measures to achieve the objectives of the FMP.

(2) Members of each EMT shall be appointed by the Council, in consultation with appropriate states and NMFS. Members of the EMT shall consist of a group of technical representatives that serve on each EMT and a group of representatives from the lobster industry, based on their geographical affiliation with an EMT. The Council may decide the number of representatives and operating procedures of the EMTs.

(3) No later than January 20, 1995, each EMT shall report its recommendations for management measures for the stock rebuilding program for the area it represents to the Council.

§ 649.43 First year framework specifications.

(a) On or before January 20, 1995, each EMT shall submit its recommendations for management measures for the area it represents to the Council. In developing these recommendations, the EMTs may consider and recommend additional restrictions or limitations on vessels participating in the lobster fishery according to the categories and guidelines contained in paragraph (b) of this section.

(b) After receiving the recommendations of the EMTs, the Council shall determine what management measures are necessary for each management area, in order to achieve the objectives of stock rebuilding specified in the FMP. For the management measures the Council determines are necessary to meet FMP objectives, the Council shall provide appropriate rationale and economic and biological analysis of the determinations. The Council shall make these determinations over the span of at least two Council meetings and provide the public with advance notice of, and opportunity to comment on, the determinations and the analyses before making final recommendations to be submitted to NMFS. The Council's recommendation on necessary management measures may come from one or more of the following categories:

- (1) Minimum-size changes;
- (2) A maximum-size limit;
- (3) Trap limits;
- (4) Seasonal closures of one or more management areas;
- (5) Closed areas or zones within a management area;
- (6) Restrictions on allowable fishing time;
- (7) Restrictions on allowable catches;
- (8) Permitting restrictions;
- (9) Additional restrictions on gear;
- (10) Overfishing definition;
- (11) Limitations on participation in the fishery in accordance with the control date guidelines listed below. These guidelines will apply until a stock rebuilding program is established.

(i) It is the intent of the Council that in the event that a system of assigning fishing rights is developed as part of the FMP, such assignments shall be based upon historical levels of participation in the fishery prior to March 25, 1991, with consideration for recent investments that have not yet been reflected in measures of participation.

(ii) New or re-rigged vessels will be given consideration in the assignment of fishing rights if:

(A) They were under construction or re-rigging for directed lobster fishing as of March 25, 1991, as evidenced by written construction contracts, work orders, equipment purchases, or other evidence of substantial investment and

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intent to participate in the lobster fishery; and

(B) They possessed an American lobster permit and landed lobster prior to March 25, 1992.

(iii) The public is further notified that it is the intent of the Council that historical participation will transfer with a vessel, for transfers made after March 25, 1991, unless such transfer is accompanied by a written document indicating the agreement of both buyer and seller that any future fishing rights applicable to that vessel are not being transferred with the vessel.

(iv) The Council further intends that any system of assigning fishing rights will take into consideration the following concerns relative to individuals or corporations that have sold a vessel within the time that may be chosen to determine historical fishing rights:

(A) The degree of economic dependence upon the lobster fishery including, but not limited to, the percentage of income derived from the lobster fishery;

(B) Extent of past participation in the lobster fishery; and

(C) Demonstration of intent prior to March 25, 1991, to re-enter the lobster fishery with a different vessel.

(12) Any other restrictions that the Council may designate for the purpose of reducing or controlling fishing mortality rates, except that an Individual Transferable Quota (ITQ) system would require a full FMP amendment.

(c) After developing necessary management measures and receiving public testimony, the Council shall make a recommendation to the Regional Director on or before July 20, 1995. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures 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 in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and

(4) Whether there will be a continuing evaluation of management measures adopted, following their promulgation as a final rule.

(d) If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(1) If the Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule, based on the factors specified in paragraph (c) of this section, the action will be published in the FEDERAL REGISTER as a final rule; or

(2) If the Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the FEDERAL REGISTER; or

(3) If the Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(e) At any time, the Council may make other adjustments to management measures implemented under this part pursuant to the provisions in § 649.44.

(f) Nothing in this section is meant to diminish the authority of the Secretary to take emergency action under section 305(c) of the Magnuson Act.

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§ 649.44 Framework specifications after the first year of implementation.

(a) Annually, upon request from the Council, the Regional Director will provide the Council with information of the status of the American lobster resource, based on the most recent stock assessment report.

(b) The Council and Atlantic States Fisheries Commission, through consultation with the ASMFC Lobster Scientific Committee within the stock assessment process and with the EMTs, shall continue to monitor the effectiveness of the Stock Rebuilding Program and to ensure, to the extent possible, that regional measures (within a Management Area) do not shift costs from one Management Area to another.

(c) In addition, the EMTs, on at least an annual basis, shall determine the extent to which the objectives of the FMP are being achieved and shall make recommendations to the Council for further management actions, if required.

(d) After receiving the EMT recommendations, the Council shall determine whether adjustments to, or additional management measures are necessary to meet the goals and objectives of the FMP. After considering the EMT's 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. The Council shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery. 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 may come from one or more of the following categories:

- (1) Minimum-size changes;
- (2) A maximum-size limit;
- (3) Trap limits;

(4) Seasonal closures of one or more management areas;

(5) Closed areas or zones within a management area;

(6) Restrictions on allowable fishing time;

(7) Restrictions on allowable catches;

(8) Permitting restrictions;

(9) Additional restrictions on gear;

(10) Overfishing definition;

(11) Limitations on participation in the fishery in accordance with the control date guidelines contained in § 649.44(b)(11). These guidelines will apply until a stock rebuilding program is established.

(12) Any other restrictions which the Council may designate for the purpose of reducing or controlling fishing mortality rates, except that an Individual Transferable Quota (ITQ) system would require a full FMP amendment.

(e) After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures 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 in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and

(4) Whether there will be a continuing evaluation of management measures adopted, following their promulgation as a final rule.

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(f) If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(1) If the Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule, based on the factors specified in paragraph (d) of this section, the action will be published in the FEDERAL REGISTER as a final rule; or

(2) If the Regional Director concurs with the Council's recommendation and determines that the recommended

management measures should be published first as a proposed rule, the action will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the FEDERAL REGISTER; or

(3) If the Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(g) Nothing in this section shall impair the authority of the Secretary to take emergency action under section 305(c) of the Magnuson Act.

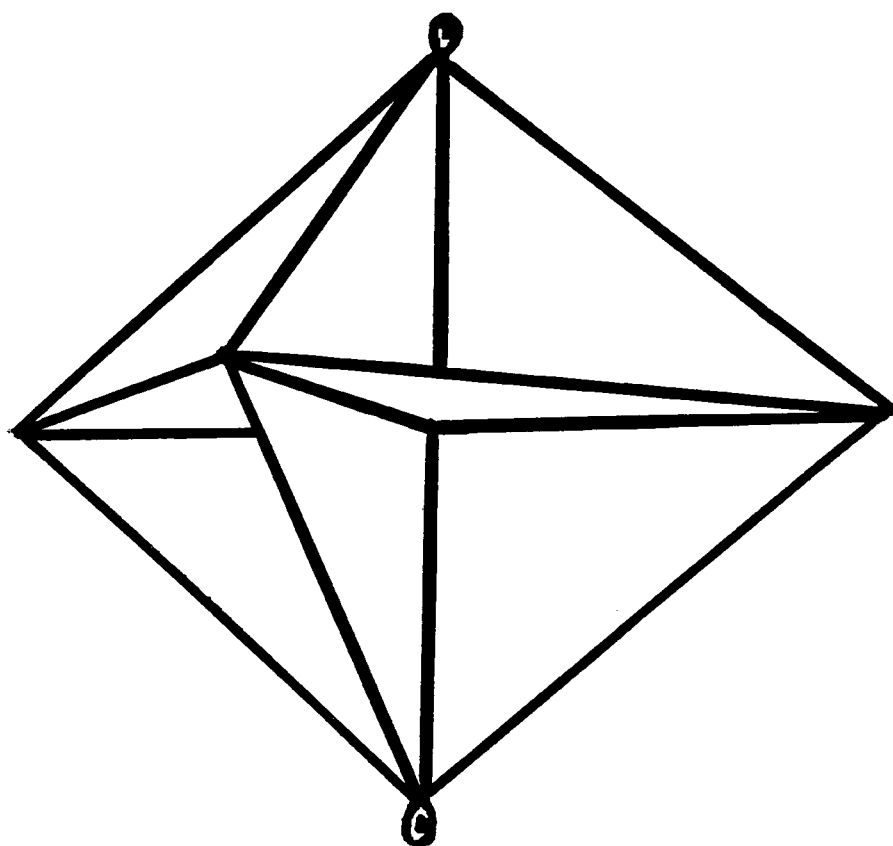


Figure 1 to Part 649. - Standard Tetrahedral Corner Radar Reflector

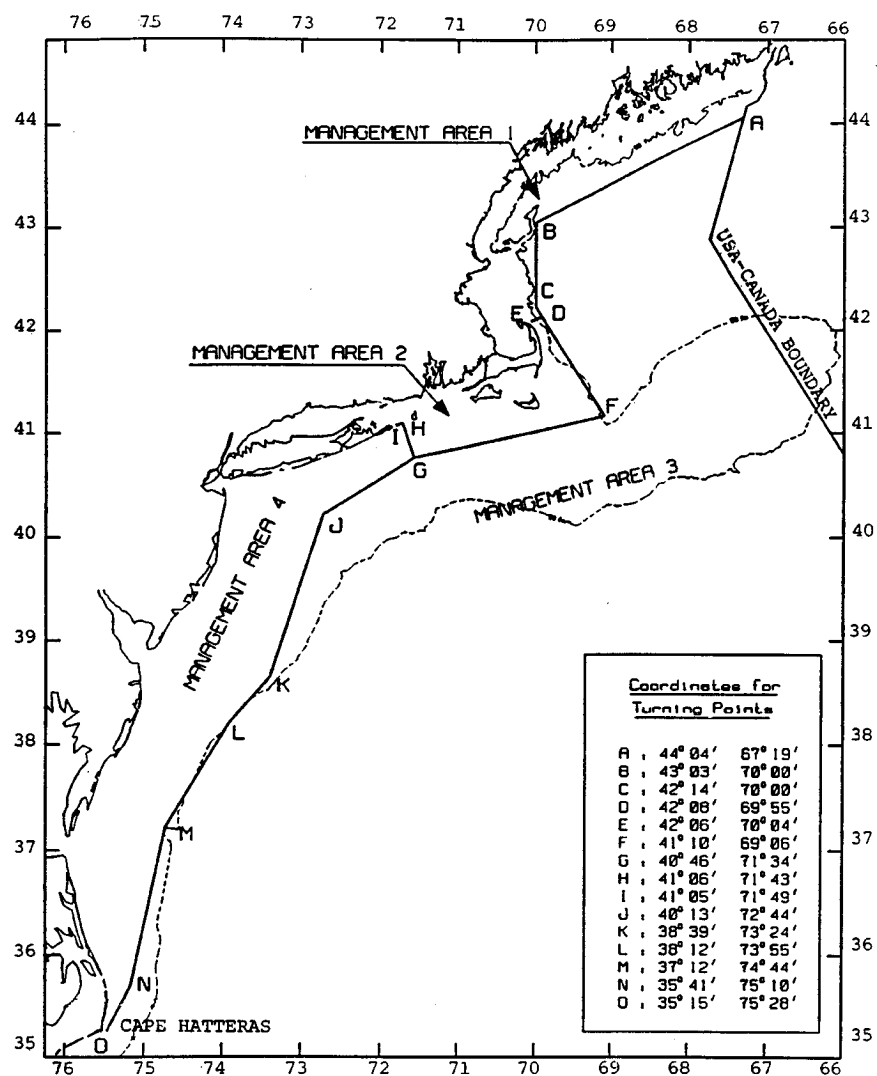


Figure 2. American lobster Management Areas established for the purposes of regional lobster management.

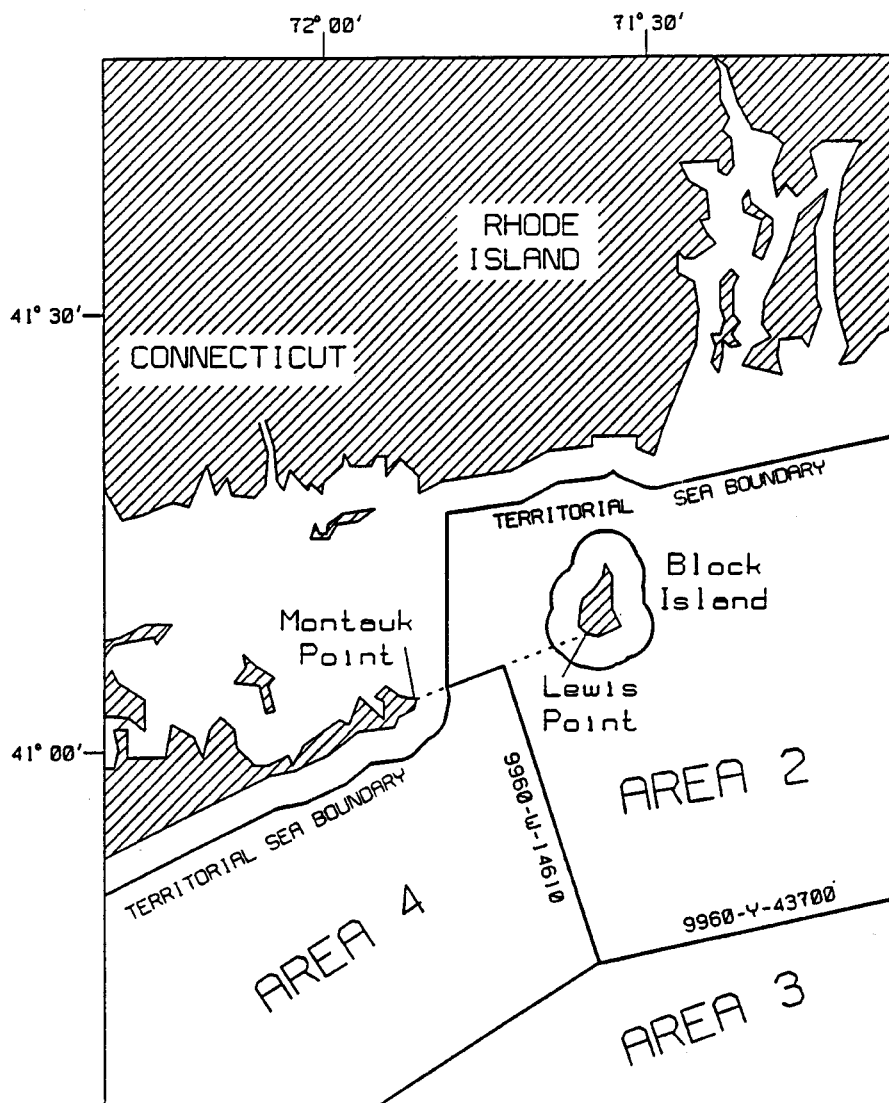


Figure 3. Seaward boundary lines of the Southern New England Nearshore Area (Area 2) and the Offshore Area (Area 3).

**PART 654—STONE CRAB FISHERY
OF THE GULF OF MEXICO**

Subpart A—General Measures

Sec.

- 654.1 Purpose and scope.
- 654.2 Definitions.
- 654.3 Relation to other laws.
- 654.4 Permits and fees. [Reserved]
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Subpart B—Management Measures

- 654.20 Seasons.
- 654.21 Harvest limitations.
- 654.22 Gear restrictions.
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- 654.26 Adjustment of management measures.
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APPENDIX A TO PART 654—FIGURES

- Figure 1—Stone Crab Claw
- Figure 2—Southwest Florida Seasonal Trawl Closure
- Figure 3—Shrimp/Stone Crab Separation Zones

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 60 FR 13919, Mar. 15, 1995, unless otherwise noted.

Subpart A—General Measures

§ 654.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, prepared by the Gulf of Mexico Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of stone crab and restricts the trawl fishery in the management area.

(c) “EEZ” refers to the EEZ in the management area, unless the context clearly indicates otherwise.

§ 654.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Management area means the EEZ off the coast of Florida from a line extending directly south from the Alabama/Florida boundary (87°31’06” W. long.) to a line extending directly east from the Dade/Monroe County, FL boundary (25°20.4’ N. lat.).

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 813-570-5301; or a designee.

Stone crab means *Menippe mercenaria*, *M. adina* or the hybrid, *M. adina* X *M. mercenaria*, or a part thereof.

§ 654.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b), (c), and (d) of this section.

(b) The regulations in this part are intended to be compatible with, and do not supersede, similar regulations in effect for the Everglades National Park (36 CFR 7.45).

(c) The regulations in this part are intended to be compatible with similar regulations and statutes in effect in Florida’s waters.

(d) Under Amendment 5 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, there is a temporary moratorium on the issuance by the Regional Director of Federal numbers and color codes to mark vessels and gear in the stone crab fishery in the management area. The moratorium will end not later than June 30, 1998. During the moratorium, fishermen must obtain numbers and color codes from Florida. (See § 654.6(a).)

§ 654.4 Permits and fees. [Reserved]

§ 654.5 Recordkeeping and reporting. [Reserved]

§ 654.6 Vessel and gear identification.

(a) An owner or operator of a vessel that is used to harvest stone crabs by traps in the management area must comply with the vessel and gear identification requirements applicable to the harvesting of stone crabs by traps in Florida’s waters in effect as of April 14, 1995, in Rule 62N-8.001 and Rule 46-

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13.002(2) (e) and (f), Florida Administrative Code. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904-487-0554. Copies may be inspected at the office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; or the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(b) A stone crab trap or buoy in the EEZ that is not in compliance with the gear identification requirements specified in paragraph (a) of this section is illegal. Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties. A stone crab trap will be presumed to be the property of the most recently documented owner.

[60 FR 13919, Mar. 15, 1995; 60 FR 20196, Apr. 28, 1995]

§ 654.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to display and maintain vessel and gear identification, as required by § 654.6(a).

(b) Possess a stone crab in the management area during the period specified in § 654.20(a).

(c) Possess a stone crab trap in the management area during the period specified in § 654.20(c).

(d) Remove from a stone crab in or from the management area, or possess in the management area, a claw that is less than the minimum size limit specified in § 654.21(a).

(e) Fail to return immediately to the water unharmed an egg-bearing stone crab, or strip eggs from or otherwise molest an egg-bearing stone crab; as specified in § 654.21(b).

(f) Hold a stone crab in or from the management area aboard a vessel other than as specified in § 654.21(c).

(g) Use or possess in the management area a stone crab trap that does not have a biodegradable panel, as specified in § 654.22(a).

(h) Pull or tend a stone crab trap in the management area other than during daylight hours, as specified in § 654.22(b).

(i) Willfully tend, open, pull, or otherwise molest another fisherman's trap, buoy, or line in the management area, as specified in § 654.22(c).

(j) Trawl in a closed area or during a closed season, as specified in §§ 654.23 or 654.24, or as may be implemented under § 654.25(b).

(k) Place a stone crab trap in a closed area or during a closed season, as specified in § 654.24, or as may be implemented under § 654.25(b).

(l) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 654.25(a).

(m) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of stone crab.

(n) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 654.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 654.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 654.20 Seasons.

(a) *Closed season.* No person may possess a stone crab in the management area from 12:01 a.m., local time, May 16, through 12 p.m. midnight, local time, October 14, each year. Holding a stone crab in a trap in the water during a soak period or during a removal period (see paragraph (b) of this section), or during any extension thereto, is not deemed possession, provided that, if the trap is removed from the water

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during such period, such crab is returned immediately to the water with its claws unharvested.

(b) *Placement of traps.* (1) *Prior to the fishing season.* The period of October 5 through October 14 is established as a trap soak period. A stone crab trap may be placed in the management area not earlier than 1 hour before sunrise on October 5.

(2) *After the fishing season.* The period of May 16 through May 20 is established as a trap removal period. A stone crab trap must be removed from the management area not later than 1 hour after sunset on May 20, unless an extension to the removal period is granted under paragraph (b)(2)(i) of this section and the extension authorization is carried aboard the fishing vessel as specified in paragraph (b)(2)(ii) of this section.

(i) An extension of the removal period may be granted by Florida in accordance with Rule 46-13.002(2)(b), Florida Administrative Code, in effect as of April 14, 1995. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904-487-0554. Copies may be inspected at the office of the Regional Director, or the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC.

(ii) The extension authorization must be carried aboard the fishing vessel. The operator of a fishing vessel must present the authorization for inspection upon request of an authorized officer.

(c) *Possession of stone crab traps.* A stone crab trap may not be possessed in the management area from the end of the trap removal period, or an extension thereto, to the beginning of the trap soak period, as specified in paragraph (b) of this section. A stone crab trap, float, or rope in the management area during this period will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized offi-

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ficier. An owner of such trap, float, or rope remains subject to appropriate civil penalties.

§ 654.21 Harvest limitations.

(a) *Claw size.* No person may remove from a stone crab in or from the management area, or possess in the management area, a claw with a propodus measuring less than 2.75 inches (7.0 cm), measured in a straight line from the elbow to the tip of the lower immovable finger. The propodus is the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body when the entire appendage is extended. (See Appendix A, Figure 1, of this part.)

(b) *Egg-bearing stone crabs.* An egg-bearing stone crab in or from the management area must be returned immediately to the water unharmed—without removal of a claw. An egg-bearing stone crab may not be stripped of its eggs or otherwise molested.

(c) *Holding stone crabs.* A live stone crab in or from the management area may be held aboard a vessel until such time as a legal-sized claw is removed, provided it is held in a container that is shaded from direct sunlight and it is wet with sea water as necessary to keep it in a damp condition. Containers holding stone crabs must be stacked in a manner that does not compress the crabs. A stone crab body from which a legal-sized claw has been removed must be returned to the sea before the vessel reaches shore or a port or dock.

§ 654.22 Gear restrictions.

(a) *Biodegradable panels.* A stone crab trap used or possessed in the management area must have a panel constructed of wood or cotton and located on a side of the trap at least two slats above the bottom, or on the top of the trap, which, when removed, will leave an opening in the trap measuring at least 2.5 inches by 5 inches (6.35 cm by 12.7 cm).

(b) *Daylight hours.* A stone crab trap in the management area may be pulled or tended during daylight hours only—that is, from 1 hour before sunrise to 1 hour after sunset.

(c) *Gear belonging to others.* No fisherman may willfully tend, open, pull, or

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otherwise molest another fisherman's trap, buoy, or line in the management area without the prior written consent of that fisherman.

§ 654.23 Southwest Florida seasonal trawl closure.

From January 1 to 1 hour after sunset (local time) May 20, each year, the area described in this section is closed to trawling, including trawling for live bait. The area is that part of the management area shoreward of a line connecting the following points (see Appendix A, Figure 2, of this part):

Point	North Latitude	West Longitude
B ¹	26°16'	81°58.5'
C	26°00'	82°04'
D	25°09'	81°47.6'
E	24°54.5'	81°50.5'
M ¹	24°49.3'	81°46.4'

¹ On the seaward limit of Florida's waters.

§ 654.24 Shrimp/stone crab separation zones.

Five zones are established in the management area and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. The zones are as shown in Appendix A, Figure 3, of this part. Although Zone II is entirely within Florida's waters, it is included in this section and Appendix A, Figure 3, of this part for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46-38.001, Florida Administrative Code. Geographical coordinates of the points referred to in this paragraph and shown in Appendix A, Figure 3, of this part are as follows (loran readings are unofficial and are included only for the convenience of fishermen):

Point	North latitude	West longitude	Loran Chain 7980			
			W	X	Y	Z
A	28°59'30"	82°45'36"	14416.5	31409.4	45259.1	62895.3
B	28°59'30"	83°00'10"	14396.0	31386.3	45376.8	63000.0
C	28°26'01"	82°59'47"	14301.5	31205.9	45103.2	63000.0
D	28°26'01"	82°56'54"	14307.0	31212.2	45080.0	62981.3
E	28°41'39"	82°55'25"	14353.7	31300.2	45193.9	62970.0
F	28°41'39"	82°56'09"	14352.4	31298.6	45199.4	62975.0
G	28°48'56"	82°56'19"	14372.6	31337.2	45260.0	62975.0
H	28°53'51"	82°51'19"	14393.9	31371.8	45260.0	62938.7
I	28°54'43"	82°44'52"	(¹)	(¹)	(¹)	(¹)
J	28°51'09"	82°44'00"	(²)	(²)	(²)	(²)
K	28°50'59"	82°54'16"	14381.6	31351.8	45260.0	62960.0
L	28°41'39"	82°53'56"	14356.2	31303.0	45181.7	62960.0
M	28°41'39"	82°38'46"	(³)	(³)	(³)	(³)
N	28°41'39"	82°53'12"	14357.4	31304.4	45176.0	62955.0
O	28°30'51"	82°55'11"	14323.7	31242.4	45104.9	62970.0
P	28°40'00"	82°53'08"	14352.9	31295.7	45161.8	62955.0
Q	28°40'00"	82°47'58"	14361.3	31305.4	45120.0	62920.0
R	28°35'14"	82°47'47"	14348.6	31280.6	45080.0	62920.0
S	28°30'51"	82°52'55"	14327.7	31247.0	45086.6	62955.0
T	28°27'46"	82°55'09"	14315.2	31225.8	45080.0	62970.0
U	28°30'51"	82°52'09"	14329.1	31248.6	45080.0	62949.9

¹ Crystal River Entrance Light 1A.

² Long Pt. (southwest tip).

³ Shoreline.

(a) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ during the period October 5 through May 20, each year.

(b) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M.

(c) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ during the period October 5 through May 20, each year.

(d) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(1) It is unlawful to place a stone crab trap in that part of Zone IV that

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is in the EEZ during the periods October 5 through December 1, and April 2 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone IV that is in the EEZ during the period December 2 through April 1, each year.

(e) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(1) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ during the periods October 5 through November 30, and March 16 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone V that it is in the EEZ during the period December 1 through March 15, each year.

(f) A stone crab trap, float, or rope in the management area during a period not authorized by this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, float, or rope remains subject to appropriate civil penalties. A stone crab trap will be presumed to be the property of the most recently documented owner.

§ 654.25 Prevention of gear conflicts.

(a) No person may knowingly place in the management area any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and limitations of the Fishery Manage-

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ment Plan for the Stone Crab Fishery of the Gulf of Mexico, the Regional Director may modify or establish separation zones for shrimp trawling and the use of fixed gear as may be necessary and appropriate to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the FEDERAL REGISTER.

§ 654.26 Adjustment of management measures.

In accordance with the procedures and limitations of the fishery management plan for the Stone Crab Fishery of the Gulf of Mexico, the Regional Director may establish or modify the following management measures: Limitations on the number of traps that may be fished by each vessel; construction characteristics of traps; gear and vessel identification requirements; gear that may be used or prohibited in a directed fishery; bycatch levels in non-directed fisheries; seasons; soak/removal periods and requirements for traps; use, possession and handling of stone crabs aboard vessels; and minimum legal sizes.

§ 654.27 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations in this part.

APPENDIX A TO PART 654—FIGURES

Figure 1—Stone Crab Claw

Figure 2—Southwest Florida Seasonal Trawl Closure

Figure 3—Shrimp/Stone Crab Separation Zones

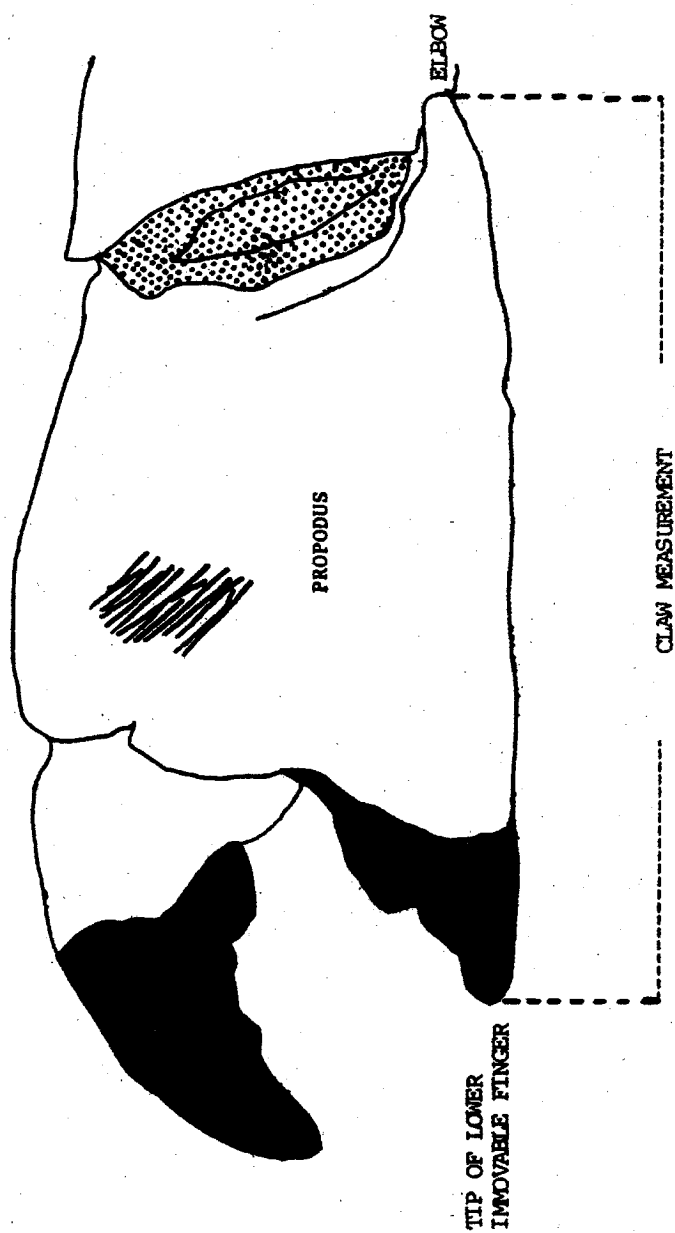


FIGURE 1. STONE CRAB CLAW

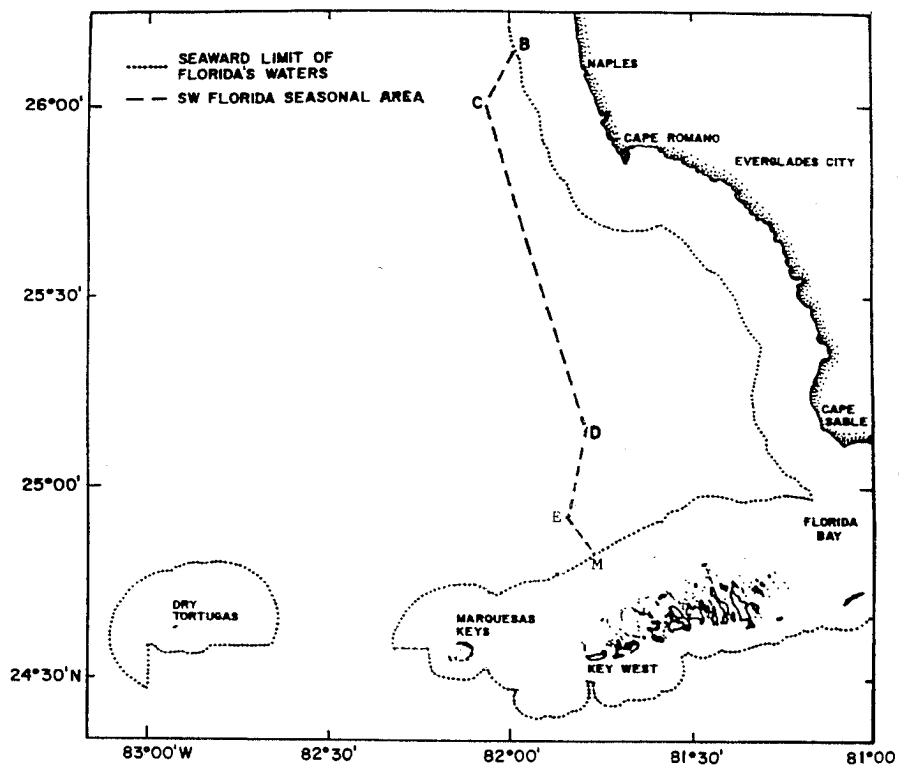


FIGURE 2. SOUTHWEST FLORIDA SEASONAL TRAWL CLOSURE

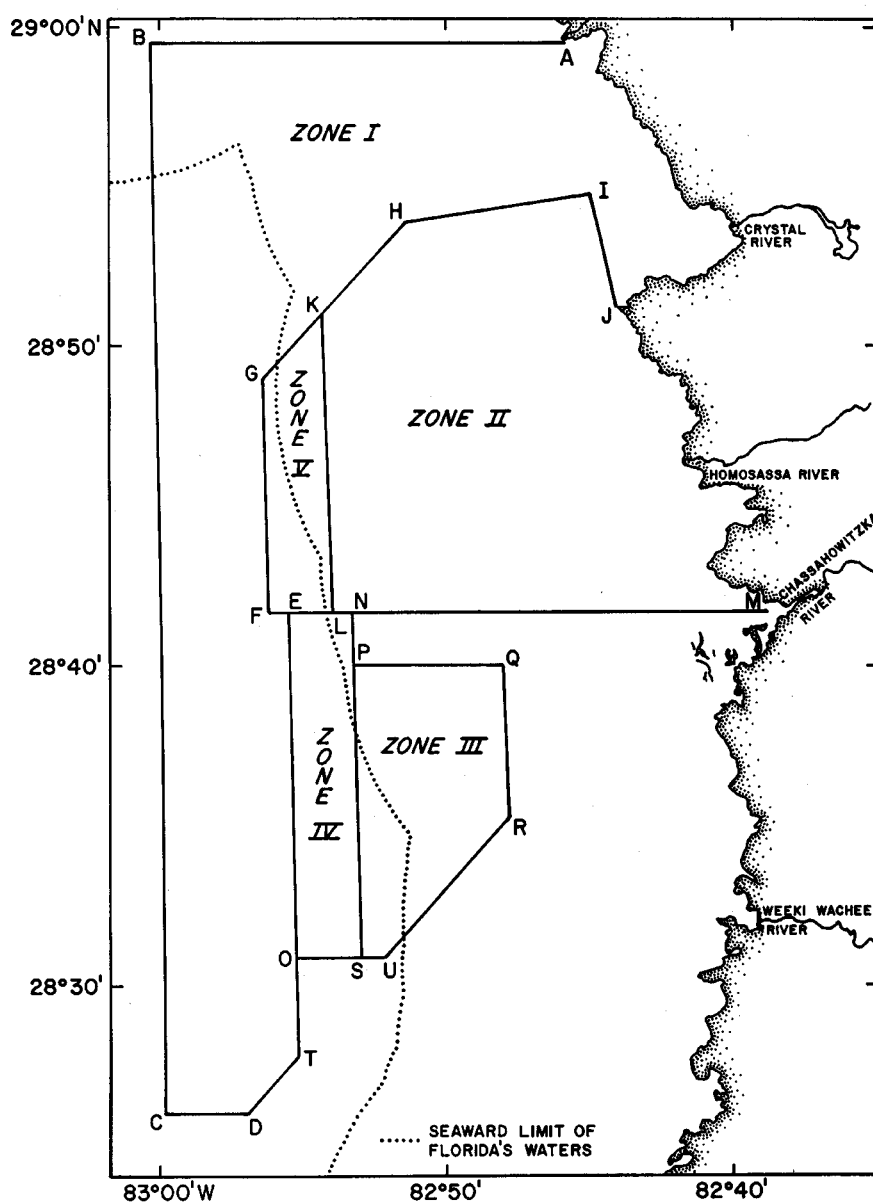


Figure 3. Shrimp/stone crab separation zones.

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**PART 660—FISHERIES OFF WEST
COAST AND WESTERN PACIFIC
STATES**

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Table 1 to Part 660—Quotas for Precious Corals Permit Areas

Table 2 to Part 660—Vessel Capacity Ratings for West Coast Groundfish Limited Entry Permits

Figures—Part 660

Figure 1 to Part 660—Carapace Length of Lobsters

Figure 2 to Part 660—Length of a Longline Vessel

Figure 3 to Part 660—Dressed, Head-off Length of Salmon

AUTHORITY: 16 U.S.C. 1801 *et. seq.*

SOURCE: 61 FR 34572, July 2, 1996, unless otherwise noted.

Subpart A—General

§ 660.1 Purpose and scope.

(a) The regulations in this part govern fishing for Western Pacific and West Coast fishery management unit species by vessels of the United States that operate or are based inside the outer boundary of the EEZ off Western Pacific and West Coast States.

(b) General regulations governing fishing by all vessels of the United States and by fishing vessels other than vessels of the United States are contained in part 600 of this chapter.

§ 660.2 Relation to other laws.

NMFS recognizes that any state law pertaining to vessels registered under the laws of that state while operating in the fisheries regulated under this part, and that is consistent with this part and the FMPs implemented by this part, shall continue in effect with respect to fishing activities regulated under this part.

§ 660.3 Reporting and recordkeeping.

Except for fisheries subject to subparts D and F of this part, any person who is required to do so by applicable state law or regulation must make and/or file all reports of management unit species landings containing all data and in the exact manner required by applicable state law or regulation.

Subpart B—Western Pacific Fisheries—General

§ 660.11 Purpose and scope.

(a) This subpart contains regulations that are common to all Western Pacific fisheries managed under fishery management plans prepared by the Western Pacific Fishery Management Council under the Magnuson Act.

(b) Regulations specific to individual fisheries are included in subparts C, D, E, and F of this part.

§ 660.12 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in subparts B through F of this part have the following meanings:

Bottomfish FMP means the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region.

Bottomfish management area means the areas designated in § 660.69.

Bottomfish management unit species means the following fish:

Common name	Local name	Scientific name
Snappers:		
Silver jaw jobfish	Lehi (H); palu-gustusilvia (S)	<i>Aphareus rutilans.</i>
Gray jobfish	Uku (H); asoama (S)	<i>Aprion virescens.</i>
Squirrelfish snapper	Ehu (H); palu-malau (S)	<i>Etelis carbunculus.</i>
Longtail snapper	Onaga, ula'T1ula (H); palu-loa (S)	<i>Etelis coruscans.</i>
Blue stripe snapper	Ta'ape (H); savane (S); funai (G)	<i>Lutjanus kasmira.</i>
Yellowtail snapper	Palu-i' lusama (S); yellowtail kalekale	<i>Pristipomoides auricilla.</i>
Pink snapper	Opakapaka (H); palu-'Tiena'lana (S); gadao (G).	<i>Pristipomoides.</i>
Yelloweye snapper	Palusina (S); yelloweye opakapaka	<i>Pristipomoides flavipinnis.</i>
Snapper	Kalekale (H)	<i>Pristipomoides sieboldii.</i>
Snapper	Gindai (H,G); palu-sega (S)	<i>Pristipomoides zonatus.</i>
Jacks:		
Giant trevally	White ulua (H); tarakito (G); sapo-anae (S).	<i>Caranx ignobilis.</i>
Black jack	Black ulua (H); tarakito (G); tafaui (S) ...	<i>Caranx lugubris.</i>
Thick lipped trevally	Pig ulua (H); butaguchi (H)	<i>Pseudocaranx dentex.</i>
Amberjack	Kahala (H)	<i>Seriola dumeril.</i>
Groupers:		
Blacktip grouper	Fausi (S); gadau (G)	<i>Epinephelus fasciatus.</i>

Common name	Local name	Scientific name
Sea bass	Hapu' 1upu'u (H)	<i>Epinephelus quernus</i> .
Lunartail grouper	Papa (S)	<i>Variola louti</i> .
Emperor fishes:		
Ambon emperor	Filoa-gutumumu (S)	<i>Lethrinus amboinensis</i> .
Redgill emperor	Filoa-pa'lo'omumu (S); mafuti (G)	<i>Lethrinus rubrioperculatus</i> .

NOTES: G—Guam; H—Hawaii; S—American Samoa.

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace of a spiny lobster (see Figure 1 of this part).

Commercial fishing, as used in subpart D of this part, means fishing with the intent to sell all or part of the catch of lobsters. All lobster fishing in Crustaceans Permit Area 1 is considered commercial fishing.

Council means the Western Pacific Fishery Management Council.

Crustaceans FMP means the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region.

Crustaceans management area means the combined portions of the EEZ encompassed by Crustaceans Permit Areas 1, 2, and 3.

Crustaceans management unit species means spiny lobster (*Panulirus marginatus* or *Panulirus penicillatus*), slipper lobster (family *Scyllaridae*), and Kona crab (*Ranina ranina*).

Crustaceans Permit Area 1 (Permit Area 1) means the EEZ off the Northwestern Hawaiian Islands.

Crustaceans Permit Area 2 (Permit Area 2) means the EEZ off the main Hawaiian Islands.

Crustaceans Permit Area 3 (Permit Area 3) means the EEZ of the Territory of Guam and the EEZ of the Territory of American Samoa.

Crustaceans receiving vessel means a vessel of the United States to which lobster taken in Permit Area 1 are transferred from another vessel.

Dead coral means any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed.

EFP means an experimental fishing permit.

First level buyer means:

(1) The first person who purchases, with the intention to resell, management unit species, or portions thereof,

that were harvested by a vessel that holds a permit or is otherwise regulated under subpart D of this part; or

(2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving management unit species (such as the services provided by a wholesale auction facility).

Fish dealer means any person who:

(1) Obtains, with the intention to resell, Pacific pelagic management unit species, or portions thereof, that were harvested or received by a vessel that holds a permit or is otherwise regulated under subpart E of this part; or

(2) Provides recordkeeping, purchase, or sales assistance in obtaining or selling such management unit species (such as the services provided by a wholesale auction facility).

Fisheries Management Division (FMD) means the Chief, Fisheries Management Division, Southwest Regional Office, NMFS, or a designee. See Table 1 to §600.502 for the address of the Regional Office.

Fishing gear, as used in subpart D of this part, includes:

(1) *Bottom trawl*, which means a trawl in which the otter boards or the footrope of the net are in contact with the sea bed.

(2) *Gillnet*, (see §600.10).

(3) *Hook-and-line*, which means one or more hooks attached to one or more lines.

(4) *Set net*, which means a stationary, buoyed, and anchored gill net.

(5) *Trawl*, (see §600.10).

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

Harvest guideline means a specified numerical harvest objective.

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Hawaii longline limited access permit means the permit required by § 660.21 to use a vessel to fish for Pacific pelagic management unit species with longline gear in the EEZ around Hawaii or to land or transship longline-caught Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

Incidental catch or *incidental species* means species caught while fishing for the primary purpose of catching a different species.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Council, holders of permits issued under subpart D of this part, and any person who has notified the Regional Director of his or her interest in the procedures and decisions described in §§ 660.51 and 660.52, and who has specifically requested to be considered an “interested party.”

Land or *landing* means offloading fish from a fishing vessel, arriving in port to begin offloading fish, or causing fish to be offloaded from a fishing vessel.

Length overall (LOA) or *length* of a vessel, as used in § 660.21(i), means the horizontal distance, rounded to the nearest foot (with 0.5 ft and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 2 of this part). “Stem” is the foremost part of the vessel, consisting of a section of timber or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end. “Stern” is the aftermost part of the vessel.

Live coral means any precious coral that is free of holes from borers, and has no discoloration or encrustation on the skeleton at the time of removal from the seabed.

Lobster closed area means an area of the EEZ that is closed to fishing for lobster.

Longline fishing prohibited area means the portions of the EEZ in which longline fishing is prohibited as specified in § 660.26.

Longline fishing vessel means a vessel that has longline gear on board the vessel.

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nm in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

Longline general permit means the permit required by § 660.21 to use a vessel to fish for Pacific pelagic management unit species in the fishery management area, excluding the EEZ around Hawaii, or to land or transship longline-caught fish shoreward of the outer boundary of the fishery management area, excluding the waters shoreward of the EEZ around Hawaii.

Main Hawaiian Islands means the islands of the Hawaiian Islands Archipelago lying to the east of 161° W. long.

Non-precious coral means any species of coral other than those listed under the definition for precious coral in this section.

Non-selective gear means any gear used for harvesting corals that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead corals.

Northwestern Hawaiian Islands (NWHI) means the islands of the Hawaiian Islands Archipelago lying to the west of 161° W. long.

Offloading means removing management unit species from a vessel.

Owner, as used in subparts C and D of this part, means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG-1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or territory or the USCG for an undocumented vessel. As used in subpart E and F of this part, owner has the meaning in § 600.10 of this chapter.

Pacific Area Office means the Pacific Area Office, Southwest Region, NMFS,

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located in Honolulu, HI. The address and phone number may be obtained from the Regional Director whose address is in Table 1 to § 600.502.

Pacific pelagic management unit species means the following fish:

Common name	Scientific name
Mahimahi (dolphin fish)	<i>Coryphaena</i> spp.
Marlin and spearfish	<i>Makaira</i> spp.
Oceanic sharks	<i>Tetrapturus</i> spp.
	Family Alopiidae.
	Family Carcharhinidae.
	Family Lamnidae.
	Family Sphyrnidae.
Sailfish	<i>Istiophorus platypterus</i> .
Swordfish	<i>Xiphias gladius</i> .
Tuna and related species	<i>Allothunnus</i> spp., <i>Auxis</i> spp.
	<i>Euthynnus</i> spp.,
	<i>Gymnosarda</i> spp.
	<i>Katsuwonus</i> spp., <i>Scomber</i> spp.
	<i>Thunnus</i> spp.
Wahoo	<i>Acanthocybium solandri</i> .

Pelagics FMP means the Fishery Management Plan for Pelagic Species Fisheries of the Western Pacific Region.

Precious coral means any coral of the genus *Corallium* in addition to the following species of corals:

Common name	Scientific name
Pink coral (also known as red coral).	<i>Corallium secundum</i> .
Pink coral (also known as red coral).	<i>Corallium regale</i> .
Pink coral (also known as red coral).	<i>Corallium laauense</i> .
Gold coral	<i>Gerardia</i> spp.
Gold coral	<i>Callogorgia gilberti</i> .
Gold coral	<i>Narella</i> spp.
Gold coral	<i>Calyptrophora</i> spp.
Bamboo coral	<i>Lepidisis olapa</i> .
Bamboo coral	<i>Acanella</i> spp.
Black coral	<i>Antipathes dichotoma</i> .
Black coral	<i>Antipathes grandis</i> .
Black coral	<i>Antipathes ulex</i> .

Precious coral permit area means the area encompassing the precious coral beds in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) *Established beds*. Makapuu (Oahu), Permit Area E-B-1, includes the area within a radius of 2.0 nm of a point at 21°18.0' N. lat., 157°35.5' W. long.

(2) *Conditional beds*. (i) Keahole Point (Hawaii), Permit Area C-B-1, includes the area within a radius of 0.5 nm of a point at 19°46.0' N. lat., 156°06.0' W. long.

(ii) Kaena Point (Oahu), Permit Area C-B-2, includes the area within a ra-

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dius of 0.5 nm of a point at 21°35.4' N. lat., 158°22.9' W. long.

(iii) Brooks Bank, Permit Area C-B-3, includes the area within a radius of 2.0 nm of a point at 24°06.0' N. lat., 166°48.0' W. long.

(iv) 180 Fathom Bank, Permit Area C-B-4, N.W. of Kure Atoll, includes the area within a radius of 2.0 nm of a point at 28°50.2' N. lat., 178°53.4' W. long.

(3) *Refugia*. Westpac Bed, Permit Area R-1, includes the area within a radius of 2.0 nm of a point at 28°50.2' N. lat., 162°35.0' W. long.

(4) *Exploratory areas*. (1) Permit Area X-P-H includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the State of Hawaii.

(ii) Permit Area X-P-AS includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of American Samoa.

(iii) Permit Area X-P-G includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of Guam.

(iv) Permit Area X-P-PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the U.S. Pacific Island possessions.

Protected species means an animal protected under the MMPA, listed under the ESA, or subject to the Migratory Bird Treaty Act, as amended.

Protected species study zones means the waters within a specified distance, designated by the Regional Director pursuant to § 660.66, around the following islands of the NWHI and as measured from the following coordinates: Nihoa Island 23°05' N. lat., 161°55' W. long.; Necker Island 23°35' N. lat., 164°40' W. long.; French Frigate Shoals 23°45' N. lat., 166°15' W. long.; Gardner Pinnacles 25°00' N. lat., 168°00' W. long.; Maro Reef 25°25' N. lat., 170°35' W. long.; Laysan Island 25°45' N. lat., 171°45' W. long.; Lisianski Island 26°00' N. lat., 173°55' W. long.; Pearl and Hermes Reef 27°50' N. lat., 175°50' W. long.; Midway Island 28°14' N. lat., 177°22' W. long.; and Kure Island 28°25' N. lat., 178°20' W. long. The protected species study zones encompasses waters within 50 nm of the geographical coordinates listed above.

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Protected species zone means an area, designated under § 660.26, measured from the center geographical positions of certain islands and reefs in the NWHI, as follows: Nihoa Island 23°05' N. lat., 161°55' W. long.; Necker Island 23°35' N. lat., 164°40' W. long.; French Frigate Shoals 23°45' N. lat., 166°15' W. long.; Gardner Pinnacles 25°00' N. lat., 168°00' W. long.; Maro Reef 25°25' N. lat., 170°35' W. long.; Laysan Island 25°45' N. lat., 171°45' W. long.; Lisianski Island 26°00' N. lat., 173°55' W. long.; Pearl and Hermes Reef 27°50' N. lat., 175°50' W. long.; Midway Islands 28°14' N. lat., 177°22' W. long.; and Kure Island 28°25' N. lat., 178°20' W. long. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semi-circles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the protected species zone.

Qualifying landing means a landing that meets a standard required for permit eligibility under § 660.61.

(1) *Permit renewal.* A qualifying landing for permit renewal under § 660.61(e) is a landing that contained 2,500 lb (1,134 kg) of bottomfish from the NWHI or a landing of at least 2,500 lb (1,134 kg) of fish from the NWHI, of which at least 50 percent by weight was bottomfish.

(2) *New access eligibility points.* A qualifying landing for eligibility points under § 660.61(g) is any landing of bottomfish from the NWHI, regardless of weight, if made on or before August 7, 1985; or a landing of at least 2,500 lb (1,134 kg) of bottomfish lawfully harvested from the NWHI, or a landing of at least 2,500 lb (1,134 kg) of fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

Receiving vessel permit means a permit required by § 660.21(c) for a receiving vessel to transship or land Pacific pelagic management unit species taken by other vessels using longline gear.

Regional Director means the Director, Southwest Region, NMFS (see Table 1 of § 600.502 for address).

Seamount groundfish means the following species:

Common name	Scientific name
Armorhead	Pentaceros richardsoni.
Alfonsin	Beryx splendens.
Rattfish	Hyperoglyphe japonica.

Selective gear means any gear used for harvesting corals that can discriminate or differentiate between type, size, quality, or characteristics of living or dead corals.

Special Agent-In-Charge (SAC) means the Special Agent-In-Charge, NMFS, Office of Enforcement, Southwest Region, or a designee of the Special Agent-In-Charge.

Transship means offloading or otherwise transferring management unit species or products thereof to a receiving vessel.

Trap means a box-like device used for catching and holding lobsters.

U.S. harvested corals means coral caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan has been implemented under the Magnuson Act.

Vessel monitoring system unit (VMS unit) means the hardware and software equipment owned by NMFS, installed on vessels by NMFS, and required by subpart C of this part to track and transmit the positions from longline fishing vessels.

§ 660.13 Permits and fees.

(a) *Applicability.* The requirements for permits for specific Western Pacific fisheries are set forth in subparts C through F of this part.

(b) *Validity.* Each permit is valid for fishing only in the specific fishery management areas identified on the permit.

(c) *Application.* (1) A Southwest Region Federal Fisheries application form may be obtained from the Pacific Area Office to apply for a permit to operate in any of the fisheries regulated under subparts C, D, E, and F of this part. In no case shall the Pacific Area Office accept an application that is not on the Southwest Region Federal Fisheries application form. A completed application is one that contains all the necessary information, attachments,

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certifications, signatures, and fees required.

(2) A minimum of 15 days should be allowed for processing a permit application. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Change in application information.* A minimum of 10 days should be given for the Pacific Area Office to record any change in information from the permit application submitted under paragraph (c) of this section. Failure to report such changes may result in invalidation of the permit.

(e) *Issuance.* After receiving a complete application, the FMD will issue a permit to an applicant who is eligible under § 660.21, § 660.41, § 660.61, or § 660.81, as appropriate.

(f) *Fees.* (1) No fee is required for a permit issued under subparts D, E, and F of this part.

(2) A fee is charged for each application for a Hawaii longline limited access permit (including permit transfers and permit renewals). The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Director, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of a Hawaii longline limited access permit.

(g) *Expiration.* Permits issued under this subpart will remain valid for the period specified on the permit unless transferred, revoked, suspended, or modified under 15 CFR part 904.

(h) *Replacement.* Replacement permits may be issued, without charge, to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(i) *Transfer.* An application for a permit transfer as allowed under § 660.21(h), § 660.41(e), or § 660.61(c) and (d) must be submitted to the Pacific Area Office as described in paragraph (c) of this section.

(j) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(k) *Display.* Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing management unit species shoreward of the outer boundary of the fishery management area. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(l) *Sanctions.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

(m) *Permit appeals.* Procedures for appeals of permit and administrative actions are specified in the relevant subparts of this part.

§ 660.14 Reporting and recordkeeping.

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§ 660.21, 660.41, or 660.81 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Director. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to the Regional Director within 72 hours of each landing of management unit species. Each form must be signed and dated by the fishing vessel operator.

(b) *Transshipment logbooks.* Any person subject to the requirements of § 660.21(c) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Regional Director. All information specified on the forms must be recorded on the forms within 24 hours of the day of transshipment. The original logbook form for each day of transshipment activity must be submitted to the Regional Director within 72 hours of each landing of management unit species. Each form must be signed and dated by the receiving vessel operator.

(c) *Sales report.* The operator of any fishing vessel subject to the requirements of § 660.41 must submit to the

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Regional Director, within 72 hours of offloading of crustaceans management unit species, an accurate and complete sales report on a form provided by the Regional Director. The form must be signed and dated by the fishing vessel operator.

(d) *Packing or weigh-out slips.* The operator of any fishing vessel subject to the requirements of §660.41 must attach packing or weighout slips provided to the operator by the first-level buyer(s), unless the packing or weighout slips have not been provided in time by the buyer(s).

(e) *Modification of reporting and recordkeeping requirements.* The Regional Director may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the fishing record forms, transshipment logbook, and sales report forms and timeliness by which the information is to be provided, including the submission of packing or weighout slips.

(f) *Availability of records for inspection.*
(1) *Pacific pelagic management unit species.* Upon request, any fish dealer must immediately provide an authorized officer access for inspecting and copying all records of purchases, sales, or other transactions involving Pacific pelagic management unit species taken or handled by longline vessels that have permits issued under this subpart or that are otherwise subject to subpart C of this part, including, but not limited to, information concerning:

(i) The name of the vessel involved in each transaction and the owner or operator of the vessel.

(ii) The weight, number, and size of each species of fish involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(2) *Crustaceans management unit species.* Upon request, any first-level buyer must immediately allow an authorized officer and any employee of NMFS designated by the Regional Director, to access, inspect, and copy all records described in paragraph (a) of this section relating to crustacean management unit species taken by vessels that have permits issued under this subpart or that are otherwise subject to subpart D of this part.

(3) *Bottomfish and seamount groundfish management unit species.* Any person who is required by state laws and regulations to maintain records of landings and sales for vessels regulated by this subpart and subpart E of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer.

(g) *State reporting.* Any person who has a permit under §§660.21 or 660.61 and who is required by state laws and regulations to maintain and submit records of landings and sales for vessels regulated by subparts C and E of this part must maintain and submit those records in the exact manner required by state laws and regulations.

§ 660.15 Prohibitions.

In addition to the prohibitions in §600.725 of this chapter, it is unlawful for any person to:

(a) Engage in fishing without a valid permit or facsimile of a valid permit on board the vessel and available for inspection by an authorized officer, when a permit is required under §660.13 or §660.17, unless the vessel was at sea when the permit was issued under §660.13, in which case the permit must be on board the vessel before its next trip.

(b) File false information on any application for a fishing permit under §660.13 or an EFP under §660.17.

(c) Fail to file reports in the exact manner required by any state law or regulation, as required in §660.14.

(d) Falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other record or report required under §§ 660.14 and 660.17.

(e) Refuse to make available to an authorized officer or a designee of the Regional Director for inspection or copying, any records that must be made available in accordance with §660.14.

(f) Fail to affix or maintain vessel or gear markings, as required by §§660.16, 660.24, and 660.47.

(g) Violate a term or condition of an EFP issued under §660.17.

(h) Fail to report any take of or interaction with protected species as required by §660.17(k).

(i) Fish without an observer on board the vessel after the owner or agent of

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the owner has been directed by NMFS to make accommodations available for an observer under §§ 660.17, 660.28, 660.49, or 660.65.

(j) Refuse to make accommodations available for an observer when so directed by the Regional Director under § 660.28, § 660.49, or § 660.65, or under any provision in an EFP issued under § 660.17.

(k) Fail to notify officials as required in §§ 660.23, 660.28, 660.43, and 660.63.

§ 660.16 Vessel identification.

(a) Each fishing vessel subject to this subpart must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be visible from enforcement vessels and aircraft.

(b) The official number must be affixed to each vessel subject to this subpart and subparts C, D, E, and F of this part, in block Arabic numerals at least 18 inches (45.7 cm) in height for fishing and receiving vessels of 65 ft (19.8 m) LOA or longer, and at least 10 inches (25.4 cm) in height for all other vessels, except vessels subject to Subpart F and 65 ft (19.8 m) LOA or longer must be marked in block Arabic numerals at least 14 inches (35.6 cm) in height. Marking must be legible and of a color that contrasts with the background.

(c) The vessel operator must ensure that the official number is clearly legible and in good repair.

(d) The vessel operator must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

§ 660.17 Experimental fishing.

(a) *General.* The Regional Director may authorize, for limited purposes, the direct or incidental harvest of management unit species that would otherwise be prohibited by this subpart and subparts C, D, E, and F of this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Regional Director in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Observers.* No experimental fishing for crustacean management unit spe-

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cies may be conducted unless an NMFS scientific observer is aboard the vessel.

(c) *Application.* An applicant for an EFP must submit to the Regional Director at least 60 days before the desired date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application.

(2) The applicant's name, mailing address, and telephone number.

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP.

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals.

(5) For each vessel to be covered by the EFP:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) USCG documentation, state license, or registration number.

(iv) Home port.

(v) Length of vessel.

(vi) Net tonnage.

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount of such harvest necessary to conduct the experiment.

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used.

(8) The signature of the applicant.

(d) *Incomplete applications.* The Regional Director may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(e) *Issuance.* (1) If an application contains all of the required information, NMFS will publish a notice of receipt of the application in the FEDERAL REGISTER with a brief description of the proposal and will give interested persons an opportunity to comment. The

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Regional Director will also forward copies of the application to the Council, the USCG, and the fishery management agency of the affected state, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested.

(ii) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(iii) Biological information relevant to the proposal.

(2) At a Council meeting following receipt of a complete application, the Regional Director will consult with the Council and the Director of the affected state fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application, if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (e)(2) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the EFP and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way.

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP.

(v) The applicant has failed to demonstrate a valid justification for the permit.

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision to grant or deny an EFP is final and unappealable. If the permit is granted, NMFS will publish a notice in the *FEDERAL REGISTER* describing the experimental fishing to be conducted under the EFP. The Regional Director may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species that can be harvested and landed during the term of the EFP, including trip limits, where appropriate.

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP.

(iii) The times and places where experimental fishing may be conducted.

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP.

(v) The condition that observers be carried aboard vessels operating under an EFP.

(vi) Data reporting requirements.

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.

(f) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(g) *Alteration.* Any EFP that has been altered, erased, or mutilated is invalid.

(h) *Transfer.* EFPs issued under subparts B through F of this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(i) *Inspection.* Any EFP issued under subparts B through F of this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(j) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of subparts A through F of this part, any other applicable provision of this part,

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the Magnuson Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR part 904 subpart D. Other sanctions available under the statute will be applicable.

(k) *Protected species.* Persons fishing under an EFP must report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be submitted to the Regional Director within 3 days of arriving in port.

Subpart C—Western Pacific Pelagic Fisheries

§ 660.21 Permits.

(a) A fishing vessel of the United States must be registered for use under a Hawaii longline limited access permit or a longline general permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean, Pacific pelagic management unit species that were harvested with longline gear.

(b) A fishing vessel of the United States must be registered for use under a Hawaii longline limited access permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around Hawaii; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around Hawaii, Pacific pelagic management unit species that were harvested with longline gear.

(c) A receiving vessel must be registered for use with a receiving vessel permit if that vessel is used to land or transship, shoreward of the outer boundary of the fishery management area, Pacific pelagic management unit

species that were harvested with longline gear.

(d) Any required permit must be on board the vessel and available for inspection by an authorized agent, except that if the permit was issued while the vessel was at sea, this requirement applies only to any subsequent trip.

(e) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(f) An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13.

(g) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, and sanctions for permits issued under this section, as applicable, are contained in § 660.13.

(h) A limited access permit may be transferred as follows:

(1) The owner of a Hawaii longline limited access permit may apply to transfer the permit:

(i) To a different person for registration for use with the same or another vessel; or

(ii) For registration for use with another U.S. vessel under the same ownership.

(2) An application for a permit transfer will be submitted to the Pacific Area Office as described in § 660.13(c).

(i) A Hawaii longline limited access permit will not be registered for use with a vessel that has a LOA greater than 101 ft (30.8 m).

(j) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a Hawaii longline limited access permit.

(k) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Director the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Director, the appeal will be in writing, will state the action(s) appealed, and the reasons therefor, and will be submitted within 30 days of the action(s) by the FMD. The appellant may request an informal hearing on the appeal.

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(1) Upon receipt of an appeal authorized by this section, the Regional Director may request additional information. Upon receipt of sufficient information, the Regional Director will decide the appeal in accordance with the criteria set out in this part and in the Fishery Management Plans prepared by the Council, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (k)(3) of this section; and such other considerations as deemed appropriate. The Regional Director will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(2) If a hearing is requested, or if the Regional Director determines that one is appropriate, the Regional Director may grant an informal hearing before a hearing officer designated for that purpose. Such a hearing normally shall be held no later than 30 days following receipt of the appeal, unless the hearing officer extends the time. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend, in writing, a decision to the Regional Director.

(3) The Regional Director may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Director will notify the appellant, and interested persons, if any, of the decision, and the reason(s) therefor, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Director's action shall constitute final Agency action for the purposes of the APA.

(4) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Director for good cause, either upon

his/her own motion or upon written request from the appellant stating the reason(s) therefor.

§ 660.22 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for Pacific pelagic management unit species using gear prohibited under § 660.30 or not permitted by an EFP issued under § 660.17.

(b) Falsify or fail to make and/or file all reports of Pacific pelagic management unit species landings, containing all data and in the exact manner, as required by applicable state law or regulation, as specified in § 660.3, provided that the person is required to do so by applicable state law or regulation.

(c) Use a longline vessel without a valid longline general permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(d) Use a longline fishing vessel without a valid Hawaii longline limited access permit registered for use with that vessel to fish for Pacific pelagic management unit species in the EEZ around Hawaii.

(e) Use a receiving vessel without a valid receiving vessel permit registered for use with that vessel to land or transship, shoreward of the outer boundary of the fishery management area, Pacific pelagic management unit species harvested with longline gear.

(f) Transfer a permit in violation of § 660.21(h).

(g) Fish for Pacific pelagic management unit species with longline gear within the protected species zone in the NWHI.

(h) Fail to notify the NMFS Southwest Enforcement Office of intent to enter or depart the protected species zone, as required under § 660.23(b).

(i) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.17.

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(j) Fail to comply with notification requirements set forth in § 660.23 or in any EFP issued under § 660.17.

(k) Fail to comply with a term or condition governing the observer program established in § 660.28.

(l) Fail to comply with other terms and conditions that the Regional Director imposes by written notice to either the permit holder or the designated agent of the permit holder to facilitate the details of observer placement.

(m) Fish in the fishery after failing to comply with the notification requirements in § 660.23.

(n) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited access permit registered for use with that vessel or a valid longline general permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(o) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited access permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

(p) Enter the EEZ around Hawaii with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid Hawaii longline limited access permit registered for use with that vessel.

(q) Enter the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid Hawaii longline limited access permit registered for use with that vessel or a longline general permit registered for use with that vessel.

(r) Fail to carry a VMS unit as required under § 660.25.

(s) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a

VMS unit without the prior permission of the SAC.

(t) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit.

(u) Fish for, catch, or harvest Pacific pelagic management unit species with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS.

(v) Possess on board a vessel without a VMS unit Pacific pelagic management unit species harvested with longline gear after NMFS has installed the VMS unit on the vessel.

(w) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit.

(x) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer.

(y) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC.

§ 660.23 Notifications.

(a) The permit holder for a fishing vessel subject to the requirements of this subpart, or an agent designated by the permit holder, shall provide a notice to the Regional Director at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around Hawaii. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Director is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Director. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8:00 a.m. to 5 p.m. (Hawaii time) on weekdays for NMFS to contact to arrange observer placement.

(b) The operator of any vessel subject to the requirements of this subpart who does not have on board a VMS unit while transiting the protected species

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zone as defined in §660.12, must notify the NMFS Southwest Enforcement Office (see part 600 for address of Regional Director) immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of access or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

§ 660.24 Gear identification.

(a) *Identification.* The operator of each permitted vessel in the fishery management area must ensure that the official number of the vessel be affixed to every longline buoy and float, including each buoy and float that is attached to a radar reflector, radio antenna, or flag marker, whether attached to a deployed longline or possessed on board the vessel. Markings must be legible and permanent, and must be of a color that contrasts with the background material.

(b) *Enforcement action.* Longline gear not marked in compliance with paragraph (a) of this section and found deployed in the EEZ will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§ 660.25 Vessel monitoring system.

(a) *VMS unit.* Only a VMS unit owned by NMFS and installed by NMFS complies with the requirement of this subpart.

(b) *Notification.* After a Hawaii longline limited access permit holder has been notified by the SAC of a specific date for installation of a VMS unit in the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(c) *Fees and charges.* During the experimental VMS program, a Hawaii longline limited access permit holder shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility

of the owner or operator and not NMFS.

(d) *Permit holder duties.* The holder of a Hawaii longline limited access permit and the master of the vessel operating under the permit must:

(1) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(2) Carry the VMS unit on board whenever the vessel is at sea.

(3) Not remove or relocate the VMS unit without prior approval from the SAC.

(e) *Authorization by the SAC.* The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

§ 660.26 Longline fishing prohibited area management.

(a) *Prohibited areas.* Longline fishing shall be prohibited in the longline fishing prohibited areas as defined in paragraphs (b), (c), and (d) of this section.

(b) *Longline protected species zone.* The protected species zone is 50 nm from the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island, as defined in § 660.12.

(c) *Main Hawaiian Islands.* (1) From February 1 through September 30 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	DW. long.
A	18°05'	155°40'
B	18°20'	156°25'
C	20°00'	157°30'
D	20°40'	161°40'
E	21°40'	161°55'
F	23°00'	161°30'
G	23°05'	159°30'
H	22°55'	157°30'
I	21°30'	155°30'
J	19°50'	153°50'
K	19°00'	154°05'
A	18°05'	155°40'

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(2) From October 1 through the following January 31 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05'	155°40'
L	18°25'	155°40'
M	19°00'	154°45'
N	19°15'	154°25'
O	19°40'	154°20'
P	20°20'	154°55'
Q	20°35'	155°30'
R	21°00'	155°35'
S	22°30'	157°35'
T	22°40'	159°35'
U	22°25'	160°20'
V	21°55'	160°55'
W	21°40'	161°00'
E	21°40'	161°55'
D	20°40'	161°40'
C	20°00'	157°30'
B	18°20'	156°25'
A	18°05'	155°40'

(d) *Guam*. The longline fishing prohibited area around Guam is the waters seaward of Guam bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
A	14°25'	144°00'
B	14°00'	143°38'
C	13°41'	144°33'30"
D	13°00'	143°25'30"
E	12°20'	143°37'
F	11°40'	144°09'
G	12°00'	145°00'
H	13°00'	145°42'
I	13°27'	145°51'

§ 660.27 Exemptions for longline fishing prohibited areas; procedures.

(a) An exemption permitting a person to use longline gear to fish in a portion(s) of the Hawaii longline fishing prohibited area will be issued to a person who can document that he or she:

(1) Currently owns a Hawaii longline limited access permit issued under this part and registered for use with his or her vessel.

(2) Before 1970, was the owner or operator of a vessel when that vessel landed Pacific pelagic management unit species taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area.

(3) Was the owner or operator of a vessel that landed Pacific pelagic man-

agement unit species taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area, in at least 5 calendar years after 1969, which need not be consecutive.

(4) In any one of the 5 calendar years, was the owner or operator of a vessel that harvested at least 80 percent of its total landings, by weight, of longline-caught Pacific pelagic management unit species in an area that is now in the Hawaii longline fishing prohibited area.

(b) Each exemption shall specify the portion(s) of the Hawaii longline fishing prohibited area, bounded by longitudinal and latitudinal lines drawn to include each statistical area, as appearing on Hawaii State Commercial Fisheries Charts, in which the exemption holder made the harvest documented for the exemption application under paragraph (a)(4) of this section.

(c) Each exemption is valid only within the portion(s) of the Hawaii longline fishing prohibited area specified on the exemption.

(d) A person seeking an exemption under this section must submit an application and supporting documentation to the Pacific Area Office at least 15 days before the desired effective date of the exemption.

(e) If the Regional Director determines that a gear conflict has occurred and is likely to occur again in the Hawaii longline fishing prohibited area between a vessel used by a person holding an exemption under this section and a non-longline vessel, the Regional Director may prohibit all longline fishing in the Hawaii longline fishing prohibited area around the island where the conflict occurred, or in portions thereof, upon notice to each holder of an exemption who would be affected by such a prohibition.

(f) The Council will consider information provided by persons with Hawaii longline limited access permits issued under this part who believe they have experienced extreme financial hardship resulting from the Hawaii longline area closure, and will consider recommendations of the Pelagic Advisory Review Board to assess whether exemptions under this section should continue to be allowed, and, if appropriate, revise the qualifying criteria in paragraph (a)

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of this section to permit additional exemptions.

(1) If additional exemptions are needed, the Council will advise the Regional Director in writing of its recommendation, including criteria by which financial hardships will be mitigated, while retaining the effectiveness of the longline fishing prohibited area.

(2) Following a review of the Council's recommendation and supporting rationale, the Regional Director may:

(i) Reject the Council's recommendation, in which case written reasons will be provided by the Regional Director to the Council for the rejection; or

(ii) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the Pelagics FMP, the national standards, and other applicable law, initiate rulemaking to implement the Council's recommendations.

§ 660.28 Conditions for at-sea observer coverage.

(a) NMFS shall advise the permit holder or the designated agent of any observer requirement at least 24 hours (not including weekends and Federal holidays) before any trip for which NMFS received timely notice in compliance with these regulations.

(b) The "Notice Prior to Fishing Trip" requirements in this subpart commit the permit holder to the representations in the notice. The notice can be modified by the permit holder or designated agent because of changed circumstance, if the Regional Director is promptly provided a modification to the notice that complies with the notice requirements. The notice will also be considered modified if the Regional Director and the permit holder or designated agent agree to placement changes.

(c) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart, or as a condition of an EFP issued under § 660.17, the vessel may not engage in the fishery without taking the observer.

(d) A NMFS observer shall arrive at the observer's assigned vessel 30 minutes before the time designated for departure in the notice or the notice as

modified, and will wait 1 hour for departure.

(e) A permit holder must accommodate a NMFS observer assigned under these regulations. The Regional Director's office, and not the observer, will address any concerns raised over accommodations.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(1) Allowing for the embarking and debarking of the observer.

(2) Allowing the observer access to all areas of the vessel necessary to conduct observer duties.

(3) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties.

(4) Allowing the observer access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(5) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer.

(6) Providing sea turtle, marine mammal, or sea bird specimens as requested.

(7) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(g) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Director imposes by written notice.

(h) The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Director.

(i) Reimbursement requirements are as follows:

(1) Upon observer verification of vessel accommodations and the number of

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assigned days on board, NMFS will reimburse vessel owners a reasonable amount for observer subsistence as determined by the Regional Director.

(2) If requested and properly documented, NMFS will reimburse the vessel owner for the following:

(i) Communications charges incurred by the observer.

(ii) Lost fishing time arising from a seriously injured or seriously ill observer, provided that notification of the nature of the emergency is transmitted to the Fisheries Observer Branch, Southwest Region, NMFS (see address for Southwest Regional Director) at the earliest practical time. NMFS will reimburse the owner only for those days during which the vessel is unable to fish as a direct result of helping the NMFS employee who is seriously injured or seriously ill. Lost fishing time is based on time travelling to and from the fishing grounds and any documented out-of-pocket expenses for medical services. Payment will be based on the current target fish market prices and that vessel's average target fish catch retained per day at sea for the previous 2 years, but shall not exceed \$5,000 per day or \$20,000 per claim. Detailed billing with receipts and supporting records are required for allowable communication and lost fishing time claims. The claim must be completed in ink, showing the claimant's printed name, address, vessel name, observer name, trip dates, days observer on board, an explanation of the charges, and claimant's dated signature with a statement verifying the claim to be true and correct. Requested reimbursement claims must be submitted to the Fisheries Observer Branch, Southwest Region, NMFS. NMFS will not process reimbursement invoices and documentation submitted more than 120 days after the occurrence.

(j) If a vessel normally has cabins for crew members, female observers on a vessel with an all-male crew must be accommodated either in a single person cabin or, if NMFS concludes that adequate privacy can be ensured by installing a curtain or other temporary divider, in a two-person shared cabin. If the vessel normally does not have cabins for crew members, alternative accommodations must be approved by

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NMFS. If a cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, or if no cabin is assigned, then arrangements for sharing common facilities must be established and approved in advance by NMFS.

§ 660.29 Port privileges and transiting for unpermitted U.S. longline vessels.

A U.S. longline fishing vessel that does not have a permit under subpart B of this part may enter waters of the fishery management area with Pacific pelagic management unit species on board, but may not land or transship any management unit species on board the vessel. The vessel's longline gear must be stowed or secured so it is rendered unusable during the time the vessel is in those waters.

§ 660.30 Prohibition of drift gillnetting.

Fishing with drift gillnets in the fishery management area is prohibited, except where authorized by an EFP issued under § 660.17.

§ 660.31 Framework adjustments to management measures.

(a) *Introduction.* Adjustments in management measures may be made through rulemaking if new information demonstrates that there are biological, social, or economic concerns in the fishery. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(b) *Annual report.* By June 30 of each year, the Council-appointed Pelagics Plan Team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

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(2) Following the framework procedures of Amendment 7 to the Pelagics FMP, the Council may recommend to the Regional Director that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

(d) *Procedure for new measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 7 to the Pelagics FMP, the Council will publicize, including by FEDERAL REGISTER notice, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a FEDERAL REGISTER notice summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

Subpart D—Western Pacific Crustacean Fisheries

§ 660.41 Permits.

(a) *Applicability.* (1) The owner of any vessel used to fish for lobster in Permit Area 1 must have a limited access permit issued for such vessel. Only one permit will be assigned to any vessel.

(2) The owner of any vessel used to fish for lobster in Permit Area 2 or Permit Area 3, must have a permit issued for such a vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters

in Permit Areas 1 and 2 at the same time.

(4) A limited access permit is valid for fishing only in Permit Area 1.

(b) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 660.13.

(c) *Application.* An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from the Pacific Area Office and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(d) *Number of permits.* A maximum of 15 limited access permits can be valid at any time.

(e) *Transfer or sale of limited access permits.* (1) Permits may be transferred or sold, but no one individual, partnership, or corporation will be allowed to hold a whole or partial interest in more than one permit, except that an owner who qualifies initially for more than one permit may maintain those permits, but may not obtain additional permits. Layering of partnerships or corporations shall not insulate a permit holder from this requirement.

(2) If 50 percent or more of the ownership of a limited access permit is passed to persons other than those listed on the permit application, the Pacific Area Office must be notified of the change in writing and provided copies of the appropriate documents confirming the changes within 30 days.

(3) Upon the transfer or sale of a limited access permit, a new application must be submitted by the new permit owner according to the requirements of § 660.13. The transferred permit is not valid until this process is completed.

(f) *Replacement of a vessel covered by a limited access permit.* A limited access permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a

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replacement vessel owned by that person.

(g) *Issuance of limited access permits to future applicants.*

(1) The Regional Director may issue limited access permits under this section when fewer than 15 vessel owners hold active permits.

(2) When the Regional Director has determined that limited access permits may be issued to new persons, a notice shall be placed in the FEDERAL REGISTER, and other means will be used to notify prospective applicants of the opportunity to obtain permits under the limited access management program.

(3) A period of 90 days will be provided after publication of the FEDERAL REGISTER notice for submission of new applications for a limited access permit.

(4) Limited access permits issued under this paragraph (g) will be issued first to applicants qualifying under paragraph (g)(4)(i) of this section. If the number of limited access permits available is greater than the number of applicants that qualify under paragraph (g)(4)(i) of this section, then limited access permits will be issued to applicants under paragraph (g)(4)(ii) of this section.

(i) First priority to receive limited access permits under this paragraph (g) goes to owners of vessels that were used to land lobster from Permit Area 1 during the period 1983 through 1990, and who were excluded from the fishery by implementation of the limited access system. If there are insufficient permits for all such applicants, the new permits shall be issued by the Regional Director through a lottery.

(ii) Second priority to receive limited access permits under paragraph (g) goes to owners with the most points, based upon a point system. If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Director shall issue the permits through a lottery. Under the point system, limited access permits will be issued, in descending order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

(A) Three points shall be assigned for each calendar year after August 8, 1985,

that the applicant was the operator of a vessel that was used to land lobster from Permit Area 1.

(B) Two points shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in either commercial fishing in Permit Area 2 for lobster, or fishing in Permit Area 1 for fish other than lobster with an intention to sell all or part of the catch.

(C) One point shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in any other commercial fishing in the EEZ surrounding Hawaii.

(5) A holder of a new limited access permit must own at least a 50-percent share in the vessel that the permit would cover.

§ 660.42 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.16, it is unlawful for any person to do any of the following:

(a) In Permit Area 1, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) Without a limited access permit issued under § 660.41;

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 660.48;

(iii) From closed areas for lobsters, as specified in § 660.46;

(iv) During a closed season, as specified in § 660.45; or

(v) After the closure date, as specified in § 660.50, and until the fishery opens again in the following calendar year.

(2) Fail to report before landing or offloading as specified in § 660.43.

(3) Fail to comply with any protective measures implemented under § 660.51 or § 660.52.

(4) Possess on a fishing vessel in the crustaceans fishery management area any lobster trap when fishing for lobster is prohibited as specified in §§ 660.45, 660.50, 660.51, or 660.52.

(5) Leave a trap unattended in the Management Area except as provided in § 660.48.

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(6) Maintain on board the vessel or in the water more than 1,200 traps per fishing vessel, of which no more than 1,100 can be assembled traps, as specified in § 660.48.

(7) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 660.50, until the fishery opens again the following year.

(8) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Director for inspection and copying any records that must be made available in accordance with § 660.14(f)(2).

(b) In Permit Area 2, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) By methods other than lobster traps or by hand, as specified in § 660.48; or

(ii) During a closed season, as specified in § 660.45(b).

(2) Retain or possess on a fishing vessel any lobster taken in Permit Area 2 that is less than the minimum size specified in § 660.44.

(3) Possess on a fishing vessel any lobster or lobster part taken in Permit Area 2 in a condition where the lobster is not whole and undamaged as specified in § 660.44.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 660.44.

§ 660.43 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Director will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (2) of this section at least 30 days prior to the opening of the fishing season.

§ 660.44 Lobster size and condition restrictions—Permit Area 2.

(a) Only spiny lobsters with a carapace length of 8.26 cm or greater may be retained (see Figure 3 of this subpart).

(b) Any lobster with a punctured or mutilated body, or a separated carapace and tail, may not be retained.

(c) A female lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female lobsters.

§ 660.45 Closed seasons.

(a) Lobster fishing is prohibited in Permit Area 1 during the months of January through June, inclusive.

(b) Lobster fishing is prohibited in Permit Area 2 during the months of June, July, and August.

§ 660.46 Closed areas.

All lobster fishing is prohibited:

(a) Within 20 nm of Laysan Island.

(b) Within the EEZ landward of the 10-fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

§ 660.47 Gear identification.

In Permit Area 1, the vessel's official number must be marked legibly on all traps and floats maintained on board the vessel or in the water by that vessel.

§ 660.48 Gear restrictions.

(a) *Permit Area 1.* (1) Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hook, or explosives.

(2) The smallest opening of an entry way of any lobster trap may not allow any sphere or cylinder greater than 6.5 inches (16.5 cm) in diameter to pass from outside the trap to inside the trap.

(3) Each lobster trap must have a minimum of two escape vent panels that meet the following requirements:

(i) Panels must have at least four unobstructed circular holes no smaller than 67 mm in diameter, with centers at least 82 mm apart.

(ii) The lowest part of any opening in an escape vent panel must not be more than 85 mm above the floor of the trap.

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(iii) Panels must be placed opposite one another in each trap.

(4) A vessel fishing for or in possession of lobster in any permit area may not have on board the vessel any trap that does not meet the requirements of paragraphs (a)(1), (2), and (3) of this section.

(5) A maximum of 1,200 traps per vessel may be maintained on board or in the water, provided that no more than 1,100 assembled traps are maintained on board or in the water. If more than 1,100 traps are maintained, the unassembled traps may be carried as spares only, in order to replace assembled traps that may be lost or become unusable.

(6) Traps shall not be left unattended in any permit area, except in the event of an emergency, in which case the vessel operator must notify the NMFS Law Enforcement Office of the emergency that necessitated leaving the traps on the grounds, and the location and number of the traps, within 24 hours after the vessel reaches port.

(b) *Permit Area 2.* Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hooks, or explosives.

§ 660.49 At-sea observer coverage.

All fishing vessels subject to this subpart and subpart B of this part must carry an observer when requested to do so by the Regional Director.

§ 660.50 Harvest limitation program.

(a) *General.* A harvest guideline for Permit Area 1 will be set annually for the calendar year and shall:

(1) Apply to the total catch of spiny and slipper lobsters.

(2) Be expressed in terms of numbers of lobsters.

(b) *Harvest guideline.* (1) The Regional Director shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources, to establish the annual harvest guideline in accordance with the FMP.

(2) NMFS shall publish a document indicating the annual harvest guideline in the FEDERAL REGISTER by March 31 each year, and shall use other means to

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notify permit holders of the harvest guideline for the year.

(3) The Regional Director shall determine, on the basis of the information reported to NMFS during the open season by the operator of each vessel fishing, when the harvest guideline will be reached. Notice of this determination, with a specification of the closure date after which fishing for lobster or further landings of lobster taken in Permit Area 1 will be prohibited, will be provided to each permit holder and operator of each permitted vessel or announced in the FEDERAL REGISTER. At least 5 days advance notice of the effective date of the prohibition on landings will be given.

(c) *Monitoring and adjustment.* The operator of each vessel fishing during the open season shall report lobster catch (by species) and effort (number of trap hauls) data while at sea to NMFS in Honolulu. The Regional Director shall notify permit holders of the reporting method, schedule, and logistics at least 30 days prior to the opening of the fishing season.

§ 660.51 Monk seal protective measures.

(a) *General.* This section establishes a procedure that will be followed if the Regional Director receives a report of a monk seal death that appears to be related to the lobster fishery in Permit Area 1.

(b) *Notification.* Upon receipt of a report of a monk seal death that appears to be related to the lobster fishery, the Regional Director will notify all interested parties of the facts known about the incident. The Regional Director will also notify them that an investigation is in progress, and that, if the investigation reveals a threat of harm to the monk seal population, protective measures may be implemented.

(c) *Investigation.* (1) The Regional Director will investigate the incident reported and will attempt to:

(i) Verify that the incident occurred.

(ii) Determine the extent of the harm to the monk seal population.

(iii) Determine the probability of a similar incident recurring.

(iv) Determine details of the incident such as:

(A) The number of animals involved.

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(B) The cause of the mortality.

(C) The age and sex of the dead animal(s).

(D) The relationship of the incident to the reproductive cycle, for example, breeding season (March-September), non-breeding season (October-February).

(E) The population estimates or counts of animals at the island where the incident occurred.

(F) Any other relevant information.

(v) Discover and evaluate any extenuating circumstances.

(vi) Evaluate any other relevant factors.

(2) The Regional Director will make the results of the investigation available to the interested parties and request their advice and comments.

(d) *Determination of relationship.* The Regional Director will review and evaluate the results of the investigation and any comments received from interested parties. If there is substantial evidence that the death of the monk seal was related to the lobster fishery, the Regional Director will:

(1) Advise the interested parties of his or her conclusion and the facts upon which it is based.

(2) Request from the interested parties their advice on the necessity of protective measures and suggestions for appropriate protective measures.

(e) *Determination of response.* The Regional Director will consider all relevant information discovered during the investigation or submitted by interested parties in deciding on the appropriate response. Protective measures may include, but are not limited to, changes in trap design, changes in gear, closures of specific areas, or closures for specific periods of time.

(f) *Action by the Regional Director.* If the Regional Director decides that protective measures are necessary and appropriate, the Regional Director will prepare a document that describes the incident, the protective measures proposed, and the reasons for the protective measures; provide it to the interested parties; and request their comments.

(g) *Implementation of protective measures.* (1) If, after completing the steps described in paragraph (f) of this section, the Regional Director concludes

that protective measures are necessary and appropriate, the Regional Director will recommend the protective measures to the Assistant Administrator and provide notice of this recommendation to the Chairman of the Council and the Director of the Division of Aquatic Resources, Department of Land and Natural Resources, State of Hawaii.

(2) If the Assistant Administrator concurs with the Regional Director's recommendation, NMFS will publish an action in the FEDERAL REGISTER that includes a description of the incident that triggered the procedure described in this section, the protective measures, and the reasons for the protective measures.

(h) *Notification of "no action."* If, at any point in the process described in this section, the Regional Director or Assistant Administrator decides that no further action is required, the interested parties will be notified of this decision.

(i) *Effective dates.* (1) The protective measures will take effect 10 days after the date of publication in the FEDERAL REGISTER.

(2) The protective measures will remain in effect for the shortest of the following time periods:

(i) Until the Crustaceans FMP and this section are amended to respond to the problem;

(ii) Until other action that will respond to the problem is taken under the ESA;

(iii) Until the Assistant Administrator, following the procedures set forth in paragraph (j) of this section, decides that the protective measures are no longer required and repeals the measures; or

(iv) For the period of time set forth in the FEDERAL REGISTER notification, not to exceed 3 months. The measures may be renewed for 3 months after again following procedures in paragraphs (b) through (g) of this section.

(j) *Repeal.* (1) If the Assistant Administrator decides that protective measures may no longer be necessary for the protection of monk seals, the interested parties will be notified of this preliminary decision and the facts upon which it is based. The Assistant Administrator will request advice on

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the proposed repeal of the protective measures.

(2) The Assistant Administrator will consider all relevant information obtained by the Regional Director or submitted by interested parties in deciding whether to repeal the protective measures.

(3) If the Assistant Administrator decides to repeal the protective measures—

(i) Interested parties will be notified of the decision; and

(ii) Notification of repeal and the reasons for the repeal will be published in the FEDERAL REGISTER.

§ 660.52 Monk seal emergency protective measures.

(a) *Determination of emergency.* If, at any time during the process described in § 660.51, the Regional Director determines that an emergency exists involving monk seal mortality related to the lobster fishery and that measures are needed immediately to protect the monk seal population, the Regional Director will—

(1) Notify the interested parties of this determination and request their immediate advice and comments.

(2) Forward a recommendation for emergency action and any advice and comments received from interested parties to the Assistant Administrator.

(b) *Implementation of emergency measures.* If the Assistant Administrator agrees with the recommendation for emergency action—

(1) The Regional Director will determine the appropriate emergency protective measures.

(2) NMFS will publish the emergency protective measures in the FEDERAL REGISTER.

(3) The Regional Director will notify the interested parties of the emergency protective measures. Holders of permits to fish in Permit Area I will be notified by certified mail. Permit holders that the Regional Director knows are on the fishing grounds also will be notified by radio.

(c) *Effective dates.* (1) Emergency protective measures are effective against a permit holder at 12:01 a.m., local time, of the day following the day the permit holder receives actual notice of the measures.

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(2) Emergency protective measures are effective for 10 days from the day following the day the first permit holder is notified of the protective measures.

(3) Emergency protective measures may be extended for an additional 10 days, if necessary, to allow the completion of the procedures set out in § 660.51.

§ 660.53 Framework procedures.

(a) *Introduction.* New management measures may be added through rule-making if new information demonstrates that there are biological, social, or economic concerns in Permit Areas 1, 2, or 3. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(b) *Annual report.* By June 30 of each year, the Council-appointed Crustaceans Plan Team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council may recommend to the Regional Director that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

(d) *Procedure for New Measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been

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evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council will publicize, including by a FEDERAL REGISTER document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a FEDERAL REGISTER document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

§ 660.54 Five-year review.

The Council, in cooperation with NMFS, will conduct a review of the effectiveness and impacts of the NWHI management program, including biological, economic, and social aspects of the fishery, by July 1, 2001.

Subpart E—Bottomfish and Seamount Groundfish Fisheries

§ 660.61 Permits.

(a) *Applicability.* (1) The owner of any vessel being used to fish for bottomfish or seamount groundfish species in the management area must have a permit issued under this section for that vessel.

(2) No vessel owner may have permits for a single vessel to harvest bottomfish in the Ho'omalū Zone and the Mau Zone at the same time.

(b) *Application.* (1) An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13.

(2) Before the Regional Director issues a Mau Zone or Ho'omalū zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(3) Each applicant for a Ho'omalū zone permit will submit a supplementary information sheet to be provided by the Pacific Area Office. Each application for a Ho'omalū zone permit will be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit; and

(ii) Copies of landings receipts or other documentation, with a certification from a state or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; or

(iii) If the application is filed by a partnership or corporation, the application must identify the names of the owners and their respective percentage of ownership of the partnership or corporation.

(c) *Sale or transfer of Ho'omalū Zone permits to new vessel owners.* (1) A Ho'omalū zone permit shall not be sold or otherwise transferred to a new owner.

(2) A Ho'omalū zone permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Director.

(d) *Transfer of permits to replacement vessels.* (1) An owner of a permitted vessel may, without limitation, transfer his or her permit to another vessel owned by him or her, provided that the replacement vessel does not exceed 60 ft (18.3 m) in length and that the replacement vessel is put into service within 12 months after the owner declares to the Regional Director the intent to make the transfer of the permit.

(2) An owner of a permitted vessel may apply to the Regional Director for approval to use the permit for a replacement vessel greater than 60 ft (18.3 m) in length. The Regional Director may allow this change upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has equal catching

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power as the original vessel, or that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, and that the change is not inconsistent with the objectives of the program.

(3) The Regional Director shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(e) *Supplementary requirements for permit renewal.* (1) A permit will be eligible for renewal if the vessel covered by the permit makes three or more qualifying landings as defined in § 660.12 during the permit year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Director for waiver of the landing requirement. If the Regional Director finds that failure to make three landings was due to circumstances beyond the owner's control, the Regional Director may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions, such that the vessel operations would not be profitable.

(f) *Supplementary requirements for new limited access permits.* The Regional Director may issue new vessel permits under this part when the Regional Director has determined, in consultation with the Council, that bottomfish stocks in the Ho'omalū Zone are able to support additional fishing effort. This shall be established by determining that the total estimated annual revenue to the fleet exceeds the total estimated annual fixed and variable costs to the fleet in the Ho'omalū Zone by an amount at least equal to the average cost of a vessel year. This determination shall be made and published annually in association with the annual report required under § 660.67.

(g) *Eligibility for new limited access permits.* When the Regional Director has determined that new permits may be issued, they shall be issued to applicants based upon eligibility, determined as follows:

(1) *Point system.* (i) Two points shall be assigned for each year in which the applicant was owner or captain of a vessel that made three or more qualifying landings of bottomfish from the NWHI.

(ii) One point shall be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the main Hawaiian Islands.

(iii) Points will be assigned only under paragraph (g)(1)(i) or (ii) of this section for any 1 year.

(iv) Points will be assigned for every year for which the requisite landings can be documented.

(2) *Restrictions.* An applicant must own at least a 25-percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) *Order of issuance.* New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Director through a lottery.

(4) *Notification.* The Regional Director shall place a notice in the FEDERAL REGISTER and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

(h) *Appeals of permit actions.* (1) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Assistant Administrator. In order to be considered by the Assistant Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the Regional Director. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Assistant Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional

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information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Assistant Administrator will decide the appeal in accordance with the permit eligibility criteria set forth in this section and the amendment to the FMP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Assistant Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(3) If a hearing is requested, or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such a hearing shall normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Assistant Administrator.

(4) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Assistant Administrator's action shall constitute final action for the agency for the purposes of the APA.

(5) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Assistant Administrator for good cause, either upon his or her own motion or upon written request from the appellant or applicant stating the reason(s) therefore.

§ 660.62 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.15, it is unlawful for any person to do any of the following:

(a) Fish for bottomfish or seamount groundfish using gear prohibited under § 660.64.

(b) Fish for bottomfish in the Ho'omalū Zone without a limited access permit issued under §§ 660.13 and 660.61.

(c) Fish for bottomfish in the Mau Zone without a permit issued under §§ 660.13 and 660.61.

(d) Serve as primary operator or relief operator on a vessel with a Mau or Ho'omalū Zone permit without completing a protected species workshop conducted by NMFS, as required by § 660.61.

(e) Fail to notify the USCG at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalū Zone, as required by § 660.63.

(f) Fish within any protected species study zone in the NWHI without notifying the Regional Director of the intent to fish in these zones, as required under § 660.63.

§ 660.63 Notification.

(a) The owner or operator of a fishing vessel subject to this subpart must inform the Pacific Area Office at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones defined in § 660.12. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The operator of a fishing vessel that has taken bottomfish in the Ho'omalū Zone must contact the

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USCG, by radio or otherwise, at the 14th District, Honolulu, HI; Pacific Area, San Francisco, CA; or 17th District, Juneau, AK, at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

§ 660.64 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for bottomfish and seamount groundfish with bottom trawls and bottom set gillnets is prohibited.

(b) *Possession of gear.* Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 660.61 or otherwise established to be fishing for bottomfish or seamount groundfish in the management subareas is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish and seamount groundfish is prohibited.

§ 660.65 At-sea observer coverage.

(a) All fishing vessels subject to this subpart must carry an observer when directed to do so by the Regional Director.

(b) The Pacific Area Office will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice. If an observer is required, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

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

(d) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet

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and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Director prior to the vessel's departure from port.

§ 660.66 Protected species conservation.

The Regional Director may change the size of the protected species study zones defined in § 660.12 of this subpart:

(a) If the Regional Director determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the ESA.

(b) After consulting with the Council.

(c) Through notification in the FEDERAL REGISTER published at least 30 days prior to the effective date or through actual notice to the permit holders.

§ 660.67 Framework for regulatory adjustments.

(a) *Annual reports.* By June 30 of each year, a Council-appointed bottomfish monitoring team will prepare an annual report on the fishery by area covering the following topics:

(1) Fishery performance data.

(2) Summary of recent research and survey results.

(3) Habitat conditions and recent alterations.

(4) Enforcement activities and problems.

(5) Administrative actions (e.g., data collection and reporting, permits).

(6) State and territorial management actions.

(7) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and state/Federal needs, problems, and trends). Indications of potential problems warranting further investigation may be signaled by the following indicator criteria:

(i) Mean size of the catch of any species in any area is a pre-reproductive size.

(ii) Ratio of fishing mortality to natural mortality for any species.

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(iii) Harvest capacity of the existing fleet and/or annual landings exceed best estimate of MSY in any area.

(iv) Significant decline (50 percent or more) in bottomfish catch per unit of effort from baseline levels.

(v) Substantial decline in ex-vessel revenue relative to baseline levels.

(vi) Significant shift in the relative proportions of gear in any one area.

(vii) Significant change in the frozen/fresh components of the bottomfish catch.

(viii) Entry/exit of fishermen in any area.

(ix) Per-trip costs for bottomfishing exceed per-trip revenues for a significant percentage of trips.

(x) Significant decline or increase in total bottomfish landings in any area.

(xi) Change in species composition of the bottomfish catch in any area.

(xii) Research results.

(xiii) Habitat degradation or environmental problems.

(xiv) Reported interactions between bottomfishing operations and protected species in the NWHI.

(8) Recommendations for Council action.

(9) Estimated impacts of recommended action.

(b) *Recommendation of management action.* (1) The team may present management recommendations to the Council at any time. Recommendations may cover actions suggested for Federal regulations, state/territorial action, enforcement or administrative elements, and research and data collection. Recommendations will include an assessment of urgency and the effects of not taking action.

(2) The Council will evaluate the team's reports and recommendations, and the indicators of concern. The Council will assess the need for one or more of the following types of management action: Catch limits, size limits, closures, effort limitations, access limitations, or other measures.

(3) The Council may recommend management action by either the state/territorial governments or by Federal regulation.

(c) *Federal management action.* (1) If the Council believes that management action should be considered, it will make specific recommendations to the

Regional Director after requesting and considering the views of its Scientific and Statistical Committee and Bottomfish Advisory Panel and obtaining public comments at a public hearing.

(2) The Regional Director will consider the Council's recommendation and accompanying data, and, if he or she concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Director rejects the Council's proposed action, a written explanation for the denial will be provided to the Council within 2 weeks of the decision.

(3) The Council may appeal denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(4) The Regional Director and the Assistant Administrator will make their decisions in accord with the Magnuson Act, other applicable law, and the Bottomfish FMP.

(5) To minimize conflicts between the Federal and state management systems, the Council will use the procedures in paragraph (b) of this section to respond to state/territorial management actions. Council consideration of action would normally begin with a representative of the state or territorial government bringing a potential or actual management conflict or need to the Council's attention.

(d) *Access limitation procedures.* (1) Access limitation may be adopted under this paragraph (d) only for the NWHI, American Samoa, and Guam.

(2) If access limitation is proposed for adoption or subsequent modification through the process described in this paragraph (d), the following requirements must be met:

(i) The Bottomfish Monitoring Team must consider and report to the Council on present participation in the fishery; historical fishing practices in, and dependence on, the fishery; economics of the fishery; capability of fishing vessels used in the fishery to engage in other fisheries; cultural and social framework relevant to the fishery; and any other relevant considerations.

(ii) Public hearings must be held specifically addressing the limited access proposals.

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(iii) A specific advisory subpanel of persons experienced in the fishing industry will be created to advise the Council and the Regional Director on administrative decisions.

(iv) The Council's recommendation to the Regional Director must be approved by a two-thirds majority of the voting members.

(3) If prior participation in the fishery is used as a factor in any access limitation system recommended by the Council, August 7, 1985, is the date selected by the Council as the date to be used for the NWHI and May 30, 1986, for American Samoa and Guam.

§ 660.68 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 1998.

§ 660.69 Management subareas.

(a) The bottomfish fishery management area is divided into five subareas for the regulation of bottomfish and seamount groundfish fishing with the following designations and boundaries:

(1) Main Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the east of 161°20' W. long.

(2) Northwestern Hawaiian Islands (NWHI) means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161°20' W. long. However, for the purposes of regulations issued under this subpart, Midway Island is treated as part of the Northwestern Hawaiian Islands Subarea.

(i) Ho'omalū Zone means that portion of the EEZ around the NWHI west of 165° W. long.

(ii) Mau Zone means that portion of the EEZ around the NWHI between 161°20' W. long. and 165° W. long.

(3) Hancock Seamount means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180°00' W. long. and north of 28°00' N. lat.

(4) Guam means the EEZ seaward of the Territory of Guam.

(5) American Samoa means the EEZ seaward of the Territory of American Samoa.

(b) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of Amer-

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ican Samoa, and the Territory of Guam (the "3 mile-limit").

(c) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries. The outer boundary of the fishery management area north of Guam will extend to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

Subpart F—Precious Corals Fisheries

§ 660.81 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining precious coral in any precious coral permit area must have a permit issued under § 660.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 660.12.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Director any current permit for the precious corals fishery issued under § 660.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious corals fishery are contained in § 660.13.

§ 660.82 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 660.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land precious coral in any precious coral permit area, unless a permit has been issued for that vessel

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and area as specified in § 660.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of precious coral in any precious coral permit area:

(1) By means of gear or methods prohibited by § 660.88.

(2) In refugia specified in § 660.12.

(3) In a bed for which the quota specified in § 660.84 has been attained.

(4) In violation of any permit issued under § 660.13 or § 660.17.

(c) Take and retain, possess, or land any pink coral from the Makapuu Bed (Permit Area E-B-1), Keahole Point Bed (Permit Area C-B-1), or Kaena Point Bed (Permit Area C-B-2) that is less than the minimum height specified in § 660.86, unless:

(1) A valid EFP was issued under § 660.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 660.83 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapuu Bed, which has a 2-year fishing period that begins July 1 and ends June 30, 2 years later.

§ 660.84 Quotas.

(a) *General.* The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in Table 1 of this part. Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) *Conditional bed closure.* A conditional bed will be closed to all non-selective coral harvesting after the quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory areas will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for each of the three exploratory areas will equal the quota minus

the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Director will determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1 through December 31 period.

(4) NMFS will publish in the FEDERAL REGISTER a notification of the Regional Director's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

§ 660.85 Closures.

(a) If the Regional Director determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or the end of the 2-year fishing period at Makapuu Bed, NMFS will issue a field order closing the bed involved by publication of an action in the FEDERAL REGISTER, and through appropriate news media. Any such field order must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 660.86 Size restrictions.

Pink coral harvested from the Makapuu bed (E-B-1), the Keahole Point Bed (C-B-1), and the Kaena Point Bed (C-B-2), must have attained a minimum height of 10 inches (25.4 cm). There are no size limits for precious coral from other beds or other species.

§ 660.87 Area restrictions.

Fishing for coral on the WestPac Bed is not allowed. The specific area closed to fishing is all waters within a 2-nm radius of the midpoint of 23°18.0' N. lat., 162°35.0' W. long.

§ 660.88 Gear restrictions.

(a) *Selective gear.* Only selective gear may be used to harvest coral from the EEZ of the main Hawaiian Islands.

(b) *Selective or non-selective gear.* Either selective or non-selective gear may be used to harvest coral from Brooks Bank, 180 Fathom Bank, and exploratory areas other than the EEZ off the main Hawaiian Islands.

Subpart G—West Coast Groundfish Fisheries

660.301 Purpose and scope.

This subpart implements the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) developed by the Pacific Fishery Management Council. These regulations govern groundfish fishing vessels of the United States in the EEZ off the coasts of Washington, Oregon, and California. All weights are in round weight or round-weight equivalents, unless specified otherwise.

§ 660.302 Definitions.

At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shoreside or on the water.

Closure, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited.

Commercial fishing means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, landing and/or sale; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Commercial harvest guideline or commercial quota means the harvest guideline or quota after subtracting any allocation for the Pacific Coast treaty Indian tribes or for recreational fisheries. Limited entry and open access allocations are based on the commercial harvest guideline or quota.

Council means the Pacific Fishery Management Council, including its Groundfish Management Team, Scientific and Statistical Committee (SSC), Groundfish Advisory Subpanel

(GAP), and any other committee established by the Council.

Exempted gear means all types of fishing gear except longline, trap (or pot), and groundfish trawl gear. Exempted gear includes trawl gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber south of Pt. Arena, under the authority of a State of California limited entry permit for the sea cucumber fishery.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico.

Fisheries Management Division (FMD) means the Chief, Fisheries Management Division, Northwest Regional Office, NMFS, or a designee.

Fishing gear includes the following types of gear and equipment used in the groundfish fishery:

(1) *Bobbin trawl.* The same as a roller trawl, a type of bottom trawl.

(2) *Bottom trawl.* A trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes roller (or bobbin) trawls, Danish and Scottish seine gear, and pair trawls fished on the bottom. Any trawl not meeting the requirements for a pelagic trawl in § 660.322 is a bottom trawl.

(3) *Chafing gear.* Webbing or other material attached to the codend of a trawl net to protect the codend from wear.

(4) *Codend.* (See § 600.10).

(5) *Commercial vertical hook-and-line.* Commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

(6) *Double-bar mesh.* Two lengths of twine tied into a single knot.

(7) *Double-walled codend.* A codend constructed of two walls of webbing.

(8) *Fixed gear (anchored nontrawl gear).* Longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(9) *Gillnet.* (See § 600.10).

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(10) *Hook-and-line*. One or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

(11) *Longline*. A stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include commercial vertical hook-and-line or troll gear.

(12) *Mesh size*. The opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(13) *Nontrawl gear*. All legal commercial groundfish gear other than trawl gear.

(14) *Pelagic (midwater or off-bottom) trawl*. A trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net.

(15) *Pot*. A trap.

(16) *Roller trawl (bobbin trawl)*. A trawl with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material that keep the footrope above the seabed, thereby protecting the net. A roller trawl is a type of bottom trawl.

(17) *Set net*. A stationary, buoyed, and anchored gillnet or trammel net.

(18) *Single-walled codend*. A codend constructed of a single wall of webbing knitted with single or double-bar mesh.

(19) *Spear*. A sharp, pointed, or barbed instrument on a shaft.

(20) *Trammel net*. A gillnet made with two or more walls joined to a common float line.

(21) *Trap (or pot)*. A portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats.

(22) *Trawl riblines*. Heavy rope or line that runs down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

Fishing trip is a period of time between landings when fishing is conducted.

Fishing year is the year beginning at 0801 GMT (0001 local time) on January

1 and ending at 0800 GMT on January 1 (2400 local time on December 31).

Groundfish means species managed by the PCGFMP, specifically:

Sharks:

leopard shark, *Triakis semifasciata*
soupfin shark, *Galeorhinus zyopterus*
spiny dogfish, *Squalus acanthias*

Skates:

big skate, *Raja binoculata*
California skate, *R. inornata*
longnose skate, *R. rhina*

Ratfish:

ratfish, *Hydrolagus colliei*

Morids:

finescale codling, *Antimora microlepis*

Grenadiers:

Pacific rattail, *Coryphaenoides acrolepis*

Roundfish:

cabezon, *Scorpaenichthys marmoratus*
jack mackerel (north of 39° N. lat.),
Trachurus symmetricus
kelp greenling, *Hexagrammos decagrammus*
lingcod, *Ophiodon elongatus*
Pacific cod, *Gadus macrocephalus*
Pacific whiting, *Merluccius productus*
sablefish, *Anoplopoma fimbria*

Rockfish:

aurora rockfish, *Sebastes aurora*
bank rockfish, *S. rufus*
black rockfish, *S. melanops*
black and yellow rockfish, *S. chrysomelas*
blackgill rockfish, *S. melanostomus*
blue rockfish, *S. mystinus*
bocaccio, *S. paucispinis*
bronzespotted rockfish, *S. gilli*
brown rockfish, *S. auriculatus*
calico rockfish, *S. dalli*
California scorpionfish, *Scorpaena guttata*
canary rockfish, *Sebastes pinniger*
chilipepper, *S. goodei*
China rockfish, *S. nebulosus*
copper rockfish, *S. caurinus*
cowcod, *S. levis*
darkblotched rockfish, *S. crameri*
dusty rockfish, *S. ciliatus*
flag rockfish, *S. rubrivinctus*
gopher rockfish, *S. carnatus*
grass rockfish, *S. rastrelliger*
greenblotched rockfish, *S. rosenblatti*
greenspotted rockfish, *S. chlorostictus*
greenstriped rockfish, *S. elongatus*
harlequin rockfish, *S. variegatus*
honeycomb rockfish, *S. umbrosus*
kelp rockfish, *S. atrovirens*
longspine thornyhead, *Sebastolobus altivelis*
Mexican rockfish, *Sebastes macdonaldi*
olive rockfish, *S. serranoides*
Pacific ocean perch, *S. alutus*
pink rockfish, *S. eos*
quillback rockfish, *S. maliger*
redbanded rockfish, *S. babcocki*
redstripe rockfish, *S. proriger*
rosethorn rockfish, *S. helvomaculatus*
rosy rockfish, *S. rosaceus*
rougheye rockfish, *S. aleutianus*

sharpchin rockfish, *S. zacentrus*
 shortbelly rockfish, *S. jordani*
 shortraker rockfish, *S. borealis*
 shortspine thornyhead, *Sebastolobus*
alascanus
 silvergray rockfish, *Sebastes brevispinis*
 speckled rockfish, *S. ovalis*
 splitnose rockfish, *S. diploproa*
 squarespot rockfish, *S. hopkinsi*
 starry rockfish, *S. constellatus*
 stripetail rockfish, *S. saxicola*
 tiger rockfish, *S. nigrocinctus*
 treefish, *S. serriceps*
 vermilion rockfish, *S. miniatus*
 widow rockfish, *S. entomelas*
 yelloweye rockfish, *S. ruberrimus*
 yellowmouth rockfish, *S. reedi*
 yellowtail rockfish, *S. flavidus*

All genera and species of the family Scorpaenidae that occur off Washington, Oregon, and California are included, even if not listed above. The Scorpaenidae genera are *Sebastes*, *Scorpaena*, *Scorpaenodes*, and *Sebastolobus*.

Flatfish:

arrowtooth flounder (arrowtooth turbot),
Atheresthes stomias
 butter sole, *Isopsetta isolepis*
 curlfin sole, *Pleuronichthys decurrens*
 Dover sole, *Microstomus pacificus*
 English sole, *Parophrys vetulus*
 flathead sole, *Hippoglossoides elassodon*
 Pacific sanddab, *Citharichthys sordidus*
 petrale sole, *Eopsetta jordani*
 rex sole, *Glyptocephalus zachirus*
 rock sole, *Lepidopsetta bilineata*
 sand sole, *Psettichthys melanostictus*
 starry flounder, *Platichthys stellatus*

Groundfish trawl means trawl gear that is used under the authority of a valid limited entry permit issued under this subpart endorsed for trawl gear. It does not include any type of trawl gear listed as "exempted gear."

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

Incidental catch or **incidental species** means groundfish species caught while fishing for the primary purpose of catching a different species.

Land or **landing** means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

Length overall (LOA) (with respect to a vessel) means the length overall set forth in the Certificate of Documentation (CG-1270) issued by the USCG for a documented vessel, or in a registration

certificate issued by a state or the USCG for an undocumented vessel; for vessels that do not have the LOA stated in an official document, the LOA is the LOA as determined by the USCG or by a marine surveyor in accordance with the USCG method for measuring LOA.

Limited entry fishery means the fishery composed of vessels using trawl gear, longline, and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the limited entry fishery.

Limited entry gear means longline, trap (or pot), or groundfish trawl gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear.

Limited entry permit means the permit required to participate in the limited entry fishery, and includes the gear endorsements affixed to the permit unless specified otherwise.

Open access fishery means the fishery composed of vessels using exempted gear, and longline and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery.

Open access gear means all types of fishing gear except:

(1) Longline or trap (or pot) gear fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear.

(2) Trawl gear.

Owner of a vessel or **vessel owner**, as used in this subpart, means a person identified as the current owner in the Certificate of Documentation (CG-1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel.

Pacific Coast Groundfish Fishery Management Plan (PCGFMP) means the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery developed by the Pacific Fishery Management Council and approved by the Secretary on January 4, 1982, and as it may be subsequently amended.

Permit holder means a permit owner or a permit lessee.

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Permit lessee means a person who has the right to possess and use a limited entry permit for a designated period of time, with reversion to the permit owner.

Permit owner means a person who owns a limited entry permit.

Person, as it applies to limited entry and open access fisheries conducted under this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or to process means the preparation or packaging of groundfish to render it suitable for human consumption, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

Prohibited species means those species and species groups whose retention is prohibited unless authorized by other applicable law (for example, to allow for examination by an authorized observer or to return tagged fish as specified by the tagging agency).

Quota means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only, and not for sale or barter.

Regional Director means the Director, Northwest Region, NMFS. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, "Regional Director" means the Director, Northwest Region, NMFS, acting upon the recommendation of the Director, Southwest Region, NMFS.

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year to allow for uncertainties in preseason estimates of DAP and JVP.

Round weight (See § 600.10).

Shoreside processing means processing that takes place in a facility that is fixed permanently to land.

Specification is a numerical or descriptive designation of a management objective, including but not limited to: ABC; harvest guideline; quota; limited entry or open access allocation; a set aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision; DAP, DAH, JVP, TALFF, or incidental bycatch allowances in foreign or joint venture fisheries.

Target fishing means fishing for the primary purpose of catching a particular species or species group (the target species).

Totally lost means the vessel being replaced no longer exists *in specie*, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

Trip limit means the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board the vessel, that may be taken and retained, possessed, or landed from a single fishing trip.

§ 660.303 Reporting and record-keeping.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements. Telephone surveys of the domestic industry will be conducted biannually by NMFS to determine amounts of fish that will be made available to foreign fishing and JVP. No additional Federal reports are required of fishers or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of groundfish landings containing all data, and in the

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exact manner, required by the applicable state law.

§ 660.304 Management areas.

(a) *Vancouver*. (1) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35'75" N. lat., 124°43'00" W. long.) south of the International Boundary between the U.S. and Canada (at 48°29'37.19" N. lat., 124°43'33.19" W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1	48°29'37.19"	124°43'33.19"
2	48°30'11"	124°47'13"
3	48°30'22"	124°50'21"
4	48°30'14"	124°54'52"
5	48°29'57"	124°59'14"
6	48°29'44"	125°00'06"
7	48°28'09"	125°05'47"
8	48°27'10"	125°08'25"
9	48°26'47"	125°09'12"
10	48°20'16"	125°22'48"
11	48°18'22"	125°29'58"
12	48°11'05"	125°53'48"
13	47°49'15"	126°40'57"
14	47°36'47"	127°11'58"
15	47°22'00"	127°41'23"
16	46°42'05"	128°51'56"
17	46°31'47"	129°07'39"

(3) The southern limit is 47°30' N. lat.

(b) *Columbia*. (1) The northern limit is 47°30' N. lat.

(2) The southern limit is 43°00' N. lat.

(c) *Eureka*. (1) The northern limit is 43°00' N. lat.

(2) The southern limit is 40°30' N. lat.

(d) *Monterey*. (1) The northern limit is 40°30' N. lat.

(2) The southern limit is 36°00' N. lat.

(e) *Conception*. (1) The northern limit is 36°00' N. lat.

(2) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32°35'22"	117°27'49"
2	32°37'37"	117°49'31"

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Point	N. lat.	W. long.
3	31°07'58"	118°36'18"
4	30°32'31"	121°51'58"

(f) *International boundaries*. (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit").

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

§ 660.305 Vessel identification.

(a) *Display*. The operator of a vessel that is over 25 ft (7.6 m) in length and is engaged in commercial fishing for groundfish must display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weather deck so as to be visible from above. The number must contrast with the background and be in block Arabic numerals at least 18 inches (45.7 cm) high for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) high for vessels between 25 and 65 ft (7.6 and 19.8 m) in length. The length of a vessel for purposes of this section is the length set forth in USCG records or in state records, if no USCG record exists.

(b) *Maintenance of numbers*. The operator of a vessel engaged in commercial fishing for groundfish must keep the identifying markings required by paragraph (a) of this section clearly legible and in good repair, and must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

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(c) *Commercial passenger vessels.* This section does not apply to vessels carrying fishing parties on a per-capita basis or by charter.

§ 660.306 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to:

(a) Sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing.

(b) Retain any prohibited species (defined in § 660.302) caught by means of fishing gear authorized under this subpart or unless authorized by part 600 of this chapter. Prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

(c) Falsify or fail to affix and maintain vessel and gear markings as required by § 660.305 or § 660.322(c).

(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under part 600.745.

(e) Fish for groundfish using gear not authorized under § 660.322 or in violation of any terms or conditions attached to an EFP under part 600.745.

(f) Take and retain, possess, or land more groundfish than specified under § 660.321, § 660.323, or under an EFP issued under part 600 of this chapter.

(g) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.303, provided that person is required to do so by the applicable state law.

(h) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 3,000 lb (1,361 kg) (round weight or round-weight equivalent).

(i) Possess, deploy, haul, or carry onboard a fishing vessel subject to these regulations a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions in § 660.322, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The dis-

posal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(j) Process Pacific whiting in the fishery management area during times or in areas where at-sea processing is prohibited, unless the fish were received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.324.

(k) Take and retain or receive, except as cargo, Pacific whiting on a vessel in the fishery management area that already possesses processed Pacific whiting on board, during times or in areas where at-sea processing is prohibited, unless the fish were received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.324; when taking and retention is prohibited under § 660.323(a)(4)(iv), fail to keep the trawl doors on board the vessel and attached to the trawls on a vessel used to fish for whiting.

(l) Have onboard a commercial hook-and-line fishing vessel (other than a vessel operated by persons under § 660.323(b)(1)(ii)), more than the amount of the trip limit set for black rockfish by § 660.323 while that vessel is fishing between the U.S.-Canada border and Cape Alava (48°09'30" N. lat.), or between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.).

(m) Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board (unless the vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California), without having a limited entry permit valid for that vessel affixed with a gear endorsement for trawl gear.

(n) Fail to carry onboard a vessel that vessel's limited entry permit if required.

(o) Make a false statement on an application for issuance, renewal, transfer, vessel registration, or replacement of a limited entry permit.

(p) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit

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for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(q) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed.

(r) Refuse to submit fishing gear of fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

61 FR 34572, July 2, 1996, as amended at 61 FR 48643, Sept. 16, 1996]

§ 660.321 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Director or the Council.

(b) *Annual actions.* The Pacific Coast groundfish fishery is managed on a calendar year basis. Even though specifications and management measures are announced annually, they may apply for more than 1 year. In general, management measures are designed to achieve, but not exceed, the specifications, particularly harvest guidelines, limited entry and open access allocations, or other approved fishery allocations. Annual specifications and management measures are developed at two Council meetings and published in the FEDERAL REGISTER at the beginning of the year, according to the standards

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and procedures in the PCGFMP and other applicable law.

(c) *Routine management measures.* Management measures designated "routine" at § 660.323(b) may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the FEDERAL REGISTER.

(d) *Changes to the regulations.* Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework standards and procedures in the PCGFMP and other applicable law, and will be published in the FEDERAL REGISTER.

§ 660.322 Gear restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: Trawl (bottom and pelagic), hook-and-line, longline, pot or trap, set net (anchored gillnet or trammel net), and spear.

(b) *Trawl gear—(1) Use.* Trawl nets may be used on and off the seabed. Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(2) *Mesh size.* Trawl nets may be used if they meet the minimum mesh sizes set forth in this paragraph (b)(2). The minimum sizes apply throughout the net. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.6 or 11.4 cm) (depending on the gear being measured), less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

MINIMUM TRAWL-MESH SIZE IN INCHES¹

Trawl conception type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	
Bottom	4.5	4.5	4.5	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

¹ Metric conversion: 3.0 inches = 7.6 cm; 4.5 inches = 11.4 cm.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference, except as provided in paragraph (b)(5) of this section. No section of chafing gear may be longer than 50 meshes of the net to which it is

attached. Except at the corners, the terminal end of each section of chafing gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any

riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Codends*. Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(5) *Pelagic trawls*. Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. Sweeplines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a “skirt”) may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: Over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Fixed gear*. (1) Fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be:

(i) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy, except as provided in paragraph (c)(2) of this section.

(ii) Attended at least once every 7 days.

(2) Commercial vertical hook-and-line gear that is closely tended may be marked only with a single buoy of sufficient size to float the gear. “Closely tended” means that a vessel is within visual sighting distance or within 0.25 nm (463 m) as determined by electronic navigational equipment, of its commercial vertical hook-and-line gear.

(3) A buoy used to mark fixed gear under paragraph (c)(1)(i) or (c)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel’s number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an un-

documented vessel, the vessel registration number issued by the state.

(d) *Set nets*. Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00’ N. lat.

(e) *Traps or pots*. Traps must have biodegradable escape panels constructed with # 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(f) *Recreational fishing*. The only types of fishing gear authorized for recreational fishing are hook-and-line and spear.

(g) *Spears*. Spears may be propelled by hand or by mechanical means.

§ 660.323 Catch restrictions.

(a) Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in this section.

(1) *Black rockfish*. The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09’30” N. lat.), and between Destruction Island (47°40’ N. lat.) and Leadbetter Point (46°38’10” N. lat.), is 100 lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip.

(2) *Nontrawl sablefish*. This paragraph (a)(2) applies to the limited entry fishery, except for paragraphs (a)(2)(i) and (v), which also apply to the open-access fishery.

(i) *Pre-season closure—open-access and limited entry fisheries*.

(A) Sablefish taken with fixed gear in the limited entry or open access fishery in the EEZ may not be retained or landed from 12 noon August 29 through 12 noon September 1.

(B) All fixed gear used to take and retain groundfish must be out of EEZ waters from 12 noon August 29 through 12 noon September 1, except that pot gear used to take and retain groundfish may be deployed and baited in the EEZ after 12 noon on August 31.

(ii) *Regular season—limited entry fishery*. The regular season for the limited entry nontrawl sablefish fishery begins at 1201 hours on September 1. During

the regular season, the limited entry nontrawl sablefish fishery may be subject to trip limits to protect juvenile sablefish. The regular season will end when 70 percent of the limited entry nontrawl allocation has been or is projected to be taken. The end of the regular season may be announced in the FEDERAL REGISTER either before or during the regular season.

(iii) *Mop-up season—limited entry fishery.* A mop-up season to take the remainder of the limited entry nontrawl allocation will begin about 3 weeks after the end of the regular season, or as soon as practicable thereafter. During the mop-up fishery, a cumulative trip limit will be imposed. The length of the mop-up season and amount of the cumulative trip limit, including the time period to which it applies, will be determined by the Regional Director in consultation with the Council or its designees, and will be based primarily on the amount of fish remaining in the allocation and the number of participants anticipated. The Regional Director may determine that too little of the nontrawl allocation remains to conduct an orderly or manageable fishery, in which case there will not be a mop-up season.

(iv) *Other announcements.* The dates and times that the regular season ends (and trip limits on sablefish of all sizes are resumed) and the mop-up season begins and ends, and the size of the trip limit for the mop-up fishery, will be announced in the FEDERAL REGISTER, and may be modified. Unless otherwise announced, these seasons will begin and end at 12 noon on the specified date. A vessel landing sablefish in Puget Sound that was taken under a limited entry permit with nontrawl gear during a regular season is not subject to trip limits on that trip (except the regular season trip limits to protect juvenile sablefish), provided the landing complies with Washington State regulations governing sablefish landings in Puget Sound after the regular season.

(v) *Trip limits.* Trip and/or frequency limits may be imposed in the limited entry fishery before and after the regular season, and after the mop-up season, under paragraph (b) of this section. Trip and/or size limits to protect

juvenile sablefish in the limited entry or open-access fisheries also may be imposed at any time under paragraph (b) of this section. Trip limits may be imposed in the open-access fishery at any time under paragraph (b) of this section.

(3) *Pacific whiting*—(i) *Season.* The regular season for Pacific whiting begins on May 15 north of 42°00' N. lat., on March 1 between 42°00' N. lat. and 40°30' N. lat., and on April 15 south of 40°30' N. lat. Before and after the regular season, trip landing or frequency limits may be imposed under paragraph (b) of this section.

(ii) *Closed areas.* Pacific whiting may not be taken and retained in the following portions of the fishery management area:

(A) *Klamath River Salmon Conservation Zone.* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23' W. long. (approximately 12 nm from shore), and on the south by 41°26'48" N. lat. (approximately 6 nm south of the Klamath River mouth).

(B) *Columbia River Salmon Conservation Zone.* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18' N. lat. to 124°13'18" W. long., then southerly along a line of 167 True to 46°11'06" N. lat. and 124°11' W. long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

(iii) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.321 or § 660.323, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom (183-m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area (from 43°00' to 40°30' N. lat.).

(iv) *At-sea processing.* Pacific whiting may not be processed at sea south of 42°00' N. lat. (Oregon-California border).

(v) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the fishery management area

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south of 42°00' N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00' N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in *The Nautical Almanac* issued annually by the Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(4) *Pacific whiting—allocation.* The following provisions apply from 1994 through 1996—

(i) *Shoreside reserve.* When 60 percent of the commercial harvest guideline for Pacific whiting has been or is projected to be taken, further at-sea processing of Pacific whiting will be prohibited pursuant to paragraph (a)(4)(iv) of this section. The remaining 40 percent of the commercial harvest guideline is reserved for harvest by vessels delivering to shoreside processors.

(ii) *Release of reserve.* That portion of the commercial harvest guideline that the Regional Director determines will not be used by shoreside processors by the end of that fishing year shall be made available for harvest by all fishing vessels, regardless of where they deliver, on August 15 or as soon as practicable thereafter. NMFS may again release whiting at a later date if it becomes obvious, after August 15, that shore-based needs have been substantially over-estimated, but only after consultation with the Council and only to insure full utilization of the resource.

(iii) *Estimates.* Estimates of the amount of Pacific whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Director from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information.

(iv) *Announcements.* The Assistant Administrator will announce in the

FEDERAL REGISTER when 60 percent of the commercial harvest guideline for whiting has been, or is about to be, harvested, specifying a time after which further at-sea processing of Pacific whiting in the fishery management area is prohibited. The Assistant Administrator will publish a document in the FEDERAL REGISTER to announce any release of the reserve on August 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or underutilizing the resource, adjustments may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206-526-6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the FEDERAL REGISTER, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken.

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on an annual or more frequent basis may be imposed and announced by a single notification in the FEDERAL REGISTER if they first have been designated as “routine” according to the applicable procedures in the PCGFMP. The following catch restrictions are designated as routine for the reasons given in paragraph (b)(1)(ii) of this section:

(1) *Commercial-limited entry and open access fisheries—*

(i) *Species and gear.* (A) Widow rockfish—all gear—trip landing and frequency limits.

(B) *Sebastes complex*—all gear—trip landing and frequency limits.

(C) Yellowtail rockfish—all gear—trip landing and frequency limits.

(D) Pacific ocean perch—all gear—trip landing and frequency limits.

(E) Sablefish—all gear—trip landing, frequency, and size limits.

(F) Dover sole—all gear—trip landing and frequency limits.

(G) Thornyheads (shortspine thornyheads or longspine thornyheads,

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separately or combined)—all gear—trip landing and frequency limits.

(H) Bocaccio—all gear—trip landing and frequency limits.

(I) Pacific whiting—all gear—trip landing and frequency limits.

(J) Lingcod—all gear—trip landing and frequency limits; size limits.

(K) Canary rockfish—all gear—trip landing and frequency limits.

(L) All groundfish, separately or in any combination—any legal open access gear (including non-groundfish trawl gear used to harvest pink shrimp, spot or ridgeback prawns, California halibut or sea cucumbers in accordance with the regulations in this subpart)—trip landing and frequency limits. (Size limits designated routine in this section continue to apply.)

(ii) *Reasons for “routine” management measures.* All routine management measures on commercial fisheries are intended to keep landings within the harvest levels announced by NMFS. In addition, the following reasons apply:

(A) Trip landing and frequency limits—to extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) Size limits—to protect juvenile fish; to extend the fishing season.

(2) *Recreational—(i) Species and gear.*

(A) Lingcod—all gear—bag and size limits.

(B) Rockfish—all gear—bag limits.

(ii) *Reasons for “routine” management measures.* All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS. In addition, the following reasons apply:

(A) Bag limits—to spread the available catch over a large number of anglers; to avoid waste; for consistency with state regulations.

(B) Size limits—to protect juvenile fish; to enhance the quality of the recreational fishing experience; for consistency with state regulations.

(c) *Prohibited species.* Groundfish species or species groups under the PCGFMP for which quotas have been achieved and the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmonid.

(2) Pacific halibut.

(3) Dungeness crab caught seaward of Washington or Oregon.

[61 FR 34572, July 2, 1996; 61 FR 37843, July 22, 1996; 61 FR 48643, Sept. 16, 1996]

§ 660.324 Pacific Coast treaty Indian fisheries.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest groundfish in their usual and accustomed fishing areas in U.S. waters.

(b) For the purposes of this part, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) The Pacific Coast treaty Indian tribes’ usual and accustomed fishing areas within the fishery management area (FMA) are set out below in paragraphs (c)(1) through (c)(4) of this section. Boundaries of a tribe’s fishing area may be revised as ordered by a Federal court.

(1) *Makah*—That portion of the FMA north of 48°02’15” N. lat. (Norwegian Memorial) and east of 125°44’00” W. long.

(2) *Quileute*—That portion of the FMA between 48°07’36” N. lat. (Sand Point) and 47°31’42” N. lat. (Queets River) and east of 125°44’00” W. long.

(3) *Hoh*—That portion of the FMA between 47°54’18” N. lat. (Quillayute River) and 47°21’00” N. lat. (Quinault River) and east of 125°44’00” W. long.

(4) *Quinault*—That portion of the FMA between 47°40’06” N. lat. (Destruction Island) and 46°53’18” N. lat. (Point Chehalis) and east of 125°44’00” W. long.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall

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be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Director, prior to the first of the Council's two annual groundfish meetings. The Secretary generally will announce the annual tribal allocation at the same time as the annual specifications. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is *prima facie* evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(f) A limited entry permit under subpart C is not required for participation in a tribal fishery described in paragraph (d) of this section.

(g) Fishing under this section by a member of a Pacific Coast treaty Indian tribe within their usual and accustomed fishing area is not subject to the provisions of other sections of this part.

(h) Any member of a Pacific Coast treaty Indian tribe must comply with this section, and with any applicable tribal law and regulation, when participating in a tribal groundfish fishery described in paragraph (d) of this section.

(i) Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's usual and accustomed fishing area, or for a species of groundfish not covered by an allocation or regulation under this section, is subject to the regulations in the other sections of this part.

(j) *Black rockfish.* Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established annually for the areas between the U.S.-Canadian border and Cape Alava (48°09'30" N. lat.) and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), in accordance with the procedures for implementing annual specifications. Pacific Coast treaty Indians fishing for black rockfish in

these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of this part.

(k) *Groundfish without a tribal allocation.* Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery.

§ 660.331 Limited entry and open access fisheries—general.

All commercial fishing for groundfish must be conducted in accordance with the regulations governing limited entry and open access fisheries, except such fishing by treaty Indian tribes as may be separately provided for.

§ 660.332 Allocations.

(a) *General.* The commercial portion of the Pacific Coast groundfish fishery, excluding the treaty Indian fishery, is divided into limited entry and open access fisheries. Separate allocations for the limited entry and open access fisheries will be established annually for certain species and/or areas using the procedures described in this subpart or the PCGFMP.

(1) *Limited entry allocation.* The allocation for the limited entry fishery is the allowable catch (harvest guideline or quota excluding set asides for recreational or tribal Indian fisheries) minus the allocation to the open access fishery.

(2) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual harvest guideline or quota after subtracting any set asides for recreational or tribal Indian fisheries. For management areas where quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(b) *Open access allocation percentage.* For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(1) Computing the total catch for that species during the window period

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by any vessel that does not initially receive a limited entry permit.

(2) Dividing that amount by the total catch during the window period by all gear.

(3) The guidelines in this paragraph (b)(3) apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following year's open access allocation. If a gear type is prohibited by a state or the Secretary and a vessel thereby qualifies for a limited entry permit under this subpart, or if a small limited entry fleet is incorporated into the limited entry fishery under § 660.338, the window-period catch of these vessels will be deducted from the open access fishery's historical catch levels and the open access allocation percentage recalculated accordingly.

(c) *Catch accounting between the limited entry and open access fisheries.* Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(d) *Additional guidelines.* Additional guidelines governing determination of the limited entry and open access allocations are in the PCGFMP.

(e) *Treaty Indian fisheries.* Certain amounts of groundfish may be set aside annually for tribal fisheries prior to dividing the balance of the allowable catch between the limited entry and open access fisheries. Tribal fisheries conducted under a set-aside are not subject to the regulations governing limited entry and open access fisheries.

(f) *Recreational fisheries.* Recreational fishing for groundfish is outside the scope of, and not affected by, the regulations governing limited entry and open access fisheries. Certain amounts of groundfish may be specifically allocated to the recreational fishery, and will be set aside prior to dividing the commercial allocation between the

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commercial limited entry and open access fisheries.

§ 660.333 Limited entry fishery-general.

(a) *General.* Participation in the limited entry fishery requires that the owner of a vessel have a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. There are four types of gear endorsements: "A," "Provisional A," "B," and "Designated species B." More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear. All fishing with open access gear is subject to regulations applicable to the open access fishery. Vessels with limited entry permits may also participate in the open access fishery when the limited entry fishery is closed, but only with open access gear.

(b) *Renewal of limited entry permits and gear endorsements.*

(1) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(2) Notification to renew limited entry permits will be issued by FMD prior to September 1 each year to the most recent address of the permit owner. The permit owner shall provide FMD with notice of any address change within 15 days of the change.

(3) A limited entry permit that is allowed to expire will not be renewed unless the FMD determines that failure to renew was proximately caused by the illness, injury, or death of the permit owner.

(c) *Transfer and registration of limited entry permits and gear endorsements.* (1) Upon transfer of a limited entry permit, the FMD will reissue the permit in the name of the new permit holder with such gear endorsements as are eligible for transfer with the permit. No transfer is effective until the limited entry permit has been reissued and is in the possession of the new permit holder.

(2) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. A permit not registered for use with a particular vessel may not be used. If the permit will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the FMD and placed aboard the vessel before it is used under the permit.

(3) Application forms for the transfer and registration of limited entry permits are available from the FMD (see part 600 for address of the Regional Director). Contents of the application, and required supporting documentation, are specified in the application form.

(4) The FMD will maintain records of all limited entry permits that have been issued, renewed, transferred, registered, or replaced.

(d) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(1) A certified copy of the current vessel document (USCG or state) is the best evidence of vessel ownership and LOA.

(2) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights.

(4) Such other relevant, credible evidence as the applicant may submit, or the FMD or the Regional Director request or acquire, may also be considered.

(e) *Initial decisions.* Initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the FMD.

Adverse decisions shall be in writing and shall state the reasons therefor. The FMD may decline to act on an application for issuance, renewal, transfer, or registration of a limited entry permit if the permit sanction provisions of the Magnuson Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(f) *Transfers.* Limited entry permits are transferable as follows:

(1) The permit owner may transfer (by sale, assignment, lease, bequest, intestate succession, barter, trade, gift, or other form of conveyance) the limited entry permit to a different person. The permit holder may register the permit for use with a different vessel under the same ownership, subject to the conditions set forth in this subpart.

(2) Gear endorsements may not be transferred separately from the limited entry permit.

(3) Except as provided in §§ 660.335(b), 660.336(b), and 660.337(b)(2), only “A” gear endorsements remain valid with the transfer of a limited entry permit.

(g) *Eligibility.* Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a limited entry permit.

(h) *Vessel size endorsements—(1) General.* The limited entry permit will be endorsed with the LOA for the size of the vessel that initially qualified for the permit, except:

(i) If the permit was initially issued under section 14.3.2.3.8 of the FMP [re pre-1991 replacement vessels qualifying for “provisional A” permits] for a replacement vessel that was more than 5 ft (1.52 m) longer than the replaced vessel, the permit will be endorsed for the size of the replacement vessel.

(ii) If the permit was initially issued to a replacement trawl vessel that was more than 5 ft (1.52 m) shorter than the replaced vessel, it will be endorsed for the size of the smaller replacement vessel.

(iii) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel.

(iv) When permits are combined into one permit to be registered for use with

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a vessel requiring a larger size endorsement, the new permit will be endorsed for the size of the larger vessel.

(2) *Limitations of size endorsements*—(i) A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under paragraph (i) of this section or a change in the size endorsement.

(ii) A limited entry permit endorsed for trawl gear may be registered for use with a vessel between 5 ft (1.52 m) shorter and 5 ft (1.52 m) longer than the size endorsed on the existing permit without requiring a combination of permits under paragraph (i) of this section or a change in the size endorsement under paragraph (h)(1)(iii) of this section.

(iii) *Combining limited entry permits.* Two or more limited entry permits with “A” gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement. The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 2 of this part for the LOA (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls between the sums for two adjacent lengths on Table 2 of this part, the length rating shall be the higher length.

(i) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

§ 660.334 Limited entry permits—“A” endorsement.

(a) A limited entry permit with an “A” endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the

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type(s) of limited entry gear specified in the endorsement.

(b) An “A” endorsement is transferable with the limited entry permit to another person, or a different vessel under the same ownership under § 660.333.

(c) An “A” endorsement expires on failure to renew the limited entry permit to which it is affixed (see § 660.333).

§ 660.335 Limited entry permits—“Provisional A” endorsement.

(a) A “provisional A” endorsement entitles the permit owner to fish for all groundfish species with the types of limited entry gear specified in the endorsement.

(b) A “provisional A” endorsement is not transferrable except as specified in the PCGFMP.

(c) The holder of a “provisional A” endorsement must comply with the requirements set out in the PCGFMP at 14.3.2.4 in order for the permit to be upgraded to an “A” permit.

(d) A “provisional A” endorsement expires at the end of any of the three consecutive 365-day periods (during the 3-year qualifying period) in which a vessel’s landings do not meet the applicable landing requirement or upon failure to renew the limited entry permit. A “provisional A” endorsement that expires will not be reissued.

§ 660.336 Limited entry permits—“B” endorsement.

(a) A limited entry permit with a “B” endorsement entitles the permit owner to fish for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(b) A “B” endorsement is not transferable to another person, and may not be used with another vessel under the same ownership, unless the vessel for which the endorsement was issued is totally lost, and the permit is transferred to a replacement vessel owned by the same owner.

(c) All “B” endorsements expire on December 31, 1996.

(d) A “B” endorsement expires on failure to renew the limited entry permit.

§ 660.337 Limited entry permits—"designated species B" endorsement.

(a) *Issuance criteria*—(1) *General*. *Designated species* means Pacific whiting, jack mackerel north of 39° N. lat., and shortbelly rockfish. Bycatch allowances in fisheries for these species will be established using the procedures specified for incidental allowances in joint venture and foreign fisheries in the PCGFMP.

(2) *Catch limit*. On or about October 1 of each year, the FMD will determine the commitment of persons with limited entry permits with "A" gear endorsements (the "limited entry fleet") to harvest each designated species for delivery to domestic processors during the coming year. "Commitment" means a permit holder's contract or agreement with a specific domestic processor to deliver an estimated amount of the designated species. The "designated species B" endorsement catch limit is the harvest guideline or quota for the designated species minus the commitment of the limited entry fleet. If the commitment is less than DAP and the harvest guideline or quota for the species, "designated species B" endorsements valid for delivery to domestic processors will be issued in numbers necessary to reach but not exceed the harvest guideline or quota. "Designated species B" endorsements also may be issued for delivery to foreign processors of designated species for which a JVP is established. If, at any time during the fishing year, the FMD determines that any part of the limited entry fleet commitment will not be taken, the Regional Director will make a reapportionment to the "designated species B" endorsement catch limit. The amount of the annual limited entry fleet commitment, "designated species B" endorsement catch limit, and the amounts and timing of any reapportionments to the "designated species B" endorsement catch limit will be announced in the FEDERAL REGISTER.

(3) *Procedure for issuance*. Owners of vessels applying for "designated species B" endorsements must apply on or before November 1 of each year for a "designated species B" endorsement for the following year. Applications are available from the FMD. Applicants

are required to specify their commitments for delivery of the designated species for the coming year. On or about November 1 of each year, the FMD will establish a prioritized list of applicants based on seniority (number of years the vessel has fished for the designated species). A vessel which replaces a lost vessel, consistent with the standards in the PCGFMP, has the same seniority status as the replaced vessel. Vessels with equal seniority will be ranked equally. "Designated species B" endorsements will be issued first to all vessels with the highest seniority, then to those with the next highest seniority, and so on down the list. No further endorsements will be issued when it is estimated that the commitments of applicants receiving endorsements is sufficient to take the "designated species B" catch limit. If there are insufficient commitments by senior applicants to take the "designated species B" catch limit, additional applications will be ranked by lottery and a number of endorsements sufficient to take the catch limit will be issued.

(b) *Attributes*. (1) A limited entry permit with a "designated species B" endorsement entitles the permit recipient to fish only for the species, and only with the gear, specified in the endorsement.

(2) A "designated species B" endorsement is not transferable to another person, and may not be used with a different vessel under the same ownership, unless the vessel has been totally lost and replaced consistent with the provisions of the PCGFMP, in which case the replacement vessel has the same seniority as the lost vessel for purposes of a "designated species B" endorsement.

(3) A "designated species B" endorsement is valid only for the fishing year for which it is issued.

§ 660.338 Limited entry permits—new permits.

(a) Small limited entry fisheries that are controlled by a local government, are in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of

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the limited entry program and incorporated into the limited entry fishery. Permits issued under this subsection will be issued according to the standards and procedures set out in the PCGFMP and will carry the rights explained therein. Window period is that period from July 11, 1984, through August 1, 1988.

(b) If, after the window period, an exempt gear is prohibited by Washington, Oregon, or California or NMFS, the owners of vessels using such gear, who would not otherwise qualify for an "A" or "provisional A" endorsement, may qualify for a "provisional A" endorsement for only one of the three limited entry gears, if the vessel used the prohibited gear to make sufficient landings of groundfish during the window period to meet the MLR for the limited entry gear. If a vessel would qualify for an endorsement for more than one limited entry gear, the owner must choose the type of gear for which the endorsement will be issued. If an "A" or "provisional A" endorsement was previously issued for the vessel, and the endorsement was subsequently transferred or expired, no "provisional A" endorsement will be issued. Permits issued under this section will be issued according to the procedures and standards set out in the PCGFMP and will carry the rights explained therein.

(c) An owner of a vessel that qualifies under this section must apply to the FMD for a permit within 180 days of incorporation of the limited entry fleet of which the vessel is a part or within 180 days of the effective date of the prohibition of that vessel's gear. Untimely applications will be rejected unless the applicant demonstrates that circumstances beyond the applicant's control prevented submission of the application during the specified period. Illness, injury, or death of the potential applicant are the primary grounds on which untimely applications may be accepted.

§ 660.339 Limited entry permit fees.

The Regional Director will charge fees to cover administrative expenses related to issuance of limited entry permits, including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The appro-

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priate fee must accompany each application.

§ 660.340 Limited entry permit appeals.

(a) Decisions on appeals of initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the Regional Director.

(b) Appeals decisions shall be in writing and shall state the reasons therefor.

(c) Within 30 days of an initial decision by the FMD denying issuance, renewal, transfer, or registration of a limited entry permit, or endorsement upgrade, on the terms requested by the applicant, an appeal may be filed with the Regional Director.

(d) The appeal must be in writing, and must allege facts or circumstances to show why the criteria in this subpart have been met, or why an exception should be granted.

(e) At the appellant's discretion, the appeal may be accompanied by a request that the Regional Director seek a recommendation from the Council as to whether the appeal should be granted. Such a request must contain the appellant's acknowledgement that the confidentiality provisions of the Magnuson Act at 16 U.S.C. 1853(d) and part 600 of this chapter are waived with respect to any information supplied by the Regional Director to the Council and its advisory bodies for purposes of receiving the Council's recommendation on the appeal. In responding to a request for a recommendation on appeal, the Council will apply the provisions of the PCGFMP in making its recommendation as to whether the appeal should be granted.

(f) Absent good cause for further delay, the Regional Director will issue a written decision on the appeal within 45 days of receipt of the appeal, or, if a recommendation from the Council is requested, within 45 days of receiving the Council's recommendation. The Regional Director's decision is the final administrative decision of the Department as of the date of the decision.

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§ 660.341 Limited entry permit sanctions.

Limited entry permits issued or applied for under this subpart are subject to sanctions pursuant to the Magnuson Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

Subpart H—West Coast Salmon Fisheries

§ 660.401 Purpose and scope.

This subpart implements the Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California developed by the Pacific Fishery Management Council. These regulations govern the management of West Coast salmon fisheries in the EEZ.

§ 660.402 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in this subpart have the following meanings:

Barbless hook means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Where barbless hooks are specified, hooks manufactured with barbs can be made barbless by forcing the point of the barb flat against the main part of the point.

Commercial fishing means fishing with troll fishing gear as defined annually under § 660.408, or fishing for the purpose of sale or barter of the catch.

Council means the Pacific Fishery Management Council.

Dressed, head-off length of salmon means the shortest distance between the midpoint of the clavicle arch (see Figure 3 of this subpart) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails (see Figure 3 of this subpart).

Dressed, head-off salmon means salmon that have been beheaded, gilled, and gutted without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. The northeastern, northern, and northwestern boundaries of the fishery management area are as follows:

(1) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the United States and Canada (at 48°29'37" N. lat., 124°43'33" W. long.), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) Northern and northwestern boundary is a line¹ connecting the following coordinates:

N. lat.	W. long.
48°29'37.19"	124°43'33.19"
48°30'11"	124°47'13"
48°30'22"	124°50'21"
48°30'14"	124°52'52"
48°29'57"	124°59'14"
48°29'44"	125°00'06"
48°28'09"	125°05'47"
48°27'10"	125°08'25"
48°26'47"	125°09'12"
48°20'16"	125°22'48"
48°18'22"	125°29'58"
48°11'05"	125°53'48"
47°49'15"	126°40'57"
47°36'47"	127°11'58"
47°22'00"	127°41'23"
46°42'05"	128°51'56"
46°31'47"	129°07'39"

(3) The southern boundary of the fishery management area is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates:

N. lat.	W. long.
32°35'22"	117°27'49"
32°37'37"	117°49'31"
31°07'58"	118°36'18"
30°32'31"	121°51'58"

¹The line joining these coordinates is the provisional international boundary of the U.S. EEZ as shown on NOAA/NOS Charts #18480 and #18002.

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(4) The inner boundaries of the fishery management area are subject to change if the Secretary assumes responsibility for the regulation of the salmon fishery within state waters under section 306(b) of the Magnuson Act.

Freezer trolling vessel means a fishing vessel, equipped with troll fishing gear, that has a present capability for:

(1) On board freezing of the catch.

(2) Storage of the fish in a frozen condition until they are landed.

Land or landing means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish onboard the vessel are counted as part of the landing.

Plugs means artificial fishing lures made of wood or hard plastic with one or more hooks attached. Lures commonly known as “spoons,” “wobblers,” “dodgers,” and flexible plastic lures are not considered plugs, and may not be used where “plugs only” are specified.

Recreational fishing means fishing with recreational fishing gear as defined annually under § 660.408 and not for the purpose of sale or barter.

Recreational fishing gear will be defined annually under § 660.408.

Regional Director means the Director, Northwest Region, NMFS, or a designee. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, *Regional Director* means the Director, Northwest Region, NMFS, acting in consultation with the Director, Southwest Region, NMFS.

Salmon means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including, but not limited to:

Chinook (king) salmon, *Oncorhynchus tshawytscha*
Coho (silver) salmon, *Oncorhynchus kisutch*
Pink (humpback) salmon, *Oncorhynchus gorbuscha*
Chum (dog) salmon, *Oncorhynchus keta*
Sockeye (red) salmon, *Oncorhynchus nerka*
Steelhead (rainbow trout), *Oncorhynchus mykiss*

Total length of salmon means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and

the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

Treaty Indian fishing means fishing for salmon and steelhead in the fishery management area by a person authorized by the Makah Tribe to exercise fishing rights under the Treaty with the Makah, or by the Quileute, Hoh, or Quinault Tribes to exercise fishing rights under the Treaty of Olympia.

Troll fishing gear will be defined annually under § 660.408.

Whole bait means a hook or hooks baited with whole natural bait with no device to attract fish other than a flasher.

§ 660.403 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter, § 660.2, and paragraphs (b) and (c) of this section.

(b) Any person fishing subject to this subpart who also engages in fishing for groundfish should consult Federal regulations in subpart G for applicable requirements of that subpart, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with § 660.305.

(c) Any person fishing subject to this subpart is bound by the international boundaries of the fishery management area described in § 660.402, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

§ 660.404 Recordkeeping and reporting.

(a) This subpart recognizes that catch and effort data necessary for implementation of any applicable fishery management plan are collected by the States and Indian tribes of Washington, Oregon, California, and Idaho under existing data collection requirements. Except as provided in paragraph (b) of this section, no additional catch reports will be required of fishermen or processors so long as the data collection and reporting systems operated by

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State agencies and Indian tribes continue to provide NMFS with statistical information adequate for management.

(b) Persons engaged in commercial fishing may be required to submit catch reports that are specified annually under § 660.408.

EFFECTIVE DATE NOTE: At 61 FR 34600, July 2, 1996, § 660.404 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 660.405 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Take and retain or land salmon caught with a net in the fishery management area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(2) Fish for, or take and retain, any species of salmon:

(i) During closed seasons or in closed areas;

(ii) While possessing on board any species not allowed to be taken in the area at the time;

(iii) Once any catch limit is attained;

(iv) By means of gear or methods other than recreational fishing gear or troll fishing gear, or gear authorized under § 660.408(k) for treaty Indian fishing;

(v) In violation of any action issued under this subpart; or

(vi) In violation of any applicable area, season, species, zone, gear, daily bag limit, or length restriction.

(3) Fish for salmon in an area when salmon of less than the legal minimum length for that area are on board the fishing vessel, except that this provision does not prohibit transit of an area when salmon of less than the legal minimum length for that area are on board, so long as no fishing is being conducted.

(4) Remove the head of any salmon caught in the fishery management area, or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(5) Take and retain or possess on board a fishing vessel any species of salmon that is less than the applicable minimum total length, including the applicable minimum length for dressed, head-off salmon.

(6) Possess on board a fishing vessel a salmon, for which a minimum total length is extended or cannot be determined, except that dressed, head-off salmon may be possessed on board a freezer trolling vessel, unless the adipose fin of such salmon has been removed.

(7) Fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this subpart.

(8) Engage in recreational fishing while aboard a vessel engaged in commercial fishing. This restriction is not intended to prohibit the use of fishing gear otherwise permitted under the definitions of troll and recreational fishing gear, so long as that gear is legal in the fishery for which it is being used.

(9) Take and retain, possess, or land any steelhead taken in the course of commercial fishing in the fishery management area, unless such take and retention qualifies as treaty Indian fishing.

(10) Sell, barter, offer to sell, offer to barter, or purchase any salmon taken in the course of recreational salmon fishing.

(11) Refuse to submit fishing gear or catch subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(12) Take and retain Pacific halibut (*Hippoglossus stenolepis*) except in accordance with regulations of the International Pacific Halibut Commission at part 300 of this title. Pacific halibut that cannot be retained lawfully must be returned to the water immediately and with the least possible injury.

(13) Violate any other provision of this subpart.

(b) The fishery management area is closed to salmon fishing except as opened by this subpart or superseding regulations or notices. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified.

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§ 660.406 Exempted fishing.

(a) NMFS may allow such exempted fishing in the fishery management area as may be recommended by the Council, the Federal Government, state government, or treaty Indian tribes having usual and accustomed fishing grounds in the fishery management area.

(b) NMFS will not allow any exempted fishery recommended by the Council unless NMFS determines that the purpose, design, and administration of the exempted fishery are consistent with the goals and objectives of the Council's fishery management plan, the national standards (section 301(a) of the Magnuson Act), and other applicable law.

(c) Each vessel participating in any exempted fishery recommended by the Council and allowed by NMFS is subject to all provisions of this subpart, except those portions which relate to the purpose and nature of the exempted fishery. These exceptions will be specified in a permit issued by the Regional Director to each vessel participating in the exempted fishery and that permit must be carried aboard each participating vessel.

§ 660.407 Treaty Indian fishing.

Except as otherwise provided in this subpart, treaty Indian fishing in any part of the fishery management area is subject to the provisions of this subpart, the Magnuson Act, and any other regulations issued under the Magnuson Act.

§ 660.408 Annual actions.

(a) *General.* NMFS will annually establish or, as necessary, adjust management specifications for the commercial, recreational, and treaty Indian fisheries by publishing the action in the FEDERAL REGISTER under § 660.411. Management specifications are set forth in paragraphs (b) through (n) of this section.

(b) *Allowable ocean harvest levels.* The allowable ocean harvest for commercial, recreational, and treaty Indian fishing may be expressed in terms of season regulations expected to achieve a certain optimum harvest level or in terms of a particular number of fish. Procedures for determining allowable ocean harvest vary by species and fish-

ery complexity, and are documented in the fishery management plan and Council documents.

(c) *Allocation of ocean harvest levels—*(1) *Coho and chinook from the U.S.-Canada border to Cape Falcon—*(i) *Overall allocation schedule.* Initial allocation of coho and chinook salmon north of Cape Falcon, OR, will be based on the following schedule:

Allowable non-treaty ocean harvest (thousands of fish)	Percentage ¹	
	Com- mercial	Rec- reational
Coho:		
0–300	25	75
>300	60	40
Chinook:		
0–100	50	50
>100–150	60	40
>150	70	30

¹ The percentage allocation is tiered and must be calculated in additive steps when the harvest level exceeds the initial tier. For example, for a total allowable ocean harvest of 150,000 chinook, the recreational allocation would be equal to 50 percent of 100,000 chinook plus 40 percent of 50,000 chinook or 50,000 + 20,000 = 70,000 chinook.

(ii) *Deviations from allocation schedule.* The initial allocation may be modified annually in accordance with paragraphs (c)(1)(iii) through (vii) of this section. These deviations from the allocation schedule provide flexibility to account for the dynamic nature of the fisheries and better achieve the allocation objectives and fishery allocation priorities in paragraphs (c)(1)(viii) and (ix) of this section. Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, state fishery needs, and spawning requirements. Every effort will be made to establish seasons and gear requirements that provide troll and recreational fleets a reasonable opportunity to catch the available harvest. These may include single-species directed fisheries with landing restrictions for other species.

(iii) *Preseason trades.* Preseason species trades (chinook and coho) may be made if they are based upon the recommendation of the commercial and recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon; simultaneously benefit both the commercial and recreational fisheries or benefit one fishery without harming the other; and are supported by a socio-economic analysis

that compares the impacts of the recommendation to those of the standard allocation schedule to determine the allocation that best meets the allocation objectives. This analysis will be made available to the public during the preseason process for establishing annual management measures. Preseason trades will use an exchange ratio of four coho to one chinook as a desirable guideline.

(iv) *Commercial allocation.* The commercial allowable ocean harvest of chinook and coho derived during the preseason allocation process may be varied by major subareas (i.e., north of Leadbetter Point and south of Leadbetter Point) if there is need to do so to decrease impacts on weak stocks. Deviations in each major subarea will generally not exceed 50 percent of the allowable ocean harvest of each species that would have been established without a geographic deviation in the distribution of the allowable ocean harvest. Deviation of more than 50 percent will be based on a conservation need to protect the weak stocks and will provide larger overall harvest for the entire fishery north of Cape Falcon than would have been possible without the deviation.

(v) *Recreational allocation.* The recreational allowable ocean harvest of chinook and coho derived during the preseason allocation process will be distributed among the three major recreational subareas as described in the coho and chinook distribution sections below. Additionally, based upon the recommendation of the recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon, the Council will include criteria in its preseason salmon management recommendations to guide any inseason transfer of coho among the recreational subareas to meet recreational season duration objectives. The Council may also establish additional subarea quotas with a major subarea to meet recreational season objectives based on agreement of representatives of the affected ports.

(A) *Coho distribution.* The preseason recreational allowable ocean harvest of coho north of Cape Falcon will be distributed to provide 50 percent to the area north of Leadbetter Point and 50

percent to the area south of Leadbetter Point. In years with no fishery in Washington State management area 4B, the distribution of coho north of Leadbetter Point will be divided to provide 74 percent to the subarea between Leadbetter Point and the Queets River (Westport) and 26 percent to the subarea north of the Queets River (Neah Bay/La Push). In years when there is an area 4B fishery under state management, 25 percent of the numerical value of that fishery shall be added to the recreational allowable ocean harvest north of Leadbetter Point prior to applying the sharing percentages. That same value would then be subtracted from the Neah Bay/La Push share in order to maintain the same total distribution north of Leadbetter Point.

(B) *Chinook distribution.* Subarea distributions of chinook will be managed as guidelines based on calculations of the Salmon Technical Team with the primary objective of achieving all-species fisheries without imposing chinook restrictions (i.e., area closures or bag limit reductions). Chinook in excess of all-species fisheries needs may be utilized by directed chinook fisheries north of Cape Falcon or by negotiating a preseason species trade of chinook and coho between commercial and recreational allocations in accordance with paragraph (c)(1)(iii) of this section.

(vi) *Inseason trades and transfers.* Inseason transfers, including species trades of chinook and coho, may be permitted in either direction between commercial and recreational fishery quotas to allow for uncatchable fish in one fishery to be reallocated to the other. Fish will be deemed uncatchable by a respective commercial or recreational fishery only after considering all possible annual management actions to allow for their harvest that are consistent with the harvest management objectives specific in the fishery management plan including consideration of single species fisheries. Implementation of inseason transfers will require consultation with the pertinent commercial and recreational Salmon Advisory Subpanel representatives from the area involved and the Salmon

Technical Team, and a clear establishment of available fish and impacts from the transfer. Inseason trades or transfers may vary from the guideline ratio of four coho to one chinook to meet the allocation objectives in paragraph (c)(1)(viii) of this section.

(vii) *Other inseason provisions.* Any increase or decrease in the recreational or commercial allowable ocean harvest resulting from an inseason restructuring of a fishery or other inseason management action does not require reallocation of the overall non-treaty allowable ocean harvest north of Cape Falcon between the recreational and commercial fisheries. Inseason redistribution of subarea quotas within the recreational fishery or the distribution of allowable coho catch transfers from the commercial fishery among subareas may deviate from the preseason distribution. Inseason management actions may be taken by the Regional Director to assure meeting the primary objective of achieving all-species fisheries without imposing chinook restrictions in each of the recreational subareas north of Cape Falcon. Such actions might include, but are not limited to: Closure from 0 to 3, 0 to 6, 3 to 200, or 5 to 200 nm from shore; closure from a point extending due west from Tatoosh Island for 5 nm, then south to a point due west of Umatilla Reef Buoy, then due east to shore; closure from North Head at the Columbia River mouth north to Leadbetter Point; change in species that may be landed; or other actions as prescribed in the annual management measures.

(viii) *Allocation objectives.* The goal of allocating ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the following objectives for the commercial and recreational fisheries. When deviation from the allocation schedule is being considered, these objectives will serve as criteria to help determine whether a user group will benefit from the deviation.

(A) Provide recreational opportunity by maximizing the duration of the fishing season while minimizing daily and area closures and restrictions on gear and daily limits.

(B) Maximize the value of the commercial harvest while providing fisheries of reasonable duration.

(ix) *Fishery allocation priorities.* The following fishery allocation priorities will provide guidance in the preseason process of establishing final harvest allocations and structuring seasons that best achieve the allocation objectives. To the extent fish are provided to each fishery by the allocation schedule, these priorities do not favor one user group over the other and should be met simultaneously for each fishery. Seasons may be structured that deviate from these priorities consistent with the allocation objectives.

(A) At total allowable harvest levels up to 300,000 coho and 100,000 chinook: For the recreational fishery, provide coho for a late June through early September all-species season; provide chinook to allow access to coho and, if possible, a minimal chinook-only fishery prior to the all-species season; and adjust days per week and/or institute area restrictions to stabilize season duration. For the commercial fishery, provide chinook for a May and early June chinook season and provide coho for hooking mortality and/or access to a pink fishery, and ensure that part of the chinook season will occur after June 1.

(B) At total allowable harvest levels above 300,000 coho and above 100,000 chinook: For the recreational fishery, relax any restrictions in the all-species fishery and/or extend the all-species season beyond Labor Day as coho quota allows; provide chinook for a Memorial Day through late June chinook-only fishery; and adjust days per week to ensure continuity with the all-species season. For the commercial fishery, provide coho for an all-species season in late summer and/or access to a pink fishery; and leave adequate chinook from the May through June season to allow access to coho.

(2) *Coho south of Cape Falcon—(i) Allocation schedule.* Preseason allocation shares of coho salmon south of Cape Falcon, OR, will be determined by an allocation schedule, which is based on the following formula. The formula will be used to interpolate between allowable harvest levels as shown in the table below.

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(A) Up to 350,000 allowable ocean harvest: The first 150,000 fish will be allocated to the recreational fishery. Additional fish will be allocated 66.7 percent to troll and 33.3 percent to recreational. The incidental coho mortality for a commercial all-salmon-except-coho fishery will be deducted from the troll allocation. If the troll allocation is insufficient for this purpose, the remaining number of coho needed for this estimated incidental coho mortality will be deducted from the recreational share.

(B) From 350,000 to 800,000 allowable ocean harvest: The recreational allocation is equal to 14 percent of the allowable harvest above 350,000 fish, plus 217,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

(C) Above 800,000 allowable ocean harvest: The recreational allocation is equal to 10 percent of the allowable harvest above 800,000 fish, plus 280,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage	Number (thousands)	Percentage
2,700	2,230	82.6	470	17.4
2,600	2,140	82.3	460	17.7
2,500	2,050	82.0	450	18.0
2,400	1,960	81.7	440	18.3
2,300	1,870	81.3	430	18.7
2,200	1,780	80.9	420	19.1
2,100	1,690	80.5	410	19.5
2,000	1,600	80.0	400	20.0
1,900	1,510	79.5	390	20.5
1,800	1,420	78.9	380	21.1
1,700	1,330	78.2	370	21.8
1,600	1,240	77.5	360	22.5
1,500	1,150	76.7	350	23.3
1,400	1,060	75.7	340	24.3
1,300	970	74.6	330	25.4
1,200	880	73.3	320	26.7
1,100	790	71.8	310	28.2
1,000	700	70.0	300	30.0
900	610	67.8	290	32.2
800	520	65.0	280	35.0
700	434	62.0	266	38.0
600	348	58.0	252	42.0
500	262	52.4	238	47.6
400	176	44.0	224	56.0
350	133	38.0	217	62.0
300	100	33.3	200	66.7
200	133	16.5	167	83.5

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage	Number (thousands)	Percentage
100	(¹)	(¹)	(¹)	(¹)

¹An incidental coho allowance associated with any commercial all-salmon-except-coho fishery will be deducted from the recreational share of coho during periods of low coho abundance when the commercial allocation of coho under the schedule would be insufficient to allow for incidental hooking mortality of coho in the commercial all-salmon-except-coho fishery.

(ii) *Geographic distribution.* Allowable harvest south of Cape Falcon may be divided and portions assigned to subareas based on considerations including, but not limited to, controlling ocean harvest impacts on depressed, viable natural stocks within acceptable maximum allowable levels; stock abundance; allocation considerations; stock specific impacts; relative abundance of the salmon species in the fishery; escapement goals; and maximizing harvest potential.

(iii) *Recreational allocation at 167,000 fish or less.* When the recreational allocation is at 167,000 fish or less, the total recreational allowable ocean harvest of coho will be divided between two major subareas with independent impact quotas. The initial allocation will be 70 percent from Cape Falcon to Humbug Mountain and 30 percent south of Humbug Mountain. Coho transfers between the two impact quotas may be permitted on a one-for-one basis, if chinook constraints preclude access to coho. Horse Mountain to Point Arena will be managed for an impact guideline of 3 percent of the south of Cape Falcon recreational allocation. The recreational coho fishery between Humbug Mountain and Point Arena may be closed when it is projected that the harvest impact between Humbug Mountain and Point Arena, combined with the projected harvest impact that will be taken south of Point Arena to the end of the season, equals the impact quota for south of Humbug Mountain. The recreational fishery for coho salmon south of Point Arena will not close upon attainment of the south of Humbug Mountain impact quota.

(iv) *Oregon coastal natural coho.* At Oregon coastal natural coho spawning escapements of 28 or fewer adults per

mile, the allocation provisions of paragraph (c)(2)(i) of this section do not apply. Fisheries will be established that will provide only the minimum incidental harvest of Oregon coastal natural coho necessary to prosecute other fisheries, and that under no circumstances will cause irreparable harm to the Oregon coastal natural coho stock.

(v) *Inseason reallocation.* No later than August 15 each year, the Salmon Technical Team will estimate the number of coho salmon needed to complete the recreational seasons. Any coho salmon allocated to the recreational fishery that are not needed to complete the recreational seasons will be reallocated to the commercial fishery. Once reallocation has taken place, the remaining recreational quota will change to a harvest guideline. If the harvest guideline for the recreational fishery is projected to be reached on or before Labor Day, the Regional Director may allow the recreational fishery to continue through the Labor Day weekend only if there is no significant danger of impacting the allocation of another fishery or of failing to meet an escapement goal.

(d) *Management boundaries and zones.* Management boundaries and zones will be established or adjusted to achieve a conservation purpose. A conservation purpose protects a fish stock, simplifies management of a fishery, or promotes wise use of fishery resources by, for example, separating fish stocks, facilitating enforcement, separating conflicting fishing activities, or facilitating harvest opportunities. Management boundaries and zones will be described by geographical references, coordinates (latitude and longitude), LORAN readings, depth contours, distance from shore, or similar criteria.

(e) *Minimum harvest lengths.* The minimum harvest lengths for commercial, recreational, and treaty Indian fishing may be changed upon demonstration that a useful purpose will be served. For example, an increase in minimum size for commercially caught salmon may be necessary for conservation or may provide a greater poundage and monetary yield from the fishery while not substantially increasing hooking mortality. The removal of a minimum

size for the recreational fishery may prevent wastage of fish and outweigh the detrimental impacts of harvesting immature fish.

(f) *Recreational daily bag limits.* Recreational daily bag limits for each fishing area will be set equal to one, two, or three salmon of some combination of species. The recreational daily bag limits for each fishing area will be set to maximize the length of the fishing season consistent with the allowable level of harvest in the area.

(g) *Fishing gear restrictions.* Gear restrictions for commercial, recreational, and treaty Indian fishing may be established or modified upon demonstration that a useful purpose will be served. For example, gear restrictions may be imposed or modified to facilitate enforcement, reduce hooking mortality, or reduce gear expenses for fishermen.

(h) *Seasons—(1) In general.* Seasons for commercial and recreational fishing will be established or modified taking into account allowable ocean harvest levels and quotas, allocations between the commercial and recreational fisheries, and the estimated amount of effort required to catch the available fish based on past seasons.

(2) *Commercial seasons.* Commercial seasons will be established or modified taking into account wastage of fish that cannot legally be retained, size and poundage of fish caught, effort shifts between fishing areas, and protection of depressed stocks present in the fishing areas. All-species seasons will be established to allow the maximum allowable harvest of pink and sockeye salmon without exceeding allowable chinook or coho harvest levels and within conservation and allocation constraints of the pink and sockeye stocks.

(3) *Recreational seasons.* If feasible, recreational seasons will be established or modified to encompass Memorial Day and Labor Day weekends, and to avoid the need for inseason closures.

(i) *Quotas* (by species, including fish caught 0–3 nm seaward of Washington, Oregon, and California). Quotas for commercial, recreational, and treaty Indian fishing may be established or modified to ensure that allowable ocean harvests are not exceeded.

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Quotas may be fixed or adjustable and used in conjunction with seasons. Any quota established does not represent a guaranteed ocean harvest, but a maximum ceiling on catch.

(j) *Selective fisheries.* In addition to the all-species seasons and the all-species-except-coho seasons established for the commercial and recreational fisheries, selective coho-only, chinook-only, or pink-only fisheries may be established if harvestable fish of the target species are available; harvest of incidental species will not exceed allowable levels; proven, documented selective gear exists; significant wastage of incidental species will not occur; and the selective fishery will occur in an acceptable time and area where wastage can be minimized and target stocks are primarily available.

(k) *Treaty Indian fishing.* (1) NMFS will establish or modify treaty Indian fishing seasons and/or fixed or adjustable quotas, size limits, gear restrictions, and/or area restrictions taking into account recommendations of the Council, proposals from affected tribes, and relevant Federal court proceedings.

(2) The combined treaty Indian fishing seasons will not be longer than necessary to harvest the allowable treaty Indian catch, which is the total treaty harvest that would occur if the tribes chose to take their total entitlement of the weakest stock in the fishery management area, assuming this level of harvest did not create conservation or allocation problems on other stocks.

(3) Any fixed or adjustable quotas established will be consistent with established treaty rights and will not exceed the harvest that would occur if the entire treaty entitlement to the weakest run were taken by treaty Indian fisheries in the fishery management area.

(4) If adjustable quotas are established for treaty Indian fishing, they may be subject to inseason adjustment because of unanticipated coho hooking mortality occurring during the season, catches in treaty Indian fisheries inconsistent with those unanticipated under Federal regulations, or a need to redistribute quotas to ensure attainment of an overall quota.

(l) *Yurok and Hoopa Valley tribal fishing rights.* For purposes of section 303 of

the Magnuson Act, the federally reserved fishing rights of the Yurok and Hoopa Valley Indian Tribes as set out in a legal opinion² dated October 4, 1993, by the Office of the Solicitor, Department of the Interior, are applicable law. Under section 303 of the Magnuson Act, allowable ocean harvest must be consistent with all applicable laws.

(m) *Inseason notice procedures.* Telephone hotlines and USCG broadcasts will provide actual notice of inseason actions for commercial, recreational, and treaty Indian fishing.

(n) *Reporting requirements.* Reporting requirements for commercial fishing may be imposed to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Such reports are subject to the limitations described herein. Persons engaged in commercial fishing in a regulatory area subject to quota management and landing their catch in another regulatory area open to fishing may be required to transmit a brief radio report prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the radio reports, and the entities receiving the reports will be specified annually.

EFFECTIVE DATE NOTE: At 61 FR 34601, July 2, 1996, § 660.408 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 660.409 Inseason actions.

(a) *Fixed inseason management provisions.* NMFS is authorized to take the following inseason management actions annually, as appropriate.

(1) *Automatic season closures based on quotas.* When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, NMFS will, by an inseason action issued under § 660.411, close the commercial or recreational fishery, or

²Copies of the Solicitor's Opinion are available from the Director, Southwest Region, NMFS.

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both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

(2) *Rescission of automatic closure.* If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, NMFS will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided NMFS finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours. The season will be reopened by an inseason action issued under § 660.411.

(3) *Adjustment for error in preseason estimates.* NMFS may, by an inseason action issued under § 660.411, make appropriate changes in relevant seasons or quotas if a significant computational error or errors made in calculating preseason estimates of salmon abundance are identified, provided that such correction can be made in a timely manner to affect the involved fishery without disrupting the capacity to meet the objectives of the fishery management plan.

(b) *Flexible inseason management provisions.* (1) The Regional Director will consult with the Chairman of the Council and the appropriate State Directors prior to taking any of the following flexible inseason management provisions, which include, but are not limited to, the following:

- (i) Modification of quotas and/or fishing seasons.
- (ii) Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations.

(iii) Modification of recreational bag limits and recreational fishing days per calendar week.

(iv) Establishment or modification of gear restrictions.

(v) Modification of boundaries, including landing boundaries, and establishment of closed areas.

(2) Fishery managers must determine that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the fishery management plan. All inseason adjustments will be based on consideration of the following factors:

- (i) Predicted sizes of salmon runs.
- (ii) Harvest quotas and hooking mortality limits for the area and total allowable impact limitations, if applicable.
- (iii) Amount of commercial, recreational, and treaty Indian catch for each species in the area to date.
- (iv) Amount of commercial, recreational, and treaty Indian fishing effort in the area to date.
- (v) Estimated average daily catch per fisherman.
- (vi) Predicted fishing effort for the area to the end of the scheduled season.
- (vii) Other factors, as appropriate.

§ 660.410 Escapement goals.

(a) *Current escapement goals.* The following specific escapement goals are in effect. Annual management objectives for Washington coastal fall, spring, and summer chinook; Puget Sound chinook; Washington coastal coho; and Puget Sound coho are developed through fixed procedures established in the U.S. District Court.

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning ¹ escapement goal
Sacramento River Fall Chinook ²	122,000 to 180,000 for natural and hatchery
Klamath River Fall Chinook	Between 33 and 34 percent of the potential adult natural spawners, but no fewer than 35,000 naturally spawning adults in any one year. ³ The brood escapement rate will average 33 to 34 percent over the long term. The escapement rate for each brood may vary from the 33 to 34 percent in order to achieve the required tribal/non-tribal annual allocation.
Oregon Coastal Chinook	150,000 to 200,000 natural

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SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT— Continued

System	Spawning ¹ escapement goal
Columbia River Chinook:	
Upper River Fall	40,000 bright adults above McNary Dam.
Upper River Summer	80,000 to 90,000 adults above Bonneville Dam.
Upper River Spring	100,000 to 200,000 adults above Bonneville Dam.
Lower River Spring (Willamette River)	30,000 to 45,000 based on run size
Oregon Coastal Coho	Oregon coastal natural (OCN) coho spawning escapement is based on an aggregate density of 42 naturally spawning adults per mile in standard index survey areas ⁴
Puget Sound Pink	900,000 natural.
Lake Washington Sockeye ⁵	300,000 to Lake Washington.
Columbia River Sockeye ⁵	65,000 over Priest Rapids.

¹Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production.

²Includes upper and lower river components.

³The minimum escapement floor of 35,000 naturally spawning adults may be modified only by amendment to the FMP.

⁴At OCN stock sizes below 125 percent of the annual numerical escapement goal, an exploitation rate of up to 20 percent will be allowed for incidental impacts of the combined ocean troll, sport, and freshwater fisheries. At OCN spawning escapements of 28 or fewer adults per mile, an exploitation rate of up to 20 percent may be allowed to provide only minimum incidental harvest to prosecute other fisheries, provided the rate chosen will cause no irreparable harm to the OCN stock.

⁵These stocks represent a negligible component of the Washington ocean harvest.

(b) *Modification of escapement goals.* NMFS is authorized, through an action issued under §660.411, to modify an escapement goal if—

(1) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council and the Salmon Technical Team, justifies modification of an escapement goal;

(2) For Oregon coastal chinook, specific goals are developed within the overall goal for north coast and south coast stocks; or

(3) Action by a Federal court indicates that modification of an escapement goal is appropriate.

§660.411 Notification and publication procedures.

(a) *Notification and effective dates.* (1) Annual and certain other actions taken under §§660.408 and 660.410 will be implemented by an action published in the FEDERAL REGISTER, and will be effective upon filing, unless a later time is specified in the action.

(2) Inseason actions taken under §660.409 will be by actual notice available from telephone hotlines and USCG broadcasts, as specified annually. Inseason actions will also be published in the FEDERAL REGISTER as soon as practicable. Inseason actions will be effective from the time specified in the actual notice of the action (telephone hotlines and USCG broadcasts), or at the time the inseason action published

in the FEDERAL REGISTER is effective, whichever comes first.

(3) Any action issued under this section will remain in effect until the expiration date stated in the action or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(b) *Public comment.* If time allows, NMFS will invite public comment prior to the effective date of any action published in the FEDERAL REGISTER. If NMFS determines, for good cause, that an action must be filed without affording a prior opportunity for public comment, public comments on the action will be received by NMFS for a period of 15 days after filing of the action with the Office of the Federal Register.

(c) *Availability of data.* The Regional Director will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Region, NMFS. For actions affecting fisheries occurring primarily or exclusively in the fishery management area seaward of California, information relevant to the action also will be made available for public review during normal office hours at the Southwest Region, NMFS.

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TABLE 1 TO PART 660.—QUOTAS FOR PRECIOUS CORALS PERMIT AREAS

Name of coral bed	Type of bed	Harvest quota	Number of years	Gear restriction
Makapuu	E	P—2,000 kg	2	S
		G—600 kg	2	S
		B—600 kg	2	S
Ke-ahole Point	C	P—67 kg	1	S
		G—20 kg	1	S
		B—17 kg	1	S
Kaena Point	C	P—67 kg	1	S
		G—20 kg	1	S
		B—17 kg	1	S
Brooks Bank	C	P—17 kg	1	N
		G—133 kg	1	N
		B—111 kg	1	N
180 Fathom Bank	C	P—222 kg	1	N
		G—67 kg	1	N
		B—56 kg	1	N
Westpac Bed	R	Zero (0 kg)		
Hawaii, American Samoa, Guam, U.S. Pacific Island possessions.		X—1,000 kg (all species combined except black corals) per area.	1	N

Notes:

- Types of corals: P=Pink G=Gold B=Bamboo.
- There are no restrictions under this part on the harvest of black corals, except the data submission requirements (§660.3). State regulations on black coral harvesting are not superseded by this part.
- Only $\frac{1}{5}$ of the indicated amount is allowed if nonselective gear is used; that is, the nonselective harvest will be multiplied by 5 and counted against the quota. If both selective and nonselective methods are used, the bed will be closed when $S+5N=Q$, where S=selective harvest amount, N=nonselective harvest amount and Q=total harvest quota, for any single species on that bed.
- Only selective gear may be used in the EEZ seaward of the main Hawaiian Islands; i.e., south and east of a line midway between Nihoa and Niihau Islands. Nonselective gear or selective gear may be used in all other portions of exploratory areas.
- S=Selective gear only; N=Nonselective or selective gear.
- No authorized fishing for coral in refugia.

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS

Vessel length	Capacity rating
<20	1.00
21	1.13
22	1.27
23	1.42
24	1.58
25	1.75
26	1.93
27	2.12
28	2.32
29	2.53
30	2.76
31	2.99
32	3.24
33	3.50
34	3.77
35	4.05
36	4.35
37	4.66
38	4.98
39	5.31
40	5.66
41	6.02
42	6.39
43	6.78
44	7.18
45	7.59
46	8.02
47	8.47
48	8.92
49	9.40
50	9.88
51	10.38

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
52	10.90
53	11.43
54	11.98
55	12.54
56	13.12
57	13.71
58	14.32
59	14.95
60	15.59
61	16.25
62	16.92
63	17.61
64	18.32
65	19.04
66	19.78
67	20.54
68	21.32
69	22.11
70	22.92
71	23.74
72	24.59
73	25.45
74	26.33
75	27.23
76	28.15
77	29.08
78	30.04
79	31.01
80	32.00
81	33.01
82	34.04
83	35.08

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TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
84	36.15
85	37.24
86	38.34
87	39.47
88	40.61
89	41.77
90	42.96
91	44.16
92	45.38
93	46.63
94	47.89
95	49.17
96	50.48
97	51.80
98	53.15
99	54.51
100	55.90
101	57.31
102	58.74
103	60.19
104	61.66
105	63.15
106	64.67
107	66.20
108	67.76
109	69.34
110	70.94
111	72.57
112	74.21
113	75.88
114	77.57
115	79.28
116	81.02
117	82.77
118	84.55
119	86.36
120	88.18
121	90.03
122	91.90
123	93.80
124	95.72
125	97.66
126	99.62
127	101.61
128	103.62
129	105.66
130	107.72
131	109.80
132	111.91
133	114.04
134	116.20
135	118.38
136	120.58
137	122.81
138	125.06
139	127.34
140	129.64
141	131.97
142	134.32
143	136.70
144	139.10
145	141.53
146	143.98
147	146.46
148	148.96
149	151.49
150	154.05
151	154.68
152	155.31

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
153	155.94
154	156.57
155	157.20
156	157.83
157	158.46
158	159.10
159	159.73
160	160.36
161	160.99
162	161.62
163	162.25
164	162.88
165	163.51
166	164.14
167	164.77
168	165.41
169	166.04
170	166.67
171	167.30
172	167.93
173	168.56
174	169.19
175	169.82
176	170.45
177	171.08
178	171.72
179	172.35
180	172.98
181	173.61
182	174.24
183	174.87
184	175.50
185	176.13
186	176.76
187	177.40
188	178.03
189	178.66
190	179.29
191	179.92
192	180.55
193	181.18
194	181.81
195	182.44
196	183.07
197	183.71
198	184.34
199	184.97
200	185.60
201	186.23
202	186.86
203	187.49
204	188.12
205	188.75
206	189.38
207	190.02
208	190.65
209	191.28
210	191.91
211	192.54
212	193.17
213	193.80
214	194.43
215	195.06
216	195.69
217	196.33
218	196.96
219	197.59
220	198.22
221	198.85

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TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
222	199.48
223	200.11
224	200.74
225	201.37
226	202.01
227	202.64
228	203.27
229	203.90
230	204.53
231	205.16
232	205.79
233	206.42
234	207.05
235	207.68
236	208.32
237	208.95
238	209.58
239	210.21
240	210.84
241	211.47
242	212.10
243	212.73
244	213.36
245	213.99
246	214.63
247	215.26
248	215.89
249	216.52
250	217.15
251	217.78
252	218.41
253	219.04
254	219.67
255	220.30
256	220.94
257	221.57
258	222.20
259	222.83
260	223.46
261	224.09
262	224.72
263	225.35
264	225.98
265	226.61
266	227.25
267	227.88
268	228.51
269	229.14
270	229.77
271	230.40
272	231.03
273	231.66
274	232.29
275	232.93
276	233.56
277	234.19
278	234.82
279	235.45
280	236.08
281	236.71
282	237.34
283	237.97
284	238.60
285	239.24
286	239.87
287	240.50
288	241.13
289	241.76
290	242.39

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TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
291	243.02
292	243.65
293	244.28
294	244.91
295	245.55
296	246.18
297	246.81
298	247.44
299	248.07
300	248.70
301	249.33
302	249.96
303	250.59
304	251.22
305	251.86
306	252.49
307	253.12
308	253.75
309	254.38
310	255.01
311	255.64
312	256.27
313	256.90
314	257.54
315	258.17
316	258.80
317	259.43
318	260.06
319	260.69
320	261.32
321	261.95
322	262.58
323	263.21
324	263.85
325	264.48
326	265.11
327	265.74
328	266.37
329	267.00
330	267.63
331	268.26
332	268.89
333	269.52
334	270.16
335	270.79
336	271.42
337	272.05
338	272.68
339	273.31
340	273.94
341	274.57
342	275.20
343	275.83
344	276.47
345	277.10
346	277.73
347	278.36
348	278.99
349	279.62
350	280.25
351	280.88
352	281.51
353	282.14
354	282.78
355	283.41
356	284.04
357	284.67
358	285.30
359	285.93

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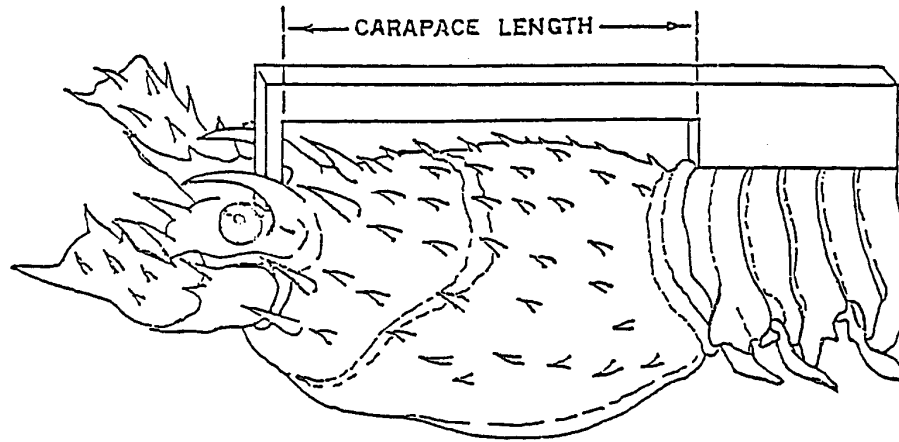
TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
360	286.56
361	287.19
362	287.82
363	288.46
364	289.09
365	289.72
366	290.35
367	290.98
368	291.61
369	292.24
370	292.87
371	293.50
372	294.13
373	294.77
374	295.40
375	296.03
376	296.66
377	297.29
378	297.92
379	298.55
380	299.18

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUND FISH LIMITED ENTRY PERMITS—Continued

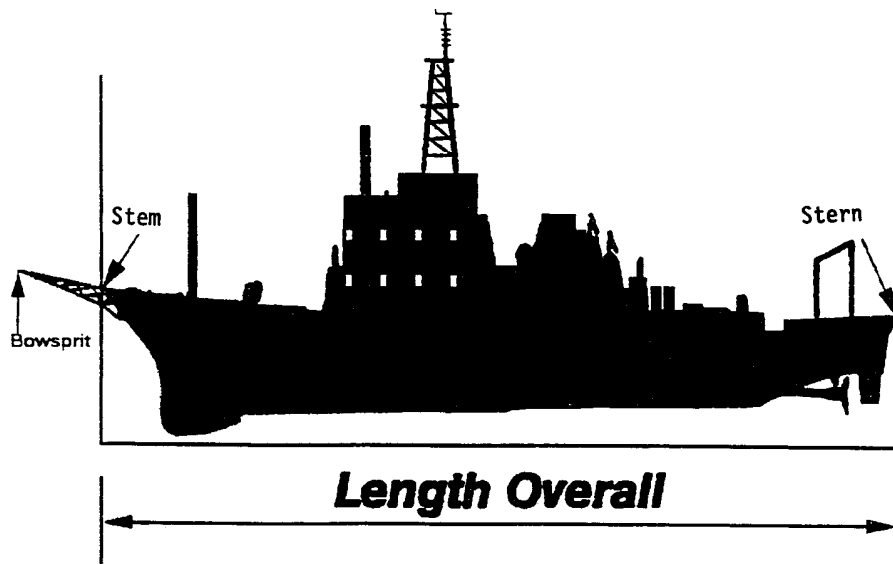
Vessel length	Capacity rating
381	299.81
382	300.44
383	301.08
384	301.71
385	302.34
386	302.97
387	303.60
388	304.23
389	304.86
390	305.49
391	306.12
392	306.75
393	307.39
394	308.02
395	308.65
396	309.28
397	309.91
398	310.54
399	311.17
>400	311.80

FIGURE 1 TO PART 660—CARAPACE LENGTH OF LOBSTERS



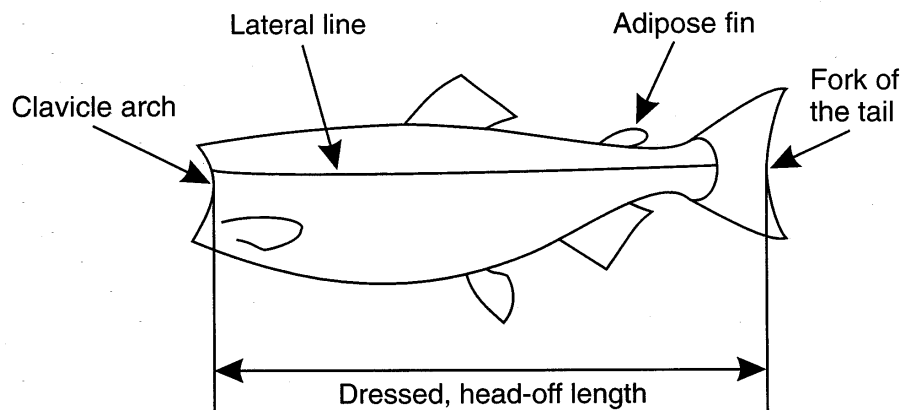
Carapace Length of Lobsters

FIGURE 2 TO PART 660—LENGTH OF LONGLINE VESSEL



Length of Longline Vessel

FIGURE 3 TO PART 660—DRESSED, HEAD-OFF LENGTH OF SALMON



Dressed, Head-off Length of Salmon

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PART 662—NORTHERN ANCHOVY FISHERY

Subpart A—General

- Sec.
- 662.1 Purpose and scope.
- 662.2 Definitions.
- 662.3 Relation to other laws.
- 662.4 Recordkeeping and reporting.
- 662.5 Vessel identification.
- 662.6 Prohibitions.
- 662.7 Facilitation of enforcement.
- 662.8 Penalties.

Subpart B—Management Measures

- 662.20 Harvest quota.
- 662.21 Closures.
- 662.22 Fishing seasons.
- 662.23 Closed areas.
- 662.24 Gear limitations.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 49 FR 9572, Mar. 14, 1984, unless otherwise noted.

Subpart A—General

§ 662.1 Purpose and scope.

This part governs fishing for northern anchovy by vessels of the United States in the Pacific anchovy fishery area (PAFA). These regulations implement the Northern Anchovy Fishery Management Plan (FMP) developed by the Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended.

§ 662.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Anchovy means fish of the species *Engraulis mordax*, or parts or products thereof.

Council means the Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201.

Fishing year means a 12-month period beginning August 1 and extending through July 31 of the following year.

Live bait fishery means fishing for northern anchovies for use as live bait in other fisheries.

Nonreduction fishery means fishing for northern anchovies for use as dead bait or providing fish for human consumption.

Northern anchovy means fish of the species *Engraulis mordax*, or parts or products thereof.

PAFA means the Pacific anchovy fishery area which is the EEZ seaward of California, and between 38° N. latitude (Point Reyes) and the United States-Mexico International Boundary which is a line connecting the following coordinates:

32°35'22" N. latitude, 117°27'49" W. longitude
32°37'37" N. latitude, 117°49'31" W. longitude
31°07'58" N. latitude, 118°36'18" W. longitude
30°32'31" N. latitude, 121°51'58" W. longitude

Reduction fishery means fishing for northern anchovies for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, or other fishery products or byproducts for purposes other than direct human consumption.

Reduction harvest quota means the amount of anchovies, by weight, which may be harvested during a fishing year for reduction purposes.

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, or a designee.

Spawning biomass means the estimated amount, by weight, of all sexually mature northern anchovies in the central subpopulation (defined as) from 38° N. latitude (Point Reyes) south to approximately 30° N. latitude at Punta Baja, Baja California.

Special allocations means that part of the total harvest quota reserved for nonreduction fishing, reduction fishing in subarea A, and any conservation purpose.

Subarea A means the northern portion of the PAFA between 38° N. latitude (Point Reyes), and a southern limit at 35°14' N. latitude (Point Buchon).

Subarea B means the southern portion of the PAFA between 35°14' N. latitude (Point Buchon), and the United States-Mexico International Boundary described in this section.

Subarea B harvest quota means the amount of anchovies, by weight, which may be harvested during a fishing year for reduction purposes in Subarea B.

Total harvest quota means the total amount of anchovies, by weight, which may be harvested during a fishing year

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by the reduction and nonreduction fisheries.

[49 FR 9572, Mar. 14, 1984, as amended at 53 FR 24655, 24660, June 29, 1988; 59 FR 18978, Apr. 21, 1994]

§ 662.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter.

(b) Any State law which pertains to vessels registered under the laws of that State while fishing in the EEZ and which is consistent with the Federal regulations will continue to have force and effect on fishing activities addressed in this part.

(c) If a vessel has filed with the State of California a declaration of intent to take anchovies for reduction purposes, it will be conclusively presumed that any fishing for anchovies by that vessel is for reduction purposes unless an exemption to the declaration has been filed with the State of California.

[53 FR 24658, June 29, 1988]

§ 662.4 Recordkeeping and reporting.

Data regarding fishing vessels, fishing activities, landings and processing activities required by the FMP for the reduction and nonreduction fisheries are collected by the State of California under existing data collection provisions. No additional reports will be required of fishermen or processors as long as the data collection and reporting systems operated by the State of California continue to provide the Secretary with statistical information adequate for management. Reporting requirements may be promulgated by emergency regulations if this reporting system becomes inadequate for management purposes.

§ 662.5 Vessel identification.

(a) *Official number.* Each fishing vessel in the reduction fishery must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. The official number is the anchovy reduction registration number issued by the State of California.

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(b) *Numerals.* The official number must be affixed to each vessel subject to this part in block Arabic numerals at least 14 inches in height. Markings must be legible and of a color that contrasts with the background.

[49 FR 9572, Mar. 14, 1984, as amended at 53 FR 24658, June 29, 1988]

§ 662.6 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for anchovies in the PAFA:

(1) During any applicable closed season or in any applicable closed area specified in this part;

(2) During any applicable closure specified in this part; or

(3) Aboard a fishing vessel which has not filed an applicable declaration of intent with the State of California.

(b) Take or retain anchovies for reduction purposes in the PAFA unless they are taken with authorized fishing gear as specified in § 662.24.

[49 FR 9572, Mar. 14, 1984, as amended at 53 FR 24658, June 29, 1988]

§ 662.7 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 662.8 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 662.20 Harvest quota.

(a) *Announcement of harvest quotas.* The total harvest quota, reduction harvest quota, subarea B harvest quota, and special allocations will be determined by the *Regional Director* from the estimated spawning biomass according to the formulas in paragraph (b) of this section, and will be announced on or about August 1 as interim final quotas. The quotas will be announced according to the following procedure:

(1) No less than 14 calendar days before the meeting of the Council's Anchovy Planning team and Advisory Subpanel, a notice will be published in

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the FEDERAL REGISTER notifying the public when the estimate of the annual spawning biomass will be available. The notice also will announce the date and location of a meeting of the Council's Anchovy Planning team and Advisory Subpanel, where the estimated spawning biomass and the annual quotas will be reviewed and public comments received. This meeting is expected to convene during the second week of June.

(2) All materials relating to the annual quotas will be forwarded to the Council and its Scientific and Statistical Committee and will be available for public inspection at the Office of the *Regional Director*.

(3) On or about August 1, the interim final quotas will be published in the FEDERAL REGISTER with an opportunity for public comment.

(4) At a regular meeting of the Council, the Council will review the estimated spawning biomass and harvest quotas and offer time for public comment. The Council will either accept the harvest quotas as published or recommend to the *Regional Director* that the numbers be revised. If a revision is requested, a justification for the revision must be provided. An annual quota may be adjusted only if inaccurate data were used or if errors were made in the calculations.

(5) If the *Regional Director* determines that a change in a harvest quota is justified, NMFS will publish a notice in the FEDERAL REGISTER notifying the public of the change and the reasons for the change. If no changes are necessary, the interim final quotas will become final quotas, and no notice will be published.

(b) *Determination of harvest quotas.* The total harvest quota in the PAFA will be determined by adding the nonreduction fishery allocation in the PAFA and the reduction harvest quota in the PAFA, and they will be separately determined by the following formulas.

(1) When the estimated spawning biomass is less than 300,000 mt, there will be no reduction harvest quota and the nonreduction allocation in the PAFA will be 4,900 mt.

(2) When the estimated spawning biomass is equal to or greater than 300,000

mt, the reduction harvest quota in the PAFA will be 70 percent of the estimated spawning biomass in excess of 300,000 mt or 140,000 mt, whichever is less, and the nonreduction fishery allocation in the PAFA will be 4,900 mt except as specified in § 662.21(b).

(3) When the estimated spawning biomass is less than 50,000 mt for 2 consecutive fishing years, there will be no reduction quota and no nonreduction allocation until the spawning biomass reaches or exceeds 50,000 mt.

(4) There is no limit on the harvest of anchovy for live bait, except that when the spawning biomass is less than 50,000 mt for 2 consecutive fishing years, there will be no live bait harvest until the spawning biomass reaches or exceeds 50,000 mt.

(c) *Subarea B harvest quota.* The reduction harvest quota for subarea B will be equal to the reduction harvest quota in the PAFA minus a reserve of 10 percent of the reduction harvest quota or 9,072 mt, whichever is less. This reserve is allocated to the reduction fishery in subarea A except as provided in paragraph (d) of this section.

(d) *Reallocation of subarea A reserve.* The Secretary may reallocate on June 1 from subarea A to subarea B that portion of the reserve allocated to subarea A under paragraph (c) of this section which will not be harvested in subarea A by the end of the fishing year. This amount will be estimated based on catch to date in the current year and the expected intentions of processors and fishermen in the reduction fishery north of Point Buchon to harvest anchovies in the remaining fishing year. Reallocation under this paragraph will be based first on a need to increase the subarea B harvest quota and secondly on the projected reduction harvest in subarea A to the end of the fishing year.

(e) *Procedure for reallocation of subarea A reserve.* (1) The Secretary may, by May 1 each year, determine the need to increase the subarea B harvest quota as provided in paragraph (d) of this section if the expected reduction fishery harvest in subarea B is an amount equal to or greater than the subarea B harvest quota. After making a determination that the subarea B harvest quota needs to be increased as

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provided in paragraph (d) of this section, the Secretary will make the estimate under paragraph (d) of this section on or about May 15 and, as soon as practicable after June 1, announce to all reduction fishing vessel owners and operators and licensed anchovy reduction plant operators by notice in the FEDERAL REGISTER and other appropriate notice—

(i) The change in the subarea B quota;

(ii) The reasons for the change; and

(iii) A summary of, and responses to, any comments submitted under paragraph (e)(3) of this section.

(2) The Regional Director will compile in aggregate form all data used to make the estimates under paragraph (d) of this section and make them available for public inspection during normal business hours at the Southwest Regional Office, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

(3) Comments from the public on the estimates made under paragraph (d) of this section may be submitted to the Regional Director until May 31.

(f) Anchovies harvested for reduction and nonreduction purposes in the PAFA and adjacent territorial sea will be counted toward the total harvest quota.

[49 FR 9572, Mar. 14, 1984, as amended at 56 FR 15300, Apr. 16, 1991; 59 FR 18978, Apr. 21, 1994]

§ 662.21 Closures.

(a) *Closure of the reduction fishery.* The Secretary will close the reduction fishery during the open season provided in § 662.22 when the total harvest quota in the PAFA is taken. The Secretary will close only the reduction fishery in subarea B when the subarea B reduction harvest quota is taken.

(b) *Closure of the nonreduction fishery.* The Secretary will close the nonreduction fishery in the PAFA only if the total harvest quota is taken.

(c) *Procedure for closing.* (1) When the harvest quotas prescribed in § 662.20 are about to be taken, the Secretary will announce, by notice in the FEDERAL REGISTER and to the Council and the California Department of Fish and Game, the date of closure in one or both subareas.

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(2) If a reduction fishery closure is announced, the reduction fishery in the affected subarea will cease on the date of closure specified in the FEDERAL REGISTER notice provided by paragraph (c)(1) of this section, and will not resume until a final determination of new harvest quotas is announced under § 662.20.

(3) The nonreduction fishery in the PAFA ceases on the date that a total harvest quota closure is announced under paragraph (c)(1) of this section, and will not resume until a new harvest quota is announced under § 662.20.

§ 662.22 Fishing seasons.

All open seasons will begin at 0001 hours and terminate at 2400 hours local time. The PAFA is closed to anchovy fishing except as follows:

(a) *Nonreduction fishing season.* The open season for nonreduction fishing in the PAFA is from August 1 to July 31.

(b) *Reduction fishing season.* (1) In subarea A, the open season for reduction fishing in the PAFA is from August 1 to June 30; and

(2) In subarea B, the open season for reduction fishing in the PAFA is from September 15 to June 30.

§ 662.23 Closed areas.

(a) *Nonreduction fishery.* There are no closed areas for nonreduction fishing in the PAFA.

(b) *Reduction fishery.* The following areas are closed to reduction fishing: (1) *Farallon Islands closure* (see Figure 1). The portion of subarea A bounded by—(i) A straight line joining Pigeon Point Light (37°10.9' N. latitude, 122°23.6' W. longitude) and the U.S. navigation light on Southeast Farallon Island (37°42.0' N. latitude, 123°00.1' W. longitude); and

(ii) A straight line joining the U.S. navigation light on Southeast Farallon Island (37°42.0' N. latitude, 123°00.1' W. longitude) and the U.S. navigation light on Point Reyes (37°59.7' N. latitude, 123°01.3' W. longitude).

(2) *Subarea B closures* That portion of subarea B described as—

(i) *Oxnard closure.* (see Figure 1). The area that extends offshore four (4) miles from the mainland shore between lines running 250° true from the steam plant stack at Manadabay Beach

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(34°12.4' N. latitude, 119°15.0' W. longitude) and 220° true from the steam plant stack at Ormond Beach (34°07.8' N. latitude, 119°10.0' W. longitude).

(ii) *Santa Monica Bay closure* (see Figure 1). Santa Monica Bay shoreward of that line from Malibu Point (34°01.8' N. latitude, 118°40.8' W. longitude) to Rocky Point (Palos Verdes Point) (33°46.5' N. latitude, 118°25.7' W. longitude).

(iii) *Los Angeles Harbor closure* (see Figure 1). The area outside Los Angeles Harbor described by a line extending six miles 180° true from Point Fermin

(33°42.3' N. latitude, 118°17.6' W. longitude) and then to a point located three (3) miles offshore on a line 225° true from Huntington Beach Pier (33°39.2' N. latitude, 118°00.3' W. longitude).

(iv) *Oceanside to San Diego closure* (see Figure 1). The area six (6) miles from the mainland shore south of a line running 225° true from the tip of the outer breakwater (33°12.4' N. latitude, 117°24.1' W. longitude) of Oceanside Harbor to the United States-Mexico International Boundary.

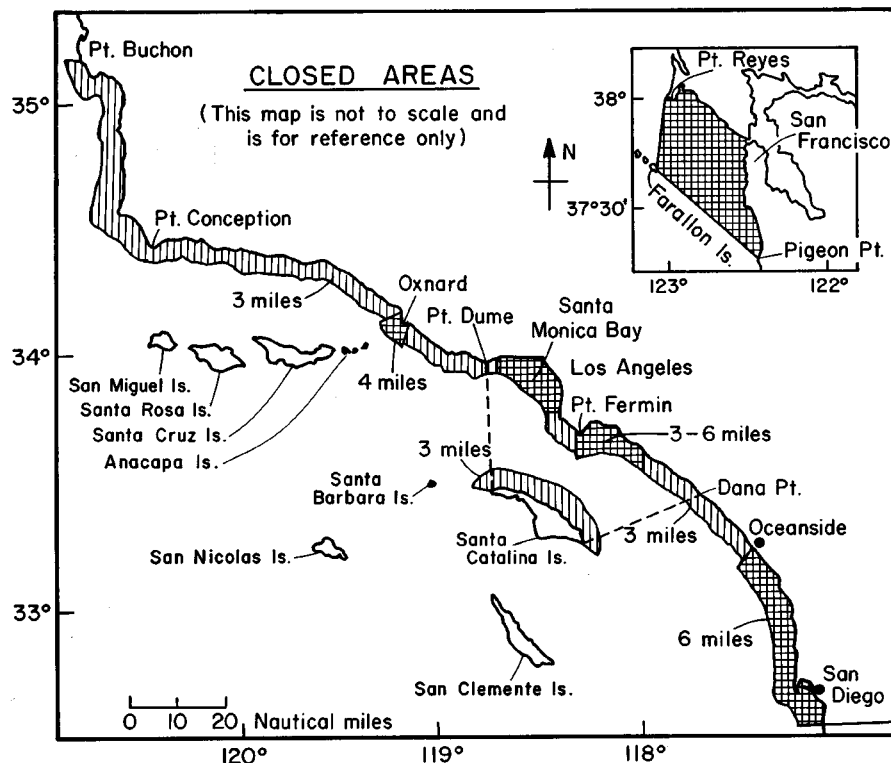


Figure 1. Existing California area closures (hatched areas extend to 3 miles offshore; cross-hatched areas extend beyond 3 miles offshore) and optional Catalina Channel foreign vessel closure (outlined by dashed lines).

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§ 662.24 Gear limitations.

(a) *Nonreduction fishery.* There are no limitations on gear used in the non-reduction fishery.

(b) *Reduction fishery.* Authorized fishing gear only may be used in the reduction fishery. Beginning on April 1, 1986, authorized fishing gear will be round haul nets which have a minimum wet-stretch mesh size of $\frac{10}{16}$ of an inch excluding the bag portion of a purse seine. The bag portion must be constructed as a single unit and must not exceed a rectangular area adjacent to 20 percent of the total corkline of the purse seine. Minimum mesh size requirements are met if a stainless steel wedge can be passed with only thumb pressure through 16 of 20 sets of two meshes each of wet mesh. The wedges used to measure trawl mesh size are made of 20 gauge stainless steel, and will be no wider than $\frac{10}{16}$ of an inch less one thickness of the metal at the widest part.

PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA

Subpart A—General

Sec.

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674.21 Commercial fishing.

674.22 Personal use fishing.

AUTHORITY: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 674.1 Purpose and scope.

(a) The purpose of this part is to implement the fishery management plan (FMP) for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude. The FMP was developed by the North Pacific Fishery Management Council under the Magnuson Act.

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(b) This part governs fishing for salmon by fishing vessels of the United States in the EEZ seaward of Alaska east of 175° E. longitude. All provisions of this part shall remain in effect until modified, revoked, or superseded.

[46 FR 33047, June 26, 1981 and 46 FR 57302, Nov. 23, 1981, as amended at 53 FR 24659, June 29, 1988]

§ 674.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

ADF&G means the Alaska Department of Fish and Game.

Commercial fishing means fishing for fish for sale or barter.

Hand troll gear means one or more lines with lures or hooks attached, drawn through the water behind a moving vessel, and retrieved by hand or hand-cranked reels or gurdies and not by any electrically, hydraulically, or mechanically-powered device or attachment.

Management area means the two areas described below:

(a) *West Area* means the waters of the EEZ seaward of Alaska which are west of 143°53'36" W. longitude (Cape Suckling).

(b) *East Area* means the waters of the EEZ seaward of Alaska east of 143°53'36" W. longitude.

Optimum yield means that amount of any species of salmon which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities, as specified in the FMP.

Personal use fishing means fishing other than commercial fishing.

Power troll gear means one or more lines, with hooks or lures attached, drawn through the water behind a moving vessel, and originating from a power gurdy or power-driven spool fastened to the vessel, the extension or retraction of which is directly to the gurdy or spool.

Regional Director means the Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802, telephone 907-586-7221, or an individual to whom the Regional Director has delegated appropriate authority.

Salmon means the following species:

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Chinook (or king) salmon (*Oncorhynchus tshawytscha*);
Coho (or silver) salmon (*O. kisutch*);
Pink (or humpback) salmon (*O. gorbuscha*);
Sockeye (or red) salmon (*O. nerka*); and
Chum (or dog) salmon (*O. keta*).

[46 FR 33047, June 26, 1981 and 46 FR 57302, Nov. 23, 1981, as amended at 53 FR 24655, 24660, June 29, 1988; 55 FR 47775, Nov. 15, 1990]

§ 674.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b), (c), and (d) of this section.

(b) For regulations concerning fishing for groundfish in the Gulf of Alaska, see part 672 of this chapter.

(c) This part 674 does not apply to fishing for salmon by vessels other than vessels of the United States conducted under the North Pacific Fisheries Act of 1954, 16 U.S.C. 1021–1035, part 661 of this chapter concerns fishing for salmon seaward of Washington, Oregon, and California.

(d) This part 674 will be administered in close coordination with ADF&G's administration for the State of Alaska's regulations governing the salmon troll fishery off Southeast Alaska. Because no commercial fishing for salmon is permitted in the EEZ west of Cape Suckling, all commercial salmon fishing west of Cape Suckling will take place in the territorial sea and be subject to Alaska's management authority.

[53 FR 24659, June 29, 1988]

§ 674.4 Permits.

(a) *General*—(1) *Commercial fishing using power troll gear*. Commercial fishing for salmon in the management area using power troll gear may be engaged in by any operator of a fishing vessel who:

(i) Held a valid State of Alaska power troll permanent entry permit on May 15, 1979, or is a transferee under paragraph (c) of this section of an operator who held such a permit on that date;

(ii) Held a valid State of Alaska power troll interim use permit on May 15, 1979; or

(iii) Holds a permit issued by the Regional Director under paragraph (b) of this section.

(2) [Reserved]

(3) *Personal use fishing*. Personal use fishing in the management area may be engaged in by any person who at the time of such fishing holds a valid State of Alaska sport fishing license.

(4) No person may engage in power trolling for salmon in the management area unless that person is described in paragraph (a)(1) of this section; except that no permit is required of a crew member or other person assisting in commercial salmon fishing operations if a person described in paragraph (a)(1) of this section is on board the same fishing vessel and engaged in commercial fishing. No person may engage in personal use fishing for salmon in the management area unless that person is described in paragraph (a)(3) of this section.

(5) The authority to engage in fishing for salmon in the management area that is granted by this paragraph (a) constitutes a use privilege which may be revoked or modified without compensation.

(b) *Permits issued by the Regional Director*—(1) *Eligibility*. (i) Except as provided in paragraph (b)(1)(ii) of this section, any person is eligible for a permit described in paragraph (a)(1)(iii) of this section if that person, during any one of the calendar years 1975, 1976, or 1977:

(A) Operated a fishing vessel in the management area; (B) engaged in commercial fishing for salmon in the management area; (C) caught salmon in the management area using power troll gear; and (D) landed such salmon.

(ii) The following persons are not eligible: (A) Persons described in paragraph (a)(1)(i) or (a)(1)(ii) of this section; (B) persons who once held but no longer hold a State of Alaska power troll permanent entry or interim-use permit; and (C) persons already holding a permit under this paragraph (b).

(2) *Application*. (i) Each applicant for a permit under this paragraph shall submit a written application to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(ii) Each applicant shall provide the following information:

(A) The applicant's name, mailing address, and telephone number; (B) the name of the fishing vessel; (C) the fishing vessel's United States Coast Guard

documentation number or State registration number; (D) the home port of the fishing vessel; (E) the length and registered tonnage of the fishing vessel; (F) the color of the fishing vessel; (G) the type of fishing gear used by the fishing vessel; and (H) the signature of the applicant.

(iii) The information required by paragraphs (b)(2)(ii)(A) through (G) shall be provided for each vessel which the applicant intends to use for commercial fishing under this part. Any changes in such information occurring after a permit is issued shall be reported to the Regional Director within 30 days of that change.

(iv) Each applicant shall submit State fish tickets or other equivalent documents showing the actual landing of salmon taken in the management area by the applicant with power troll gear during any one of the years 1975 to 1977.

(3) *Issuance.* (i) Except as provided in subpart D of 15 CFR part 904, upon receipt of a properly completed application and any document required under paragraph (b)(2)(iv) of this section, the Regional Director will promptly determine whether permit eligibility conditions have been met, and if so, will issue a permit. If the permit is denied, the Regional Director will notify the applicant in accordance with paragraph (d) of this section.

(ii) If an incomplete or improperly completed permit application is filed, or if any document required under paragraph (b)(2)(iv) of this section has not been filed, the Regional Director shall promptly notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of receipt of notification, the application shall be considered abandoned.

(4) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that has been altered, erased, or mutilated shall be invalid.

(5) *Replacement.* Replacement permits may be issued to replace lost or unintentionally mutilated permits. An application for a replacement permit shall not be considered a new application.

(6) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(c) *Transfer of authority to fish for salmon in the management area—*(1) *Holders of State of Alaska power troll permanent entry permits.* (i) The authority of any person described in paragraph (a)(1)(i) of this section to engage in commercial fishing for salmon using power troll gear in the management area shall expire upon the transfer of that person's State of Alaska power troll permanent entry permit to another and shall be transferred to the new holder of that permit.

(ii) Any person to whom transfer of a State of Alaska power troll permanent entry permit is denied by the State of Alaska may apply, with the consent of the current holder of that permit, to the Regional Director for transfer to the applicant of the current holder's authority to engage in commercial fishing for salmon using power troll gear in the management area. The Regional Director shall approve the transfer if it is determined that the applicant had the ability to participate actively in the fishery at the time the application for transfer of the permit was filed with the State of Alaska; that the applicant has access to power troll gear necessary for participation in the fishery; that the State of Alaska has not instituted proceedings to revoke the permit on the ground that it was fraudulently obtained; and that the proposed transfer of the permit is not a lease. The application shall be filed with the Regional Director within thirty days of the denial by the State of Alaska of transfer of the permit. The application shall include all documents and other evidence submitted to the State of Alaska in support of the proposed transfer of the permit and a copy of the State of Alaska's decision denying the transfer of the permit. The Regional Director may request additional information from the applicant or from the State of Alaska to assist in the consideration of the application. Upon approval of the application by the Regional Director, the authority of the permit holder to engage in commercial fishing for salmon in the management

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area using power troll gear shall expire, and that authority shall be transferred to the applicant.

(2) *Other permits.* Except as provided in paragraph (c)(3) of this section, the authority of any person described in paragraph (a)(1)(ii), (a)(1)(iii), or (a)(3) of this section to fish for salmon in the management area may not be transferred to any other person. Except for emergency transfers, the authority to engage in commercial fishing for salmon which was transferred under paragraph (c)(1)(ii) of this section may not be transferred to any other person except the current holder of the State of Alaska power troll permanent entry permit from which that authority was originally derived. That authority may be transferred to the current holder of that permit upon receipt of written notification of the transfer by the Regional Director, from which time the transferee under paragraph (c)(1)(ii) of this section shall no longer be authorized to engage in commercial fishing for salmon using power troll gear in the management area.

(3) *Emergency transfers—authority to use power troll gear.* The authority of any person described in paragraph (a)(1) of this section to engage in commercial fishing for salmon using power troll gear in the management area may be transferred to another for a period not lasting beyond the end of the calendar year of the transfer when sickness, injury, or other unavoidable hardship prevents the holder of that authority from engaging in such fishing. Such a transfer shall take effect automatically upon approval by the State of Alaska of an emergency transfer of a State of Alaska power troll entry permit, in accordance with the terms of the permit transfer. Any person to whom emergency transfer of a State of Alaska power troll entry permit is denied by the State of Alaska and any person desiring to obtain emergency transfer of a Federal commercial power troll permit previously issued by the Regional Director may apply, with the consent of the current holder of that permit, to the Regional Director for transfer to the applicant of the current holder's authority to engage in commercial fishing for salmon using power troll gear in the management area for

a period not lasting beyond the calendar year of the proposed transfer. The Regional Director shall approve the transfer if he determines that sickness, injury, or other unavoidable hardship prevents the current permit holder from engaging in such fishing; that the applicant had the ability to participate actively in the fishery at the time the application for emergency transfer of the permit was filed with the State of Alaska or, in the case of a Federal permit, with the Regional Director; that the applicant has access to power troll gear necessary for participation in the fishery; and that the State of Alaska has not instituted proceedings to revoke the permit on the ground that it was fraudulently obtained. The application in the case of a State of Alaska permit shall be filed with the Regional Director within thirty days of the denial by the State of Alaska of emergency transfer of the permit. The application shall include all documents and other evidence submitted to the State of Alaska in support of the proposed emergency transfer of the permit and a copy of the State of Alaska's decision denying the emergency transfer of the permit. The Regional Director may request additional information from the applicant or from the State of Alaska to assist in the consideration of the application. Upon approval of the application by the Regional Director, the authority of the permit holder to engage in commercial fishing for salmon using power troll gear in the management area shall expire for the period of the emergency transfer, and that authority shall be transferred to the applicant for that period.

(d) *Appeals and hearings.* (1) A decision by the Regional Director: (i) To deny a permit under paragraph (b)(3)(i) of this section; or (ii) to deny transfer of authority to engage in commercial fishing for salmon in the management area under paragraph (c) of this section, shall be in writing, shall state the facts and reasons therefor, and shall advise the applicant of the rights provided in this paragraph (d).

(2) Any such decision of the Regional Director shall be final thirty days after receipt by the applicant, unless an appeal is filed with the Assistant Administrator within that time. Failure to

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file a timely appeal shall constitute waiver of the appeal. (Address: Assistant Administrator, National Marine Fisheries Service, Room 400, Page 2 Building, 3300 Whitehaven Street, NW., Washington, DC 20235). Appeals under this paragraph shall be in writing, shall set forth the reasons why the appellant believes the Regional Director's decision was in error, and shall include any supporting facts or documentation. At the time the appeal is filed with the Assistant Administrator, the appellant may request a hearing with respect to any disputed issue of material fact. Failure to request a hearing at this time shall constitute a waiver of the hearing. If a request for a hearing is filed, the Assistant Administrator may order a hearing if it is determined that a hearing is necessary to resolve material issues of fact and shall so notify the appellant. If the Assistant Administrator orders a hearing, that order shall also serve to appoint a hearing examiner to conduct an informal fact finding inquiry into the matter. Following the hearing, the hearing examiner shall promptly furnish the Assistant Administrator with a report and appropriate recommendations. As soon as practicable after considering the matters raised in the appeal, and any report or recommendation of the hearing examiner in the event a hearing is held under this section, the Assistant Administrator shall notify the appellant in writing of the final decision. The notice shall summarize the findings of the Assistant Administrator and set forth the basis of the decision. The decision of the Assistant Administrator shall be final and unappealable.

(e) *Display*. Any permit or license described in paragraph (a)(1), or (a)(3) of this section shall be on board the vessel at all times while the vessel is in the management area, and shall be displayed for inspection upon request by an authorized officer.

(f) For purposes of this section, the term "person" excludes any nonhuman entity.

[47 FR 57302, Nov. 23, 1981, as amended at 49 FR 1044, Jan. 6, 1984]

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§§ 674.5—674.6 [Reserved]

§ 674.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for, take, or retain any salmon in violation of the Act or this part.

(b) Engage in fishing for salmon in the management area except to the extent authorized by § 674.4(a) of this part.

[55 FR 47775, Nov. 15, 1990]

§ 674.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 674.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

SOURCE: 55 FR 47775, Nov. 15, 1990, unless otherwise noted.

§ 674.20 General.

The management measures specified in this subpart shall apply to all fishing for salmon in the management area by vessels registered under laws of the State of Alaska.

§ 674.21 Commercial fishing.

(a) For State of Alaska statutes and regulations governing commercial fishing, see Alaska Statutes, title 16—Fish and Game; title 5 of the Alaska Administrative Code, chapters 1–39.

(b) For State of Alaska Regulations specifically governing the salmon troll fishery, see 5 Alaska Administrative Code 30 (Yakutat Area), and 5 Alaska Administrative Code 33 (Southeastern Alaska Area).

§ 674.22 Personal use fishing.

(a) For State of Alaska statutes and regulations governing sport and personal use salmon fishing other than subsistence fishing, see Alaska Statutes, title 16—Fish and Game; 5 Alaska

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Administrative Codes 42.010 through 75.995.

(b) For State of Alaska statutes and regulations governing subsistence fishing, see Alaska Statutes, title 16—Fish and Game; 5 Alaska Administrative Codes 01, 02, 39, and 99.010.

PART 678—ATLANTIC SHARKS

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 58 FR 21944, Apr. 26, 1993, unless otherwise noted.

Subpart A—General Provisions

§ 678.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Sharks of the Atlantic Ocean (FMP) prepared by the Secretary of Commerce.

(b) This part governs conservation and management of sharks in the management unit.

§ 678.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meaning:

Charter vessel means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer pas-

sengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a permit issued under § 678.4 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.

Dealer means the person in the United States who first receives by way of purchase, barter, or trade, sharks harvested from the management unit.

Drift gillnet, sometimes called a drift entanglement net or drift net, means a flat net, unattached to the ocean bottom, whether or not it is attached to a vessel, designed to be suspended vertically in the water to entangle the head or other body parts of a shark that attempts to pass through the meshes.

Headboat means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A headboat with a permit issued under § 678.4 is considered to be operating as a headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Landed or landing means to arrive at a dock, berth, beach, seawall, or ramp.

Large coastal species means any of the species, or a part thereof, listed in paragraph (1) of the definition of *management unit*.

Management unit means the following species in the Western North Atlantic Ocean including the Gulf of Mexico and the Caribbean Sea:

(1) Large coastal species:

- Basking sharks—Cetorhinidae
 - Basking shark, *Cetorhinus maximus*
- Hammerhead sharks—Sphyrnidae
 - Great hammerhead, *Sphyrna mokarran*
 - Scalloped hammerhead, *Sphyrna lewini*
 - Smooth hammerhead, *Sphyrna zygaena*
- Mackerel sharks—Lamnidae
 - White shark, *Carcharodon carcharias*
- Nurse sharks—Ginglymostomatidae
 - Nurse shark, *Ginglymostoma cirratum*
- Requiem sharks—Carcharhinidae
 - Bignose shark, *Carcharhinus altimus*
 - Blacktip shark, *Carcharhinus limbatus*
 - Bull shark, *Carcharhinus leucas*
 - Caribbean reek shark, *Carcharhinus perezi*
 - Dusky shark, *Carcharhinus obscurus*
 - Galapagos shark, *Carcharhinus galapagensis*
 - Lemon shark, *Negaprion brevirostris*
 - Narrowtooth shark, *Carcharhinus brachyurus*

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Night shark, *Carcharhinus signatus*
Sandbar shark, *Carcharhinus plumbeus*
Silky shark, *Carcharhinus falciformis*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*
Sand tiger sharks—Odontaspidae
Bigeye sand tiger, *Odontaspis noronhai*
Sand tiger shark, *Odontaspis taurus*
Whale sharks—Rhincodontidae
Whale shark, *Rhincodon typus*

(2) Small coastal species:

Angel sharks—Squatinae
Atlantic angel shark, *Squatina dumerili*
Hammerhead sharks—Sphyrnidae
Bonnethead, *Sphyrna tiburo*
Requiem sharks—Carcharhinidae
Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
Blacknose shark, *Carcharhinus acronotus*
Caribbean sharpnose shark, *Rhizoprionodon porosus*
Finetooth shark, *Carcharhinus isodon*
Smalltail shark, *Carcharhinus porosus*

(3) Pelagic species:

Cow sharks—Hexanchidae
Bigeye sixgill shark, *Hexanchus vitulus*
Sevengill shark, *Heptanchias perlo*
Sixgill shark, *Hexanchus griseus*
Mackerel sharks—Lamnidae
Longfin mako, *Isurus paucus*
Porbeagle shark, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Requiem sharks—Carcharhinidae
Blue shark, *Prionace glauca*
Oceanic whitetip shark, *Carcharhinus longimanus*
Thresher sharks—Alopiidae
Bigeye thresher, *Alopias superciliosus*
Thresher shark, *Alopias vulpinus*

Pelagic species means any of the species, or a part thereof, listed in paragraph (3) of the definition of *management unit*.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone 813-570-5301, or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee.

Shark means any of these species listed in the definition of the management unit, or a part thereof.

Shark tournament means any fishing competition involving sharks in which participants must register or otherwise

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enter or in which a prize or award is offered for catching a shark.

Small coastal species means any of the species, or a part thereof, listed in paragraph (2) of the definition of *management unit*.

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.

Trip limit means the total allowable take from a single trip as defined in this section.

Weightout slip means the document provided by the person weighing the shark carcasses and fins to the owner or operator of a permitted vessel that records the weights of the shark carcasses and fins, prior to or as part of, a commercial transaction involving such shark carcasses and/or fins. Any document such as “tally slip,” “trip ticket,” or “sales receipt,” that contains such information will be considered as a weighout slip.

[58 FR 21944, Apr. 26, 1993, as amended at 58 FR 68558, Dec. 28, 1993; 59 FR 52456, Oct. 18, 1994; 60 FR 35341, July 7, 1995]

§ 678.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) and (c) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it may be unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in a longline or gillnet shark fishery in the Atlantic Ocean (including the Gulf of Mexico and Caribbean Sea) 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 50 CFR part 229.

(c) Regulations governing fishing in the EEZ by vessels other than vessels of the United States appear at 50 CFR part 611, subpart A, and §§ 611.60 and 611.61 of subpart D.

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§ 678.4 Permits and fees.

(a) *Applicability.* (1) *Annual vessel permit.* (i) As a prerequisite to sell shark from the management unit or to be eligible for exemption from the bag limits specified in § 678.23(b), an owner or operator of a vessel that fishes in the EEZ must obtain an annual vessel permit; except that there is no Federal requirement for a permit for a vessel that fishes exclusively within state waters.

(ii) For a vessel owned by a corporation or partnership to be eligible for a vessel permit, 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.

(iii) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(iv) An owner or operator who applies for a permit under paragraph (b) of this section must agree, as a condition of such permit, that the vessel's shark fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, landward of the EEZ, or outside the EEZ, and without regard to where such shark or gear are possessed, taken, or landed. However, when a vessel fishes in the waters of a state that has more restrictive regulations on shark fishing, those more restrictive regulations may be applied by that state to fishing, catch, and gear in its waters.

(2) *Annual dealer permit.* A dealer who receives sharks from the management unit must have an annual dealer permit.

(b) *Application for an annual vessel permit.* (1) An application for a vessel permit must be submitted and signed by the owner (in the case of a corporation, the qualifying officer or shareholder; in the case of a partnership, the qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which

the applicant desires to have the permit made effective.

(2) An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address including ZIP code, telephone number, and 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 (IRS), and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) If the owner does not meet the earned income qualification specified in paragraph (b)(2)(vi) of this section and the operator does meet that qualification, the name, mailing address including ZIP code, telephone number, social security number, and date of birth of the operator.

(v) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the Regional Director and included on the application form.

(vi) A sworn statement by the applicant certifying that, during 1 of the 3 calendar years preceding the application,

(A) More than 50 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, or from charter or headboat operations; or

(B) His or her gross sales of fish were more than \$20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish of the corporation or partnership were more than \$20,000.

(vii) Documentation supporting the statement of income, if required under paragraph (b)(3) of this section.

(viii) A sworn statement that the applicant agrees to the conditions specified in paragraph (a)(4) of this section.

(ix) Any other information that may be necessary for the issuance or administration of the permit, as requested by

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the Regional Director and included on the application form.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (i) 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) *Application for an annual dealer permit.* (1) An application for a dealer permit must be submitted and signed by the dealer or an officer of a corporation acting as a dealer. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of each state wholesaler's license held by the dealer.

(ii) Business name; mailing address, including zip code, of the principal office of the business; employer identification number, if one has been assigned by the Internal Revenue Service; and date the business was formed.

(iii) The address of each physical facility at a fixed location where the business receives fish.

(iv) Applicant's name; official capacity in the business; address, including zip code; telephone number; social security number; and date of birth.

(v) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) or (c) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and, in the case of the annual vessel permit specified in paragraph (a)(1) of this section, 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 and the applicant has submitted all applicable reports specified at § 678.5 (a) or (b).

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 90 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it, and the conditions accepted upon its issuance remain in effect for that period, unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* (1) A vessel permit issued under paragraph (b) of 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.

(2) A dealer permit issued under paragraph (c) of this section may be transferred upon sale of the dealer's business. However, such transferred permit remains valid for a period not to exceed 30 days after sale of the dealer's business. A person purchasing a permitted dealership who desires to conduct activities for which a permit is required after that 30-day period must apply promptly for a permit in accordance with paragraph (c) of this section.

(h) *Display.* A vessel permit issued pursuant to paragraph (b) of this section must be carried on board the vessel and such vessel must be identified as required by § 678.6. A dealer permit issued pursuant to paragraph (c) of this section must be available on the dealer's premises. The operator of a vessel or a dealer must present the permit for

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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.

(l) *Change in application information.* The owner or operator of a vessel with a permit or a dealer with a permit must notify the Regional Director within 30 days after any change in the application information required by paragraph (b) or (c) of this section. The permit is void if any change in the information is not reported within 30 days.

[58 FR 21944, Apr. 26, 1993; 58 FR 27336, May 7, 1993; 59 FR 52456, Oct. 18, 1994]

§ 678.5 Recordkeeping and reporting.

(a) *Vessel reports*—(1) *All permitted vessels.* An owner or operator of a vessel for which a permit has been issued pursuant to § 678.4 must submit copies of weighout slips that record the weights of fish sold from any trip from which a shark is off-loaded. Such weighout slips must be submitted as follows:

(i) The owner or operator of a vessel that has been selected by the Science and Research Director to maintain and submit the logbook forms described in paragraph (a)(2) of this section must submit the copies of the sales receipts attached to such logbook forms.

(ii) The owner or operator of a vessel that has not been selected to submit the logbook forms described in paragraph (a)(2) of this section but has been selected to maintain and submit logbook forms to the Science and Research Director in a fishery other than the shark fishery must attach the copies of the sales receipts to the logbook forms for that other fishery and submit

them in the time frame required for those logbook forms.

(iii) The owner or operator of a vessel that has not been selected to submit logbook forms to the Science and Research Director in any fishery must submit the copies to the Science and Research Director postmarked not later than the third day after sale of the fish off-loaded from a trip.

(2) *Selected permitted vessels.* An owner or operator of a vessel for which a permit has been issued pursuant to § 678.4 and that is selected by the Science and Research Director must maintain and submit logbook forms for each trip on forms provided by the Science and Research Director. The logbook forms will provide a record of fishing location, time fished, fishing gear used, numbers of each species caught, and numbers of each species discarded. Logbook forms must be maintained and submitted for each trip, whether or not shark are caught on that trip. The logbook forms must be submitted to the Science and Research Director postmarked not later than the fifth day after sale of the fish off-loaded from a trip. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the forms.

(b) *Dealer reports.* (1) A dealer who has been issued a dealer permit pursuant to § 678.4 must submit a report to the Science and Research Director as specified in paragraph (b)(2) of this section. A report form is available from the Science and Research Director. The following information must be included in each report:

(i) Name, address, and permit number of the dealer.

(ii) Names and official numbers of fishing vessels from which shark were received.

(iii) Dates of receipt of shark.

(iv) Listed by each port and county where shark were off-loaded from fishing vessels:

(A) Total weight (pounds) by market category for shark, if applicable, and for other species received with the shark, including, but not limited to, swordfish, yellowfin tuna, bigeye tuna, and albacore; and

(B) Price per pound or total value paid by market category for shark and

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other species, to the extent that such price information is known at the time of reporting.

(2) A report of shark and other applicable species received by a dealer on the first through the 15th days of each month must be submitted to the Science and Research Director postmarked not later than the 20th day of that month. A report of shark and other applicable species received by the dealer on the 16th through the last day of each month must be submitted to the Science and Research Director postmarked not later than the fifth day of the following month. If no shark was received during the reporting period, a report so stating must be submitted postmarked as specified for that respective reporting period.

(3) The reporting requirement of paragraph (b)(1) of this section may be satisfied by providing a copy of each appropriate weigh-out sheet and/or sales record, provided such weigh-out sheet and/or sales record, by itself or combined with the form available from the Science and Research Director, includes all of the required information.

(4) For purposes of this paragraph (b), for a shark offloaded from a fishing vessel in an Atlantic coastal state from Maine through Virginia, "Science and Research Director" means the Science and Research Director, Northeast Fisheries Science Center, NMFS, Woods Hole, MA 02543, telephone 617-548-5123, or a designee. For a shark offloaded from a fishing vessel in an Atlantic coastal state from Maine through Virginia, in lieu of providing a required report to the Science and Research Director by mail, as specified in paragraph (b)(2) of this section, a dealer may provide a report to a state or Federal fishery port agent designated by the Science and Research Director. Reports so provided must be delivered to such port agent not later than the prescribed postmark date for submitting each such report.

(c) *Tournament operators.* A person conducting a shark tournament who is selected by the Science and Research Director must maintain and submit a record of catch and effort on forms available from the Science and Research Director. Completed forms must be submitted to the Science and Re-

search Director postmarked not later than the seventh day after the conclusion of the tournament and must be accompanied by a copy of the tournament rules.

(d) *Additional data and inspection.* Additional data may be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel and a dealer are required to make sharks available for inspection by the Science and Research Director or an authorized officer and to provide data on catch and effort, as requested.

[58 FR 21944, Apr. 26, 1993, as amended at 59 FR 52456, Oct. 18, 1994]

§ 678.6 Vessel identification.

(a) *Official number.* A vessel for which a permit has been issued pursuant to § 678.4 must display its official number—

(1) On the port and starboard sides of the deck house or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 feet (19.8 meters) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, its fishing gear, or any other material aboard obstructs the view of the official number from an enforcement vessel or aircraft.

§ 678.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify information required in § 678.4(b) and (c) on an application for a permit.

(b) Fail to display a permit, as specified in § 678.4(h).

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(c) Falsify or fail to provide information required to be maintained, submitted, or reported, as specified in §678.5.

(d) Fail to make a shark available for inspection or provide data on catch and effort, as required by §678.5(d).

(e) Falsify or fail to display and maintain vessel identification, as required by §678.6.

(f) Falsify or fail to provide requested information regarding a vessel's trip, as specified in §678.10(a).

(g) Fail to embark an observer on a trip when selected, as specified in §678.10(b).

(h) Assault, resist, oppose, impede, harass, intimidate, or interfere with an NMFS-approved observer aboard a vessel.

(i) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his/her duties aboard a vessel.

(j) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in §678.10(c).

(k) Remove the fins from a shark and discard the remainder, as specified in §678.22 (a)(1).

(l) Possess shark fins, carcasses, or parts, aboard or offload shark fins from a fishing vessel, except as specified in §678.22, or possess shark carcasses or parts aboard, or offload shark fins, carcasses, or parts, from a vessel, except as specified in §678.22(b).

(m) Fail to release a shark in the manner specified in §678.22(d).

(n) Exceed the bag limits, as specified in §678.23 (a) through (c).

(o) Operate a vessel with a shark aboard in excess of the bag limits, as specified in §678.23(d).

(p) Land or possess on any trip, shark in excess of the vessel trip limit, as specified in §678.22(c)(1).

(q) Transfer a shark at sea, as specified in §§678.22(c)(2) and 678.23(e).

(r) Sell, trade, or barter or attempt to sell, trade, or barter a shark harvested in the EEZ except as an owner or operator of a vessel with a permit, as specified in §678.25(a).

(s) Sell, trade, or barter, or attempt to sell, trade or barter, a shark from the management unit, except as an

owner or operator of a vessel with a permit, as specified in §678.26.

(t) Purchase, trade, or barter, or attempt to purchase, trade or barter, shark meat or fins from the management unit from an owner or operator of a vessel that does not possess a vessel permit, as specified in §678.26(b); or sell, trade, or barter, or attempt to sell, trade, or barter, a shark from the management unit, except to a permitted dealer, as specified in §678.26(d).

(u) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter, shark fins that are disproportionate to the weight of carcasses landed, as specified in §678.26(c).

(v) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

(w) [Reserved]

(x) Exceed the vessel trip limits, as specified in §678.21(c).

(y) Purchase, trade, or barter, or attempt to purchase, trade, or barter, a shark from the management unit without an annual dealer permit, as specified in §678.4(a)(2).

(z) Fish for sharks with a drift gillnet that is 2.5 km or more in length or possess a shark aboard a vessel possessing such drift gillnet, as specified in §678.21.

[58 FR 21944, Apr. 26, 1993, as amended at 58 FR 68558, Dec. 28, 1993; 59 FR 52457, Oct. 18, 1994]

§ 678.8 Facilitation of enforcement.

See §620.8 of this chapter.

§ 678.9 Penalties.

See §620.9 of this chapter.

§ 678.10 At-sea observer coverage.

(a) When requested by the Science and Research Director, an owner or operator of a vessel for which a permit has been issued pursuant to §678.4 must advise the Science and Research Director in writing not less than 10 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time); and

(2) Expected landing information (port, dock, and date).

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(b) If a vessel's trip is selected by the Science and Research Director for observer coverage, the owner or operator of such vessel must accommodate an NMFS-approved observer.

(c) An owner or operator of a vessel on which an NMFS-approved observer is embarked must—

(1) Provide, at no cost to the observer or the United States government, 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; and

(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.

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§ 678.20 Fishing year.

The fishing year is January 1 through December 31.

§ 678.21 Gear restrictions.

A drift gillnet with a total length of 2.5 km or more may not be used to fish for shark. A vessel using or having aboard a drift gillnet with a total length of 2.5 km or more may not possess a shark.

[59 FR 52457, Oct. 18, 1994]

§ 678.22 Harvest limitations.

(a) *Finning*. (1) The practice of “finning,” that is, removing only the fins and returning the remainder of the shark to the sea, is prohibited in the EEZ or aboard a vessel that has been issued a permit pursuant to § 678.4.

(2) Shark fins that are possessed aboard or off-loaded from a fishing ves-

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sel must be in proper proportion to the weight of carcasses. That is, the weight of fins may not exceed five percent of the weight of the carcasses. All fins must be weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing and such weights of the fins landed must be recorded on the weighout slips submitted by the vessel owner or operator under § 678.5(a).

(3) Shark fins may not be possessed aboard a fishing vessel after the vessel's first point of landing.

(b) *Release*. A shark that is harvested in the EEZ or harvested by a vessel that has been issued a permit pursuant to § 678.4 that is not retained—

(1) Must be released in a manner that will ensure maximum probability of survival; and

(2) If caught by hook and line, must be released by cutting the line near the hook without removing the fish from the water.

(c) *Vessel trip limits*. (1) A vessel that has been issued a permit pursuant to § 678.4 may not possess on any trip, or land from any trip, large coastal species in excess of 4,000 lb (1,814 kg), dressed weight.

(2) A shark from any of the three management units may not be transferred at sea from a vessel issued an Atlantic shark permit issued under § 678.4 to any other vessel.

[58 FR 21944, Apr. 26, 1993, as amended at 58 FR 68558, Dec. 28, 1993; Redesignated and amended at 59 FR 52457, Oct. 18, 1994]

§ 678.23 Bag limits.

(a) *Applicability*. The bag limits apply to a person who fishes in the EEZ or possesses a shark in or from the EEZ aboard a vessel—

(1) When the vessel does not have on board a permit issued under § 678.4; or

(2) When the vessel is operating as a charter vessel or headboat.

(b) *Bag limits*. Bag limits are as follows:

(1) Large coastal species and pelagic species, combined—4 per fishing vessel per trip; and

(2) Small coastal species—5 per person per day.

(c) *Combination of bag limits*. A person to whom the bag limits apply may not

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combine a bag limit specified in paragraph (b) of this section with a bag or possession limit applicable to state waters.

(d) *Responsibility for the bag limits.* The operator of a vessel for which the bag limits apply is responsible for the vessel trip limit applicable to large coastal species and pelagic species combined, and for the cumulative bag limit applicable to small coastal species based on the number of persons aboard.

(e) *Transfer of sharks.* A person for whom a bag limit specified in this section applies may not transfer at sea a shark—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such shark was taken.

[58 FR 21944, Apr. 26, 1993. Redesignated at 59 FR 52457, Oct. 18, 1994]

§ 678.24 Commercial quotas.

(a) *Applicability.* Persons fishing aboard vessels for which vessel permits have been issued under § 678.4, except for persons aboard vessels that are operating as charter vessels or headboats, are limited to the quotas specified in this section. Persons aboard vessels that are operating as charter vessels or headboats are limited to the bag limits, as specified in § 678.22(a)(2) and (b). Large coastal or pelagic species sharks that are sold are counted against the appropriate quota for their species group.

(b) *Semiannual quotas.* The following commercial quotas apply:

(1) For the period January 1 through June 30:

(i) Large coastal species—1,285 metric tons, dressed weight.

(ii) Pelagic species—290 metric tons, dressed weight.

(2) For the period July 1 through December 31:

(i) Large coastal species—1,285 metric tons, dressed weight.

(ii) Pelagic species—290 metric tons, dressed weight.

(c) *Adjustments to quotas.* The Assistant Administrator may adjust a semi-annual quota to reflect actual catches during the preceding semi-annual period. That is, catch in excess of the semi-annual quota in the preceding pe-

riod may be deducted from the current semi-annual quota and catch less than the semi-annual quota may be added. Such adjustments to semi-annual quotas will be published in the FEDERAL REGISTER. Quotas may also be adjusted under the framework procedure for adjustment of management measures, as specified in § 678.26.

[58 FR 21944, Apr. 26, 1993. Redesignated at 59 FR 52457, Oct. 18, 1994; 60 FR 21469, May 2, 1995]

§ 678.25 Closures.

(a) When a commercial quota specified in § 678.24(b) is reached, or is projected to be reached, the Assistant Administrator will publish a notice to that effect in the FEDERAL REGISTER. The effective date of such notice will be at least 5 days after the date such notice is filed with the Office of the Federal Register.

(1) On the effective date of such notice, for the remainder of the semi-annual period.

(i) A person aboard a vessel that has been issued a permit under § 678.4 may not retain shark of the species group for which the commercial quota has been reached, except as provided in paragraph (a)(2) of this section; and

(ii) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of a shark carcass or fin of that species group harvested by a person aboard a vessel that has been issued a permit under § 678.4 is prohibited.

(2) A person aboard a charter vessel or headboat that has been issued a permit under § 678.4 may retain, subject to the bag limits specified in § 678.23(b), shark of the species group for which the commercial quota has been reached, provided the vessel is operating as a charter vessel or headboat. However, the prohibition of paragraph (a)(1)(ii) and of this section regarding sale, purchase, trade, or barter, or attempted sale, purchase, trade, or barter, apply to such shark.

(b) The prohibition of paragraph (a)(1)(ii) of this section regarding sale, purchase, trade, or barter, or attempted sale, purchase, trade, or barter, by a dealer does not apply to trade in shark carcasses or fins that were harvested, off-loaded, and sold, traded,

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or bartered, prior to the effective date of the notice in the FEDERAL REGISTER, and were held in storage by a dealer or processor.

[58 FR 21944, Apr. 26, 1993. Redesignated and amended at 59 FR 52457, Oct. 18, 1994]

§ 678.26 Restrictions on sale upon landing.

Subject to the restrictions of § 678.25, (a) Upon landing, meat or fins from a shark from the management unit may be sold, traded, or bartered, or attempted to be sold, traded, or bartered, only by an owner or operator of a vessel that has been issued a permit pursuant to § 678.4, 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 fished exclusively within the waters under the jurisdiction of any state.

(b) Upon landing, meat or fins from a shark from the management unit may be purchased, traded, or bartered, or attempted to be purchased, traded, or bartered, only from the owner or operator of a vessel that has been issued a permit pursuant to § 678.4, 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 fished exclusively within the waters under the jurisdiction of any state.

(c) Fins from a shark harvested in the EEZ, or by a vessel that has been issued a permit under § 678.4, that are disproportionate to the weight of carcasses landed (see § 678.22(a)(2)) may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

(d) A shark from the management unit may be sold, traded, or bartered, or attempted to be sold, traded, or bartered, only to a dealer having a permit under § 678.4, 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 fished exclusively within the waters under the jurisdiction of any state.

[58 FR 21944, Apr. 26, 1993. Redesignated and amended at 59 FR 52457, Oct. 18, 1994]

§ 678.27 Adjustment of management measures.

In accordance with the framework regulatory adjustment procedures spec-

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ified in the FMP, the Assistant Administrator may establish or modify for species or species groups in the shark fishery the following: maximum sustainable yield, total allowable catch, quotas, trip limits, bag limits, size limits, the fishing year or fishing season, the species of sharks managed and the specification of the species groups to which they belong, and permitting and reporting requirements.

[58 FR 21944, Apr. 26, 1993. Redesignated at 59 FR 52457, Oct. 18, 1994]

§ 678.28 Specifically authorized activities.

The Assistant Administrator may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[58 FR 21944, Apr. 26, 1993. Redesignated at 59 FR 52457, Oct. 18, 1994]

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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AUTHORITY: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

SOURCE: 61 FR 31230, June 19, 1996, unless otherwise noted.

Subpart A—General

§ 679.1 Purpose and scope.

Regulations in this part were developed by the Council under the Magnuson Act. Along with part 600 of this chapter, these regulations implement the following:

(a) *Fishery Management Plan for Groundfish of the Gulf of Alaska*. (1) Regulations in this part govern commercial fishing for groundfish in the GOA by vessels of the United States (see subparts A, B, D, and E of this part).

(2) The following State of Alaska regulations are not preempted by this part for vessels regulated under this part fishing for demersal shelf rockfish in the Southeast Outside District, and which are registered under the laws of the State of Alaska: 5 AAC 28.110, fishing seasons; 5 AAC 28.130, gear; 5 AAC 28.160, harvest guidelines; 5 AAC 28.190, harvest of bait by commercial permit holders.

(b) *Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area*. Regulations in this part govern commercial fishing for groundfish in the BSAI by vessels of the United States (see subparts A, B, C, D, and E of this part).

(c) *Moratorium on entry (applicable through December 31, 1998)*. Regulations in this part govern a moratorium on the entry of new vessels in the commercial fisheries for groundfish in the GOA and BSAI and in the commercial fisheries for king and Tanner crabs in the BSAI (see subparts A and D of this part).

(d) *IFQ Program for sablefish and halibut*. The IFQ management plan for the commercial fisheries that use fixed gear to harvest sablefish and halibut (see subparts A, B, D, and E of this part).

(1) *Sablefish*. (i) Regulations in this part govern commercial fishing for sablefish by vessels of the United States:

(A) Using fixed gear within that portion of the GOA and the BSAI over which the United States exercises exclusive fishery management authority; and

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(B) Using fixed gear in waters of the State of Alaska adjacent to the BSAI and the GOA, provided that such fishing is conducted by persons who have been issued permits under § 679.4.

(ii) Regulations in this part do not govern commercial fishing for sablefish in Prince William Sound or under a State of Alaska limited entry program.

(2) *Halibut*. Regulations in this part govern commercial fishing for halibut by vessels of the United States using fixed gear, as that term is described in 16 U.S.C. 773(d), in and off of Alaska.

(e) *Western Alaska CDQ Program*. The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial seafood activities that will result in ongoing, regionally based, commercial seafood or related businesses (see subparts A, B, C, and E of this part).

(f) *Observer requirements/Research Plan*. Regulations in this part govern elements of the Research Plan for the following fisheries under the Council's authority: BSAI groundfish, GOA groundfish, BSAI king and Tanner crab in the EEZ; and halibut from Convention waters off Alaska (see subpart E of this part).

(g) *Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the BSAI*. Regulations in this part govern commercial fishing for king and Tanner crab in the BSAI by vessels of the United States, including regulations superseding State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the BSAI EEZ that are determined to be inconsistent with the FMP (see subparts A, B, and E of this part).

(h) *Fishery Management Plan for the Scallop Fishery off Alaska*. (1) Regulations in this part govern commercial fishing for scallops in the Federal waters off Alaska by vessels of the United States (see subparts A and F of this part).

(2) State of Alaska laws that are in addition to, and not in conflict with, the regulations in this part are not preempted for vessels registered under the

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laws of the State fishing for scallops in the Federal waters off Alaska.

[61 FR 31230, June 19, 1996, as amended at 61 FR 38103, July 23, 1996]

§ 679.2 Definitions.

In addition to the definitions in the Magnuson Act and in part 600 of this chapter, the terms used in this part have the following meanings:

Active/inactive periods—(1) *Active periods*—(i) *Catcher vessel*. An active period for a catcher vessel means a period of time when the catcher vessel is in a reporting area (except 300, 400, 550, or 690) or gear remains on the grounds in a reporting area (except 300, 400, 550, or 690), regardless of the vessel location.

(ii) *Shoreside processor, mothership, catcher/processor, and buying station*. An active period for a shoreside processor, mothership, catcher/processor, and buying station means a period of time when checked in.

(2) *Inactive periods*—(i) *Catcher vessel*. An inactive period for a catcher vessel means any period that does not qualify as an active period.

(ii) *Shoreside processor, mothership, catcher/processor, or buying station*. An inactive period for a shoreside processor, mothership, catcher/processor, or buying station means a period of time when not checked in.

ADF&G means the State of Alaska Department of Fish and Game.

Alaska local time (A.l.t.) means the current Alaska time, either daylight savings time or standard time.

Alaska State waters means waters adjacent to the State of Alaska and shoreward of the EEZ off Alaska.

Aleutian Islands Subarea (AI) of the BSAI means that portion of the EEZ contained in Statistical Areas 541, 542, and 543 (see Figure 1 of this part).

Authorized distributor means a tax-exempt organization authorized by NMFS to coordinate the processing, storage, transportation, and distribution of salmon taken as bycatch in the groundfish trawl fisheries to tax-exempt hunger relief agencies, food bank networks, and food bank distributors.

Authorized fishing gear means dive, fixed gear, hook-and-line, jig, longline, longline pot, nonpelagic trawl, nontrawl, pelagic trawl, pot-and-line,

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scallop dredge, and trawl defined as follows:

(1) *Dive* means any scuba or surface supported diving equipment that allows for the underwater harvest of scallops by divers, or the taking of scallops by means of such gear.

(2) *Fixed gear* means:

(i) For sablefish harvested from any GOA reporting area, all hook-and-line gear and, for purposes of determining initial IFQ allocation, all pot gear used to make a legal landing.

(ii) For sablefish harvested from any BSAI reporting area, all hook-and-line gear and all pot gear.

(iii) For halibut harvested from any IFQ regulatory area, all fishing gear comprised of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached.

(3) *Hook-and-line* means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device.

(4) *Jig* means a single, non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device.

(5) *Longline* means a stationary, buoyed, and anchored line with hooks or two or more groundfish pots attached, or the taking of fish by means of such a device.

(6) *Longline pot* means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device.

(7) *Nonpelagic trawl* means a trawl other than a pelagic trawl.

(8) *Nontrawl* means hook-and-line, jig, longline, and pot-and-line gear.

(9) *Pelagic trawl* means a trawl that:

(i) Has no discs, bobbins, or rollers;

(ii) Has no chafe protection gear attached to the footrope or fishing line;

(iii) Except for the small mesh allowed under paragraph (9)(ix) of this definition:

(A) Has no mesh tied to the fishing line, headrope, and breast lines with less than 20 inches (50.8 cm) between knots and has no stretched mesh size of less than 60 inches (152.4 cm) aft from all points on the fishing line, headrope, and breast lines and extending past the fishing circle for a distance equal to or

greater than one half the vessel's LOA; or

(B) Has no parallel lines spaced closer than 64 inches (162.6 cm) from all points on the fishing line, headrope, and breast lines and extending aft to a section of mesh, with no stretched mesh size of less than 60 inches (152.4 cm) extending aft for a distance equal to or greater than one half the vessel's LOA;

(iv) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (9)(iii) of this definition for a distance equal to or greater than one half the vessel's LOA;

(v) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (9)(iii) and (iv) of this definition;

(vi) Has no flotation other than floats capable of providing up to 200 lb (90.7 kg) of buoyancy to accommodate the use of a net-sounder device;

(vii) Has no more than one fishing line and one footrope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and the fishing circle;

(viii) Has no metallic component except for connectors (e.g., hammerlocks or swivels) or a net-sounder device aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure;

(ix) May have small mesh within 32 ft (9.8 m) of the center of the headrope as needed for attaching instrumentation (e.g., net-sounder device); and

(x) May have weights on the wing tips.

(10) *Pot-and-line* means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device.

(11) *Scallop dredge* means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any modification to this design that can be or is used in the harvest of scallops, or the taking of scallops by means of such gear.

(12) *Trawl* has the meaning specified in § 600.10 of this chapter. For purposes of this part, this definition includes, but is not limited to, Danish seines and otter trawls.

Basis species means any species or species group that is open to directed

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fishing that the vessel is authorized to harvest.

Bering Sea and Aleutian Islands Management Area (BSAI) means the Bering Sea and Aleutian Islands subareas (see Figure 1 of this part).

Bering Sea Subarea of the BSAI means that portion of the EEZ contained in Statistical Areas 508, 509, 512, 513, 514, 516, 517, 518, 519, 521, 523, 524, and 530 (see Figure 1 of this part).

Bimonthly refers to a time period equal to 2 calendar months. For purposes of the Research Plan, six consecutive bimonthly periods are established each year, as follows: January 1—February 29; March 1—April 30; May 1—June 30; July 1—August 31; September 1—October 31; and November 1—December 31.

Bogoslof District means that part of the Bering Sea Subarea contained in Statistical Area 518 (see Figure 1 of this part).

Breast line means the rope or wire running along the forward edges of the side panels of a net, or along the forward edge of the side rope in a rope trawl.

Buying station means:

(1) With respect to groundfish record-keeping and reporting, a person or vessel that receives unprocessed groundfish from a vessel for delivery at a different location to a shoreside processor or mothership and that does not process those fish.

(2) With respect to Research Plan, a person or vessel that receives unprocessed fish from a vessel for delivery to a shoreside processor or mothership and that does not process those fish.

Bycatch Limitation Zone 1 (Zone 1) means that part of the Bering Sea Subarea that is contained within the boundaries of Statistical Areas 508, 509, 512, and 516 (see Figure 1 of this part).

Bycatch Limitation Zone 2 (Zone 2) means that part of the Bering Sea Subarea that is contained within the boundaries of Statistical Areas 513, 517, and 521 (see Figure 1 of this part).

Bycatch rate means:

(1) For purposes of § 679.21(f) with respect to halibut, means the ratio of the total round weight of halibut, in kilograms, to the total round weight, in metric tons, of groundfish for which a TAC has been specified under § 679.20

while participating in any of the fisheries defined under § 679.21(f).

(2) For purposes of § 679.21(f) with respect to red king crab, means the ratio of number of red king crab to the total round weight, in metric tons, of BSAI groundfish for which a TAC has been specified under § 679.20 while participating in the BSAI yellowfin sole and BSAI “other trawl” fisheries, as defined under § 679.21(f).

Bycatch species means any species or species group for which a maximum retainable bycatch amount is calculated.

Catcher/processor means:

(1) With respect to groundfish record-keeping and reporting, a vessel that is used for catching fish and processing that fish.

(2) (Applicable through December 31, 1998). With respect to moratorium groundfish or crab species, a vessel that can be used as a catcher vessel and that can process or prepare fish to render it suitable for human consumption, industrial use, or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil, but not including heading and gutting unless additional preparation is done.

(3) With respect to Research Plan fisheries, a processor vessel that is used for, or equipped to be used for, catching fish and processing that fish.

Catcher vessel means:

(1) With respect to groundfish record-keeping and reporting, a vessel that is used for catching fish and that does not process on board.

(2) (Applicable through December 31, 1998). With respect to moratorium groundfish, as defined in paragraph (1) of this definition; with respect to moratorium crab species, a vessel that is used to catch, take, or harvest moratorium crab species that are retained on board as fresh fish product at any time.

(3) [Reserved]

(4) With respect to the Research Plan, a vessel that is used for catching fish and processing that fish.

Catcher Vessel Operational Area (CVOA) (see Figure 2 of this part and § 679.22(a)(5)).

CBL means crab bycatch limit.

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Central Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 542 (see Figure 1 of this part).

Chief, RAM Division means Chief of the Restricted Access Management Division, NMFS, Alaska Region.

Chinook Salmon Savings Area of the BSAI (see § 679.21(e)(7)(vii)(B)).

Chum Salmon Savings Area of the BSAI CVOA (see § 679.21(e)(7)(vi)(B)).

Clearing officer means a NMFS special agent, a NMFS fishery enforcement officer, or a NMFS enforcement aide who performs the function of clearing vessels at one of the primary ports listed in § 679.5(l)(3)(viii).

Commissioner of ADF&G means the principal executive officer of ADF&G.

Community Development Plan (CDP) (applicable through December 31, 1998) means a business plan for the development of a specific Western Alaska community or group of communities under the CDQ Program at § 679.30.

Community Development Quota (CDQ) (applicable through December 31, 1998) means a percentage of the CDQ reserve for a particular fish species that is allocated to a CDP.

Community Development Quota Program (CDQ Program) (applicable through December 31, 1998) means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

Community Development Quota Reserve (CDQ Reserve) (applicable through December 31, 1998) means a percentage of the TAC for a particular management area for pollock, halibut, or hook-and-line sablefish that has been set aside for purposes of the CDQ program.

Council means North Pacific Fishery Management Council.

Daily reporting period or day is the period from 0001 hours, A.l.t., until the following 2400 hours, A.l.t.

Directed fishing means:

(1) With respect to groundfish record-keeping and reporting, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under § 679.20.

(2) (Applicable through December 31, 1998). With respect to moratorium

groundfish species, directed fishing as defined in paragraph (1) of this definition, or, with respect to moratorium crab species, the catching and retaining of any moratorium crab species.

Dockside sale means the transfer of IFQ halibut or IFQ sablefish from the person who harvested it to individuals for personal consumption, and not for resale.

Donut Hole means the international waters of the Bering Sea outside the limits of the EEZ and Russian economic zone as depicted on the current edition of NOAA chart INT 813 Bering Sea (Southern Part).

Eastern Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 541 (see Figure 1 of this part).

Exvessel price means the price in dollars received by a harvester for fish from Research Plan fisheries. Exvessel price excludes any value added by processing.

Federal waters means waters within the EEZ off Alaska.

Fee percentage means the annually calculated assessment rate, in percent of exvessel value of Research Plan fisheries, used to determine fee assessments under the Research Plan.

Fish product weight means the weight of the fish product in pounds or to at least the nearest hundredth of a metric ton (0.01 mt). Fish product weight is based upon the number of production units and the weight of those units. Production units include pans, cartons, blocks, trays, cans, bags, and individual fresh or frozen fish. The weight of a production unit is the average weight of representative samples of the product, and may include additives, but not packaging. Any allowance for water added cannot exceed 5 percent of the gross product weight (fish, additives, and water).

Fishermen means persons who catch, take, or harvest fish.

Fishing circle means the circumference of a trawl intersecting the center point on a fishing line, and that is perpendicular to the long axis of a trawl.

Fishing day means a 24-hour period, from 0001 hours, A.l.t., through 2400 hours, A.l.t., in which fishing gear is retrieved and groundfish, halibut, or

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king or Tanner crab are retained. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

Fishing line means a length of chain or wire rope in the bottom front end of a trawl to which the webbing or lead ropes are attached.

Fishing month refers to a time period calculated on the basis of weekly reporting periods as follows: Each fishing month begins on the first day of the first weekly reporting period that has at least 4 days in the associated calendar month and ends on the last day of the last weekly reporting period that has at least 4 days in that same calendar month. Dates of each fishing month will be announced in the FEDERAL REGISTER published under § 679.21(f)(5).

Fishing trip means:

(1) With respect to groundfish directed fishing standards, an operator of a vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed until:

(i) The offload or transfer of all groundfish or groundfish product from that vessel;

(ii) The vessel enters or leaves an area to which a directed fishing prohibition applies; or

(iii) The end of a weekly reporting period, whichever comes first.

(2) With respect to the IFQ Program, the period beginning when a vessel operator commences harvesting IFQ species and ending when the vessel operator lands any species.

(3) With respect to the Research Plan, one of the following:

(i) For a vessel used to process groundfish or a catcher vessel used to deliver groundfish to a mothership, a weekly reporting period during which one or more fishing days occur.

(ii) For a catcher vessel used to deliver fish to other than a mothership, the time period during which one or more fishing days occur, that starts on the day when fishing gear is first deployed and ends on the day the vessel offloads groundfish, halibut, or king or Tanner crab; returns to an Alaskan port; or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

Fishing year means 0001 hours, A.l.t., on January 1, through 2400 hours, A.l.t., on December 31 (see § 679.23).

Food bank distributor means a tax-exempt organization with the primary purpose of distributing food resources to hunger relief agencies.

Food bank network means a tax-exempt organization with the primary purpose of coordinating receipt and delivery of food resources to its member food bank distributors or hunger relief agencies.

Footrope means a chain or wire rope attached to the bottom front end of a trawl and attached to the fishing line.

Gear deployment means:

(1) For trawl gear: Where the trawl gear reaches the fishing level and begins to fish.

(2) For jig/troll, hook-and-line, or longline gear: Where the gear enters the water.

(3) For pot-and-line gear: Where the first pot enters the water.

Gear retrieval means:

(1) For trawl gear: Where retrieval of trawl cable commences.

(2) For jig/troll gear: Where the jig/troll gear leaves the water.

(3) For hook-and-line or longline pot gear: Where the last hook-and-line or longline pot gear of a set leaves the water, regardless of where the majority of the haul or set took place.

(4) For pot-and-line gear: Where the last pot of a set leaves the water.

Governor means the Governor of the State of Alaska.

Groundfish means target species and the "other species" category, specified annually pursuant to § 679.20(a)(2).

Gulf of Alaska (GOA) means that portion of the EEZ contained in Statistical Areas 610, 620, 630, 640, and 650 (see Figure 3 of this part).

Halibut means Pacific halibut (*Hippoglossus stenolepis*).

Halibut CDQ reserve means the amount of the halibut catch limit for IPHC regulatory areas 4B, 4C, 4D, and 4E that is reserved for the halibut CDQ program (see § 679.31(b)).

Harvesting or to harvest means the catching and retaining of any fish.

Headrope means a rope bordering the top front end of a trawl.

Herring Savings Area means any of three areas in the BSAI presented in

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Figure 4 (see also § 679.21(e)(7)(v) for additional closure information).

Hunger relief agency means a tax-exempt organization with the primary purpose of feeding economically disadvantaged individuals free of charge.

Individual means a natural person who is not a corporation, partnership, association, or other such entity.

Individual fishing quota (IFQ) means the annual catch limit of sablefish or halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the TAC of sablefish or halibut.

IFQ crew member means any individual who has at least 150 days experience working as part of the harvesting crew in any U.S. commercial fishery, or any individual who receives an initial allocation of QS. For purposes of this definition, “harvesting” means work that is directly related to the catching and retaining of fish. Work in support of harvesting, but not directly involved with harvesting, is not considered harvesting crew work. For example, searching for fish, work on a fishing vessel only as an engineer or cook, or work preparing a vessel for a fishing trip would not be considered work of a harvesting crew.

IFQ halibut means any halibut that is harvested with fixed gear in any IFQ regulatory area.

IFQ landing means the unloading or transferring of any IFQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish.

IFQ regulatory area means:

(1) With respect to IFQ halibut, areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title.

(2) With respect to IFQ sablefish, any of the three regulatory areas in the GOA and any subarea of the BSAI, and all waters of the State of Alaska between the shore and the inshore boundary of such regulatory areas and subareas, except waters of Prince William Sound and areas in which sablefish fishing is managed under a State of Alaska limited entry program.

IFQ sablefish means any sablefish that is harvested with fixed gear, either in the EEZ off Alaska or in waters

of the State of Alaska, by persons holding an IFQ permit, but does not include sablefish harvested in Prince William Sound or under a State of Alaska limited entry program.

Inshore component (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock in the GOA or BSAI, or Pacific cod harvested in a directed fishery for Pacific cod in the GOA, or both:

(1) Shoreside processing operations.

(2) Vessels less than 125 ft (38.1 m) in LOA, that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of those fish.

(3) Vessels that process those fish at a single geographic location in Alaska State waters during a fishing year. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in report (§ 679.5(h)) when that vessel first engages in processing those fish.

IPHC means International Pacific Halibut Commission (see part 300 of chapter III of this title).

King crab means red king crab (*Paralithodes camtschatica*), blue king crab (*P. platypus*), brown (or golden) king crab (*Lithodes aequispina*), and scarlet (or deep sea) king crab (*Lithodes couesi*).

Landing means offloading fish.

Legal landing (applicable through December 31, 1998) means any amount of a moratorium species that was or is landed in compliance with Federal and state commercial fishing regulations in effect at the time of the landing.

Legal landing of halibut or sablefish (see § 679.40(a)(3)(v)).

Length overall (LOA) of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 6 of this part; see also maximum LOA, original qualifying LOA, and reconstruction).

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Logbook means Daily Cumulative Production Logbook (DCPL), Daily Cumulative Logbook (DCL), or a Daily Fishing Logbook (DFL) required by § 679.5.

Lost or destroyed vessel (applicable through December 31, 1998) means a vessel that has sunk at sea or has been destroyed by fire or other accident and has been reported to the USCG on USCG Form 2692, Report of Marine Casualty.

Management area means any district, regulatory area, subpart, part, or the entire GOA or BSAI.

Manager, with respect to any shore-side processor or buying station, means the individual responsible for the operation of the shore-side processor operation or buying station.

Maximum LOA (applicable through December 31, 1998), with respect to a vessel's eligibility for a moratorium permit, means:

(1) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is less than 125 ft (38.1 m) LOA, 1.2 times the original qualifying LOA or 125 ft (38.1 m), whichever is less.

(2) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is equal to or greater than 125 ft (38.1 m), the original qualifying LOA.

(3) For an original qualifying vessel under reconstruction on June 24, 1992, the LOA on the date reconstruction was completed, provided that maximum LOA is certified under § 679.4(c)(9).

Moratorium crab species (applicable through December 31, 1998) means species of king or Tanner crabs harvested in the BSAI, the commercial fishing for which is governed by this part.

Moratorium groundfish species (applicable through December 31, 1998) means species of groundfish, except sablefish caught with fixed gear, harvested in the GOA or in the BSAI, the commercial fishing for which is governed by this part.

Moratorium qualification (applicable through December 31, 1998) means a transferable prerequisite for a moratorium permit.

Moratorium species (applicable through December 31, 1998) means any

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moratorium crab species or moratorium groundfish species.

Mothership means:

(1) A vessel that receives and processes groundfish from other vessels; or

(2) With respect to the Research Plan, a processor vessel that receives and processes fish from other vessels and is not used for, or equipped to be used for, catching fish.

Net-sounder device means a sensor used to determine the depth from the water surface at which a fishing net is operating.

Non-allocated or nonspecified species means those fish species, other than prohibited species, for which TAC has not been specified (e.g., grenadier, prowlfish, lingcod).

Observed or observed data refers to data collected by observers who are certified under the NMFS Observer Program (see § 679.21(f)(7) and subpart E of this part).

Observer means any person certified under the NMFS Observer Program (see subpart E of this part).

Offshore component (applicable through December 31, 1998) means all vessels not included in the definition of "inshore component" that process pollock caught in directed fisheries for pollock in the GOA or BSAI, or Pacific cod caught in directed fisheries for Pacific cod in the GOA, or both.

Optimum yield (OY) (see § 679.20(a)(1)).

Original qualifying LOA (applicable through December 31, 1998) means the LOA of the original moratorium qualifying vessel on June 24, 1992.

Original qualifying vessel (applicable through December 31, 1998) means a vessel that made a legal landing during the moratorium qualifying period.

Other species is a category that consists of groundfish species in each management area that are not specified as target species (see Table 1 of the specifications provided at § 679.20(c)).

Person means:

(1) (Applicable through December 31, 1998). For purposes of the moratorium, any individual who is a citizen of the United States or any U.S. corporation, partnership, association, or other entity (or their successor in interest), whether or not organized or existing under the laws of any state.

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(2) For purposes of IFQ species, any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or their successor in interest), whether or not organized or existing under the laws of any state, who is a U.S. citizen.

Pollock roe means product consisting of pollock eggs, either loose or in sacs or skeins.

Processing, or *to process*, means the preparation of fish to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, or rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

Processor means, with respect to the Research Plan, any shoreside processor or vessel that processes fish, any person who receives fish from fishermen for commercial purposes, any fisherman who transfers fish outside of the United States, and any fisherman who sells fish directly to a restaurant or to an individual for use as bait or personal consumption. Processor does not include a buying station or a restaurant, or a person who receives fish from fishermen for personal consumption or bait.

Processor vessel means, unless otherwise restricted, any vessel that has been issued a Federal fisheries permit and that can be used for processing groundfish.

Prohibited species catch (PSC) means any of the species listed in § 679.21(b).

PRR means standard product recovery rate (see Table 3 of this part).

Qualified applicant (see Western Alaska CDQ Program, § 679.30(d)(6)).

Qualified person (see IFQ Management Measures, § 679.40(a)(2)).

Qualifying period (applicable through December 31, 1998) means the period to qualify for the moratorium from January 1, 1988, through February 9, 1992.

Quarter, or *quarterly reporting period*, means one of four successive 3-month periods, which begin at 0001 hours, A.l.t., on the first day of each quarter, and end at 2400 hours, A.l.t., on the last day of each quarter, as follows:

(1) 1st quarter: January 1 through March 31.

(2) 2nd quarter: April 1 through June 30.

(3) 3rd quarter: July 1 through September 30.

(4) 4th quarter: October 1 through December 31.

Quota share (QS) means a permit, the face amount of which is used as a basis for the annual calculation of a person's IFQ.

Reconstruction (applicable through December 31, 1998) means a change in the LOA of the vessel from its original qualifying LOA.

Regional Director, for purposes of this part, means the Director, Alaska Region, NMFS, as defined at § 600.10 of this chapter, or a designee.

Regulatory area means any of three areas of the EEZ in the GOA (see Figure 3 of this part).

Reporting area means any of the areas described in Figures 1 and 3 of this part.

Research Plan means the North Pacific Fisheries Research Plan developed by the North Pacific Fishery Management Council under the Magnuson Act.

Research Plan fisheries means the following fisheries: BSAI groundfish, GOA groundfish, BSAI king and Tanner crab, and halibut from convention waters off Alaska.

Resident fisherman (see § 679.30(d)(7)).

Retained catch means the catch retained by a processor, in round weight or round-weight equivalents, from Research Plan fisheries.

Round weight or round-weight equivalent, for purposes of this part, means:

(1) For groundfish or halibut: The weight of fish calculated by dividing the weight of the primary product made from that fish by the standard PRR for that primary product as listed in Table 3 of this part, or, if not listed, the weight of fish calculated by dividing the weight of a primary product by the standard PRR as determined using the best available evidence on a case-by-case basis.

(2) For BSAI crab processed by catcher/processors: The scale weight of a subsample multiplied by the number of subsamples comprising the retained catch.

(3) For BSAI crab processed by mothership or shoreside processors: The scale weights of retained catches.

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Sablefish (black cod) means *Anoplopoma fimbria*.

Sablefish CDQ reserve means 20 percent of the sablefish fixed gear TAC for each subarea in the BSAI for which a sablefish TAC is specified (see § 679.31(c)).

Scallop(s) means any species of the family Pectinidae, including, without limitation, weathervane scallops (*Patinopecten caurinus*).

SDP means the Salmon Donation Program established under this section.

SDP permit means a permit issued by NMFS to an applicant who qualifies as an authorized distributor for purposes of the SDP.

Set means a string of pots or hook-and-line gear or a group of pots that is deployed in a similar location with similar soak time.

Shoreside processor means:

(1) With respect to GOA and BSAI groundfish, any person or vessel that receives unprocessed groundfish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving groundfish for use as bait or personal consumption.

(2) With respect to the Research Plan, any person that receives unprocessed fish, except catcher/processors, motherships, restaurants, or persons receiving fish for use as bait or personal consumption.

Shucking machine means any mechanical device that automatically removes the meat or the adductor muscle from the shell.

Southeast Outside District of the GOA means that part of the Eastern Regulatory Area contained in Statistical Area 650 (see Figure 3 of this part).

Standard exvessel price means the exvessel price for species harvested in Research Plan fisheries, calculated annually by NMFS for each species or species group, from exvessel price information for all product forms, used in determining fee assessments.

Statistical area means the part of any reporting area defined in Figures 1 and 3 of this part, contained in the EEZ.

Steller Sea Lion Protection Areas (see Tables 4, 5, and 6 of this part and §§ 679.22(a)(7), (a)(8), 679.22(b)(2), and 227.12 of this title).

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Stem means the forward part of a vessel—that portion of the vessel where the sides are united at the fore end with the lower end attached to the keel and the bowsprit, if one is present, resting on the upper end.

Stern means the aft part of the vessel.

Stretched mesh size means the distance between opposite knots of a four-sided mesh when opposite knots are pulled tautly to remove slack.

Superexclusive registration area means any State of Alaska designated registration area within the BSAI where, if a vessel is registered to fish for crab, that vessel is prohibited from fishing for crab in any other registration area during that registration year.

Support vessel means any vessel that is used in support of other vessels regulated under this part, including, but not limited to, supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment or other supplies, or transporting processed fish. The term “support vessel” does not include processor vessels or tender vessels.

Tanner crab means *Chionoecetes* species or hybrids of these species.

Target species are those species or species groups, except the “other species” category, for which a TAC is specified pursuant to § 679.20(a)(2).

Tax-exempt organization means an organization that received a determination letter from the Internal Revenue Service recognizing tax exemption under 26 CFR part 1 (§§ 1.501 to 1.640).

Tender vessel means a vessel that is used to transport unprocessed fish received from another vessel to a shoreside processor, mothership, or buying station.

Transfer includes any loading, off-loading, shipment or receipt of any groundfish product, including quantities transferred inside or outside the EEZ, within any state’s territorial waters, within the internal waters of any state, at any shoreside processor, or any offsite meal reduction plant.

Trawl test areas (see Figure 7 of this part and § 679.24(d)).

U.S. citizen means:

(1) Any individual who is a citizen of the United States at the time of application for QS; or

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(2) Any corporation, partnership, association, or other entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.

Vessel Activity Report (VAR) (see § 679.5).

Vessel operations category (see § 679.4).

Walrus Protection Areas (see § 679.22(a)(4)).

Weekly reporting period means a time period that begins at 0001 hours, A.l.t., Sunday morning (except during the first week of each year, when it starts on January 1) and ends at 2400 hours, A.l.t., the following Saturday night (except during the last week of each year, when it ends on December 31).

West Yakutat District of the GOA means that part of the GOA Eastern Regulatory Area contained in Statistical Area 640 (see Figure 3 of this part).

Western Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 543 (see Figure 1 of this part).

Wing tip means the point where adjacent breast lines intersect or where a breast line intersects with the fishing line.

[61 FR 31230, June 19, 1996, as amended at 61 FR 33384, June 27, 1996; 61 FR 35578, July 5, 1996; 61 FR 38104, July 23, 1996; 61 FR 38359, July 24, 1996; 61 FR 49981, Sept. 24, 1996]

§ 679.3 Relation to other laws.

(a) *Foreign fishing for groundfish.* Regulations governing U.S. nationals fishing in the Russian fisheries are set forth in part 300 of chapter III of this title.

(b) *Domestic fishing for groundfish.* The conservation and management of groundfish in waters of the territorial sea and internal waters of the State of Alaska are governed by the Alaska Administrative Code at 5 AAC Chapter 28 and the Alaska Statute at A.S. 16.

(c) *Halibut.* Additional regulations governing the conservation and management of halibut are set forth in subpart E of part 300 of chapter III of this title.

(d) *King and Tanner crab.* Additional regulations governing conservation and management of king crab and Tanner crab in the BSAI are contained in Alas-

ka Statutes at A.S. 16 and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

(e) *Incidental catch of marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth in § 216.24 and part 229 of this title.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35578, July 5, 1996]

§ 679.4 Permits.

(a) *General requirements*—(1) *Application.* (i) A person may obtain or renew an application for any of the permits under this section and must mail completed forms to the Chief, RAM Division.

(ii) Upon receipt of an incomplete or improperly completed permit application, the Chief, RAM Division, will notify the applicant of the deficiency in the permit application. If the applicant fails to correct the deficiency, the permit will not be issued. No permit will be issued to an applicant until a complete application is received.

(iii) A separate application must be completed for each vessel, processor, or buying station and a copy must be retained of each completed or revised application.

(iv) The information requested on the application must be typed or printed legibly.

(2) *Amended applications.* An owner, operator, or manager who applied for and received a permit under this section must notify the Chief, RAM Division, in writing, of any change in the information within 10 days of the date of that change.

(3) *Alteration.* No person may alter, erase, or mutilate any permit, card, or document issued under this section. Any such permit, card, or document that is intentionally altered, erased, or mutilated is invalid.

(4) *Disclosure.* NMFS will maintain a list of permitted processors that may be disclosed for public inspection.

(5) *Sanctions and denials.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(b) *Federal Fisheries permit*—(1) *Groundfish.* No vessel of the United

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States may be used to fish for groundfish in the GOA or BSAI unless the owner first obtains a Federal fisheries permit for the vessel, issued under this part. A Federal fisheries permit is issued without charge.

(2) *Non-groundfish.* A vessel of the United States that fishes in the GOA or BSAI for any non-groundfish species, including but not limited to halibut, crab, salmon, scallops, and herring, and that does not retain any bycatch of groundfish is not required to obtain a Federal fisheries permit under this part.

(3) *Vessel operations categories.* (i) A Federal fisheries permit authorizes a vessel to conduct operations in the GOA and BSAI as a catcher vessel, catcher/processor, mothership, tender vessel, or support vessel.

(ii) A vessel may be issued a Federal fisheries permit as a support vessel or as any combination of the other four categories (catcher vessel, catcher/processor, mothership, tender vessel). A vessel permitted as a catcher vessel, catcher/processor, mothership, or tender vessel also may conduct all operations authorized for a support vessel.

(4) *Duration.* (i) A Federal fisheries permit remains in effect through December 31 of the year for which it is issued, unless it is revoked, suspended, or modified under 15 CFR part 904, or unless it is surrendered or invalidated.

(ii) A Federal fisheries permit is surrendered when the original permit is submitted to and received by the NMFS Enforcement Office in Juneau, AK.

(5) *Application.* A complete application for a Federal fisheries permit must include the following information for each vessel:

(i) *Amended permit.* If application is for an amended permit, the current Federal fisheries permit number and information that has changed.

(ii) *Vessels.* The complete name and homeport (city and state) of the vessel; the ADF&G vessel number; the USCG documentation number or Alaska registration number; the vessel's LOA and registered net tonnage; and the telephone, fax, and COMSAT (satellite communication) numbers used on board the vessel.

(iii) *Owner information.* The owner of the vessel must record the owner's name, permanent business mailing address, telephone and fax numbers; and the name of any company (other than the owner) that manages the operations of the vessel or shoreside processor.

(iv) *Federal fisheries permit information.* The owner of the vessel must record:

(A) The fishery or fisheries and the vessel operations category for which the permit would apply, as set forth under paragraph (b)(3) of this section.

(B) If a catcher vessel or catcher/processor, the gear type(s) used for groundfish operations.

(C) If a catcher vessel, whether groundfish is retained only as bycatch from halibut, crab, or salmon fisheries; and whether sablefish is the only groundfish targeted in the GOA.

(D) If a mothership or catcher/processor, whether inshore or offshore, to indicate component in which Pacific cod in the GOA or pollock will be processed for the entire fishing year.

(v) *Signature.* The owner of the vessel must sign and date the application.

(6) *Issuance.* (i) Except as provided in subpart D of 15 CFR part 904, upon receipt of a properly completed permit application, the Regional Director will issue a Federal fisheries permit required by this paragraph (b).

(ii) The Regional Director will send the Federal fisheries permit to the applicant with the appropriate logbooks, as provided under § 679.5.

(7) *Amended application.* If the application for an amended permit required under this section designates a change or addition of a vessel operations category, the amended permit must be on board the vessel before the new type of operations begins.

(8) *Transfer.* A Federal fisheries permit issued under this paragraph (b) is not transferable or assignable and is valid only for the vessel for which it is issued.

(9) *Inspection.* (i) An original Federal fisheries permit issued under this paragraph (b) must be carried on board the vessel whenever the vessel is fishing. Photocopied or faxed copies are not considered originals.

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(ii) A permit issued under this paragraph (b) must be presented for inspection upon the request of any authorized officer.

(c) *Moratorium permits (applicable through December 31, 1998)*—(1) *General*—(i) *Applicability*. Except as provided under paragraph (c)(2) of this section, any vessel used to catch and retain any moratorium crab species or to conduct directed fishing for any moratorium groundfish species must have a valid moratorium permit issued for that vessel under this part on board the vessel at all times it is engaged in fishing activities.

(ii) *Duration*. The moratorium permit is valid for the duration of the moratorium, unless otherwise specified.

(iii) *Validity*. A moratorium permit issued under this part is valid only if:

(A) The vessel's LOA does not exceed the maximum LOA as specified in § 679.2;

(B) The vessel's moratorium qualification has not been transferred;

(C) The permit has not been revoked or suspended under 15 CFR part 904;

(D) The permit is endorsed for all gear types on board the vessel; and

(E) The permit's term covers the fishing year in which the vessel is fishing.

(iv) *Inspection*. A moratorium permit must be presented for inspection upon the request of any authorized officer.

(2) *Moratorium exempt vessels*. (i) A moratorium exempt vessel is not subject to the moratorium permit requirement of paragraph (c)(1) of this section and is not eligible for a moratorium permit.

(ii) A moratorium exempt vessel may catch and retain moratorium species, provided it complies with the permit requirements of the State of Alaska with respect to moratorium crab species, Federal permit requirements in this part with respect to moratorium groundfish species, and other applicable Federal and State of Alaska regulations.

(3) *Moratorium exempt vessel categories*. A moratorium exempt vessel is a vessel in any of the following categories:

(i) Vessels other than catcher vessels or catcher/processor vessels.

(ii) Catcher vessels or catcher/processor vessels less than or equal to 26 ft

(7.9 m) LOA that conduct directed fishing for groundfish in the GOA.

(iii) Catcher vessels or catcher/processor vessels less than or equal to 32 ft (9.8 m) LOA that catch and retain moratorium crab species in the BSAI or that conduct directed fishing for moratorium groundfish species in the BSAI.

(iv) Catcher vessels or catcher/processor vessels that are fishing for IFQ halibut, IFQ sablefish, or halibut or sablefish under the Western Alaska CDQ Program in accordance with regulations at subpart C of this part and that are not directed fishing for any moratorium species.

(v) Catcher vessels or catcher/processor vessels less than or equal to 125 ft (38.1 m) LOA that after November 18, 1992, are specifically constructed for and used in accordance with a CDP under § 679.30, and that are designed and equipped to meet specific needs described in the CDP.

(4) *Moratorium permit endorsements*—(i) *General*. A moratorium permit will be endorsed for one or more fishery-specific gear type(s) in accordance with the endorsement criteria of paragraph (c)(5) of this section.

(ii) *Authorization*. A fishery-specific gear type endorsement authorizes the use by the vessel of that gear type in the specified fisheries.

(iii) *Fishing gear requirements*. (A) Fishing gear requirements for the BSAI crab fisheries are set forth in the Alaska Administrative Code at title 5, chapters 34 and 35.

(B) Fishing gear requirements for the GOA and the BSAI groundfish fisheries are set forth under § 679.24.

(C) A moratorium permit may be endorsed for any one or a combination of the following fishing gear types:

(1) Trawl, which includes pelagic and nonpelagic trawl gear.

(2) Pot, which includes longline pot and pot-and-line gear.

(3) Hook, which includes hook-and-line and jig gear.

(5) *Gear endorsement criteria*. For purposes of this paragraph (c)(5), the period January 1, 1988, through February 9, 1992, is "period 1," and February 10, 1992, through December 11, 1994, is "period 2." Fishery-specific gear type endorsement(s) will be based on the following criteria:

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(i) *Crab fisheries/pot gear.* A moratorium permit for a vessel may be endorsed for crab fisheries/pot gear if the vessel made a legal landing:

(A) Of a moratorium crab species in period 1;

(B) Of a moratorium groundfish species with any authorized fishing gear in period 1, and, in period 2, made a legal landing of a moratorium crab species; or

(C) Of moratorium groundfish in period 1 with pot gear.

(ii) *Groundfish fisheries/trawl gear.* A moratorium permit may be endorsed for groundfish fisheries/trawl gear if the vessel made a legal landing:

(A) Of a moratorium groundfish species with any authorized fishing gear in period 1; or

(B) Of a moratorium crab species in period 1, and, in period 2, made a legal landing of a moratorium groundfish species using trawl gear.

(iii) *Groundfish fisheries/pot gear.* A moratorium permit may be endorsed for groundfish fisheries/pot gear if the vessel made a legal landing:

(A) Of a moratorium groundfish species with any authorized fishing gear in period 1; or

(B) Of a moratorium crab species in period 1.

(iv) *Groundfish fisheries/hook gear.* A moratorium permit may be endorsed for groundfish fisheries/hook gear if the vessel made a legal landing:

(A) Of a moratorium groundfish species with any authorized fishing gear in period 1; or

(B) Of a moratorium crab species in period 1, and, in period 2, made a legal landing of a moratorium groundfish species using hook gear.

(6) *Application for permit.* A moratorium permit will be issued to the owner of a vessel of the United States if he/she submits to the Regional Director a complete moratorium permit application that is subsequently approved and if the vessel's LOA does not exceed the maximum LOA as specified in § 679.2. A complete application for a moratorium permit must include the following information for each vessel:

(i) Name of the vessel, state registration number of the vessel and the USCG documentation number of the vessel, if any.

(ii) Name(s), business address(es), and telephone and fax numbers of the owner of the vessel.

(iii) Name of the managing company.

(iv) Valid documentation of the vessel's moratorium qualification, if requested by the Regional Director due to an absence of landings records for the vessel from January 1, 1988, through February 9, 1992.

(v) Reliable documentation of the vessel's original qualifying LOA, if requested by the Regional Director, such as a vessel survey, builder's plan, state or Federal registration certificate, fishing permit records, or other reliable and probative documents that clearly identify the vessel and its LOA, and that are dated before June 24, 1992.

(vi) Specification of the fishing gear(s) used from January 1, 1988, through February 9, 1992, and, if necessary, the fishing gear(s) used from February 10, 1992, through December 11, 1994.

(vii) Specification of the vessel as either a catcher vessel or a catcher/processor vessel.

(viii) If applicable, transfer authorization if a permit request is based on transfer of moratorium qualification pursuant to paragraph (c) of this section.

(ix) Signature of the person who is the owner of the vessel or the person who is responsible for representing the vessel owner.

(7) *Moratorium qualification.* A vessel has moratorium qualification if:

(i) The vessel is an original qualifying vessel;

(ii) The vessel is not a moratorium exempt vessel under paragraph (c)(2) of this section;

(iii) The vessel's moratorium qualification has not been transferred;

(iv) The vessel receives a valid moratorium qualification through a transfer approved by the Regional Director under paragraph (c)(9) of this section; and

(v) That moratorium qualification is not subsequently transferred.

(8) *Application for moratorium qualification transfer—(i) General.* An application for approval of a transfer of moratorium qualification (see paragraph (c)(9) of this section) must be completed and the transfer approved by

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the Regional Director before an application for a moratorium permit based on that transfer can be approved. An application for approval of a transfer and an application for a moratorium permit may be submitted simultaneously.

(ii) *Contents of application.* A complete application for approval of transfer must include the following information, as applicable, for each vessel involved in the transfer of moratorium qualification:

(A) Name(s), business address(es), and telephone and fax numbers of the applicant(s) (including the owners of the moratorium qualification that is to be or was transferred and the person who is to receive or received the transferred moratorium qualification).

(B) Name of the vessel whose moratorium qualification is to be or was transferred and the name of the vessel that would receive or received the transferred moratorium qualification (if any), the state registration number of each vessel and, if documented, the USCG documentation number of each vessel.

(C) The original qualifying LOA of the vessel whose moratorium qualification is to be or was transferred, its current LOA, and its maximum LOA.

(D) The LOA of the vessel that would receive or received the transferred moratorium qualification and documentation of that LOA by a current vessel survey or other reliable and probative document.

(E) Signatures of the persons from whom moratorium qualification would be transferred or their representative, and the persons who would receive the transferred moratorium qualification or their representative.

(iii) *Contract or agreement.* A legible copy of a contract or agreement must be included with the application for transfer that specifies the vessel or person from which moratorium qualification is to be or is transferred, the date of the transfer agreement, names and signatures of all current owner(s) of the vessel whose moratorium qualification is to be or was transferred, and names and signatures of all current owner(s) of the moratorium qualification that is to be or was transferred.

(iv) *Vessel reconstruction.* The following information must be included with the application for transfer:

(A) A legible copy of written contracts or written agreements with the firm that performed reconstruction of the vessel and that relate to that reconstruction.

(B) An affidavit signed by the vessel owner(s) and the owner/manager of the firm that performed the vessel reconstruction, specifying the beginning and ending dates of the reconstruction.

(C) An affidavit signed by the vessel owner(s) specifying the LOA of the reconstructed vessel.

(v) *Vessels lost or destroyed.* A copy of USCG Form 2692, Report of Marine Casualty, must be included with the application for transfer.

(9) *Transfer of moratorium qualification (applicable through December 31, 1998)—*

(i) *General.* A transfer of a vessel's moratorium qualification must be approved by the Regional Director before a moratorium permit may be issued under this section for the vessel to which the qualification is transferred. A moratorium permit is not transferrable or assignable. A fishery-specific gear type endorsement(s) is not severable from an endorsed permit. A transfer of moratorium qualification will not be approved by the Regional Director unless:

(A) A complete transfer application that satisfies all requirements specified in paragraph (c)(8) of this section is submitted;

(B) The LOA of the vessel to which the moratorium qualification is transferred does not exceed the maximum LOA of the original qualifying vessel; and

(C) The moratorium permit associated with the moratorium qualification is not revoked or suspended.

(ii) *Vessels lost or destroyed in 1988.* The moratorium qualification of a vessel that was lost or destroyed before January 1, 1989, may not be transferred to another vessel and is not valid for purposes of issuing a moratorium permit for that vessel, if salvaged, unless salvage began on or before June 24, 1992, and the LOA of the salvaged vessel does not exceed its maximum LOA. The moratorium qualification of such a

vessel is not valid for purposes of issuing a moratorium permit for 1998 unless that vessel is used to make a legal landing of a moratorium species from January 1, 1996, through December 31, 1997.

(iii) *Vessels lost or destroyed from 1989 through 1995.* The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1989, but before January 1, 1996, is valid for purposes of issuing a moratorium permit for that vessel, if salvaged, regardless of when salvage began, provided that the vessel has not already been replaced and the LOA of the salvaged vessel does not exceed its maximum LOA. The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1989, but before January 1, 1996, may be transferred to another vessel, provided the LOA of that vessel does not exceed the maximum LOA of the original qualifying vessel. The moratorium qualification of such a vessel is not valid for purposes of issuing a moratorium permit for 1998, unless that vessel is used to make a legal landing of a moratorium species from January 1, 1996, through December 31, 1997.

(iv) *Vessels lost or destroyed after 1995.* The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1996, is valid for purposes of issuing a moratorium permit for that vessel, if salvaged, regardless of when salvage began, provided that the vessel has not already been replaced and the LOA of the salvaged vessel does not exceed its maximum LOA. The moratorium qualification of any vessel that is lost or destroyed on or after January 1, 1996, may be transferred to another vessel, providing the LOA of that vessel does not exceed the maximum LOA of the original qualifying vessel.

(v) *Reconstruction.* The moratorium qualification of a vessel is not valid for purposes of issuing a moratorium permit if, after June 23, 1992, reconstruction is initiated that results in increasing the LOA of the vessel to exceed the maximum LOA of the original qualifying vessel. For a vessel whose reconstruction began before June 24, 1992, and was completed after June 24, 1992, the maximum LOA is the LOA on the

date reconstruction was completed, provided the owner files an application for transfer and the Regional Director certifies that maximum LOA and approves the transfer based on information concerning the LOA of the reconstructed vessel submitted under paragraph (c)(8)(iv) of this section.

(10) *Appeal*—(i) *Determination.* The Chief, RAM Division, will issue an initial administrative determination to each applicant who is denied a moratorium permit by that official. An initial administrative determination may be appealed by the applicant in accordance with § 679.43. The initial administrative determination will be the final agency action if a written appeal is not received by the Chief, RAM Division, within the period specified.

(ii) *Permit denial.* An initial administrative determination that denies an application for a moratorium permit must authorize the affected vessel to catch and retain moratorium crab or moratorium groundfish species with the type of fishing gear specified on the application. The authorization expires on the effective date of the final agency action relating to the application.

(iii) *Final action.* An administrative determination denying approval of the transfer of a moratorium qualification and/or denying the issuance of a moratorium permit based on that moratorium qualification is the final agency action for purposes of judicial review.

(d) *IFQ*—(1) *General.* In addition to the permit and licensing requirements prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title and in the permit requirements of this section, all fishing vessels that harvest IFQ halibut or IFQ sablefish must have on board:

(i) *IFQ permit.* A copy of an IFQ permit that specifies the IFQ regulatory area and vessel category in which IFQ halibut or IFQ sablefish may be harvested by the IFQ permit holder and a copy of the most recent accompanying statement specifying the amount of each species that may be harvested during the current IFQ fishing season; and

(ii) *IFQ card.* An original IFQ card issued by the Regional Director.

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(2) *Registered buyer permit.* Any person who receives IFQ halibut or IFQ sablefish from the person(s) that harvested the fish must possess a registered buyer permit, except under conditions of paragraph (d)(2) (i), (ii), or (iii) of this section. A registered buyer permit also is required of any person who harvests IFQ halibut or IFQ sablefish and transfers such fish:

- (i) In a dockside sale;
- (ii) Outside of an IFQ regulatory area; or
- (iii) Outside the State of Alaska.

(3) *Permit issuance—(i) IFQ permits and cards—(A) Issuance.* IFQ permits and cards will be renewed or issued annually by the Regional Director to each person with approved QS for IFQ halibut or IFQ sablefish allocated in accordance with this section.

(B) *IFQ permit.* Each IFQ permit issued by the Regional Director will identify the permitted person and will be accompanied by a statement that specifies the amount of IFQ halibut or IFQ sablefish that person may harvest from a specified IFQ regulatory area using fixed gear and a vessel of a specified vessel category.

(C) *IFQ card.* Each IFQ card issued by the Regional Director will display an IFQ permit number and the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the permit holder's IFQ.

(ii) *Registered buyer permits.* Registered buyer permits will be renewed or issued annually by the Regional Director to persons that have a registered buyer application approved by the Regional Director.

(4) *Duration—(i) IFQ permit.* An IFQ permit authorizes the person identified on the permit to harvest IFQ halibut or IFQ sablefish from a specified IFQ regulatory area at any time during an open fishing season during the fishing year for which the IFQ permit is issued until the amount harvested is equal to the amount specified under the permit, or until it is revoked, suspended, or modified under 15 CFR part 904.

(ii) *IFQ card.* An IFQ card authorizes the individual identified on the card to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the card expires, or is revoked, suspended, or modified under 15 CFR

part 904, or cancelled on request of the IFQ permit holder.

(iii) *Registered buyer permit.* A registered buyer permit authorizes the person identified on the permit to receive or make an IFQ landing by an IFQ permit or card holder at any time during the fishing year for which it is issued until the registered buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904.

(5) *Transfer.* The IFQ permits issued under this section are not transferable, except as provided under §679.41. IFQ cards and registered buyer permits issued under this paragraph (d) are not transferable.

(6) *Inspection—(i) IFQ permit.* A legible copy of any IFQ permit issued under this section must be carried on board the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained on board.

(ii) *IFQ card.* Except as specified in §679.42(d), an individual that is issued an IFQ card must remain aboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card during all fishing operations until arrival at the point of landing and during all IFQ landings. The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer, clearing officer, or registered buyer purchasing IFQ species. Nothing in this paragraph would prevent an individual who is issued an IFQ card from being absent from the vessel used to harvest IFQ halibut or IFQ sablefish between the time the vessel arrives at the point of landing until the commencement of landing.

(iii) *Registered buyer permit.* A legible copy of the registered buyer permit must be present at the location of an IFQ landing, and must be made available for inspection on request of any authorized officer or clearing officer.

(e) *Halibut/sablefish CDQ permits and CDQ cards.* See §679.33(a) and (b).

(f) *Federal processor permit—(1) General—(i) Applicability.* In addition to the permit and licensing requirements prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to §300.62 of chapter III of this title and paragraphs (b) and

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(d) of this section, and except as provided in paragraph (f)(1)(ii) of this section, a processor of fish from a Research Plan fishery must have a Federal processor permit issued by the Regional Director.

(ii) *Exception.* Any fisherman who transfers fish outside the United States, or any fisherman who sells fish directly to a restaurant or to an individual for use as bait or for personal consumption is not required to have a Federal processor permit.

(iii) *Fee.* A Federal processor permit will be issued without charge.

(2) *Application.* A complete application for a Federal processor permit must include the following for each vessel or processor:

(i) The annual period for which the permit is requested.

(ii) The Research Plan fishery or fisheries for which the permit is requested.

(iii) If the application is for an amended permit, the current Federal processor permit number and an indication of the information that is being amended.

(iv) The processor owner's name or names, business mailing address, telephone number, and fax number.

(v) If the processor is a shoreside processor, the plant's name, business mailing address, ADF&G Processor Code, telephone number, and fax number.

(vi) If the processor is a vessel, the vessel's name, home port, net tonnage, LOA, USCG number, telephone number, fax number, INMARSAT (satellite communications) number, and ADF&G number.

(vii) The applicant's name, signature, and date.

(3) *Issuance.* (i) Permits required under paragraph (f)(1)(i) of this section will be issued annually by the Regional Director.

(ii) The Regional Director will issue a permit required under paragraph (f)(1)(i) of this section upon receipt of a complete application.

(iii) Upon receipt of an incomplete or improperly completed application, the Regional Director will notify the applicant of the deficiency. No permit will be issued to an applicant until a complete application is submitted.

(4) *Duration.* The Federal processor permit issued by the Regional Director will continue in full force and effect through December 31 of the year for which it is issued, or until it is revoked, suspended, or modified under §§ 600.735 and 600.740 of this chapter.

(5) *Transfer.* Permits issued under this paragraph (f) are not transferable or assignable.

(6) *Validity.* Each permit issued under this paragraph (f) is valid only for the vessel or processor for which it is issued.

(7) *Inspection.* (i) The permit issued under this paragraph (f) must be maintained on the processor vessel or at the shoreside processor.

(ii) The permit must be available for inspection upon request by an authorized officer or any employee of NMFS, ADF&G, or the Alaska Department of Public Safety designated by the Regional Director, Commissioner of ADF&G, or Commissioner of the Alaska Department of Public Safety.

(g) *King and Tanner crab permits.* All processors of BSAI king and Tanner crab must comply with permit requirements contained in paragraph (f) of this section.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35578, July 5, 1996; 61 FR 41525, Aug. 9, 1996]

§ 679.5 Recordkeeping and reporting.

(a) *General requirements—(1) Applicability, Federal fisheries permit.* Except as provided in paragraph (a)(iii) of this section, the following must comply with the recordkeeping and reporting requirements of this section:

(i) Any catcher vessel, mothership, catcher/processor, or tender vessel, 5 net tons or larger, that is required to have a Federal fisheries permit under § 679.4.

(ii) Any shoreside processor, mothership, or buying station that receives groundfish from vessels required to have a Federal fisheries permit under § 679.4. A shoreside processor, mothership, or buying station subject to recordkeeping and reporting requirements must report all groundfish and prohibited species received, including:

(A) Fish received from vessels not required to have a Federal fisheries permit.

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(B) Fish received under contract for handling or processing for another processor.

(iii) A catcher vessel less than 60 ft (18.3 m) LOA, is not required to comply with recordkeeping and reporting requirements contained in § 679.5(a)-(k).

(2) *Applicability, Federal processor permit.* Any processor that retains fish from a Research Plan fishery is responsible for complying with the applicable recordkeeping and reporting requirements of this section.

(3) *Responsibility.* The operator of a catcher vessel, catcher/processor, mothership, or buying station receiving from a catcher vessel and delivering to a mothership (hereafter referred to as the operator) and the manager of a shoreside processor or buying station receiving from a catcher vessel and delivering to a shoreside processor (hereafter referred to as the manager) are each responsible for complying with the applicable recordkeeping and reporting requirements of this section. In addition, the owner of a vessel, shoreside processor, or buying station must ensure that the operator, manager, or representative (see paragraph (b) of this section) complies with these requirements and is responsible for compliance.

(4) *Groundfish logbooks and forms.* The Regional Director will prescribe and provide groundfish logbooks and forms required under this section as shown in Table 9 of this part. The operator or manager must use these logbooks and forms or obtain approval from the Regional Director to use electronic versions of the logbooks and forms.

(5) *Participant identification information.* The operator or manager must record on all required records, reports, and logbooks:

(i) The name of the catcher vessel, catcher/processor, mothership, shoreside processor, or buying station as displayed in official documentation.

(ii) If a vessel, the Federal fisheries permit number and ADF&G vessel number (if applicable).

(iii) If a processor, the Federal processor permit number and ADF&G processor number.

(iv) If a buying station, the name and ADF&G vessel number (if applicable) of the buying station; the name, ADF&G

processor number, and Federal processor permit number of associated processor.

(v) If a shoreside processor or buying station delivering to a shoreside processor, the geographic location of operations.

(vi) If a representative, the name, daytime business telephone number (including area code), fax or telex number, and the COMSAT number (if applicable) of the representative.

(6) *Maintenance of records.* (i) The operator or manager must maintain all records, reports, and logbooks in a legible, timely, and accurate manner; in English; if handwritten, in indelible ink; if computer-generated, a printed, paper copy; and based on A.l.t.

(ii) The operator or manager must account for each day of the fishing year, starting with January 1 and ending with December 31, and the time periods must be consecutive in the logbook.

(iii) When applicable, the operator or manager must record in each report, form, and logbook the following information:

(A) *Page number.* Number the pages in each logbook consecutively, beginning with page one and continuing throughout the logbook for the remainder of the fishing year, except that the manager of a shoreside processor must number the DCPL pages within Part I and Part II separately, beginning with page one.

(B) *Date,* presented as month-day-year.

(C) *Time,* in military format to the nearest hour, A.l.t.

(D) *Position coordinates,* latitude and longitude to the nearest minute (Optional: Record to the nearest second or fraction of minute).

(E) *Reporting area codes,* given in Figures 1 and 3 of this part.

(F) *Species codes,* each target species, the "other species" category, and prohibited species under § 679.21(b), using the species codes given in Table 2 of this part.

(G) *Original/revised report.* If a report is the first one submitted to the Regional Director for a given date, gear type, and reporting area, the report should be labeled, "ORIGINAL REPORT." If the report is a correction to

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a previously submitted report for a given date, gear type, and reporting area, the report should be labelled, "REVISED REPORT."

(H) *Weights.* Landings, product, and discards of groundfish and herring must be recorded in pounds or to the nearest 0.01 mt on all forms and logbooks.

(7) *Active and inactive periods.* The operator or manager must, in the DFL, DCL, or DCPL:

(i) Account for each day of the fishing year by indicating active and inactive periods as defined under § 679.2.

(ii) Use a separate logbook page for each day of an active period.

(iii) Indicate on one page the first and last day of an inactive period.

(iv) Indicate all fishing activity, which is defined for each type of vessel as follows:

(A) If a catcher vessel—harvest or discard of groundfish.

(B) If a catcher/processor—harvest, discard, or processing of groundfish.

(C) If a mothership or shoreside processor—receipt, discard, or processing of groundfish.

(D) If a buying station—receipt, discard, or delivery of groundfish.

(v) If in an active period and conducting fishing activity, the operator or manager must record:

(A) The gear type used to harvest the groundfish. If a catcher vessel or catcher/processor and using hook-and-line longline gear, the average number of hooks per skate.

(B) The reporting area code where gear retrieval was completed; whether gear retrieval was in Federal or Alaska State waters.

(C) If a catcher vessel, whether a NMFS-certified observer is aboard the vessel. If a catcher/processor, mothership, or shoreside processor, the number of NMFS-certified observers aboard or on site.

(D) The number of crew, except for certified observer(s).

(E) Whether harvest is under a CDQ program; if yes, the CDQ number.

(F) If a catcher vessel or buying station, the name and ADF&G processor number of the mothership or shoreside processor to which groundfish deliveries were made.

(vi) If in an active period and not conducting fishing activity, the operator or manager must indicate "NO FISHING ACTIVITY" and briefly describe the reason.

(8) *Landings information.* The manager of a shoreside processor must:

(i) Record and report groundfish landings by species codes and product codes as defined in Tables 1 and 2 of this part for each reporting area, whether from Alaska State waters or Federal waters, gear type, and CDQ number.

(ii) Record in the DCPL each day on the day such landings occur, the following additional information:

(A) The daily combined scale weight of landings retained for processing from a catcher vessel or any associated buying station, in pounds or to at least the nearest 0.01 mt.

(B) If more than one page is used during a weekly reporting period, the total amount of landings carried forward from the previous page.

(C) At the end of each weekly reporting period, the cumulative total weight, calculated by adding the daily totals and total carried forward for that week.

(iii) If no landings occurred, write "NO LANDINGS" for that day.

(9) *Product information.* The operator of a catcher/processor or mothership or the manager of a shoreside processor must, where required:

(i) Record and report groundfish products by species codes, product codes, and product designations as defined in Tables 1 and 2 of this part for each reporting area, whether in Alaska State waters or Federal waters, gear type, and CDQ number.

(ii) Record in the DCPL each day on the day such production occurs, the daily total, balance brought forward (except for shoreside processor), and cumulative total fish product weight for each product of groundfish in pounds, or to at least the nearest 0.01 mt.

(iii) If no production occurred, write "NO PRODUCTION" for that day.

(10) *Discarded/donated species information—(i) General.* The operator or manager must record and report discards and donations by species codes and discard product codes as defined in Tables

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1 and 2 of this part for each reporting area, whether in Alaska State waters or Federal waters, gear type, and CDQ number.

(A) The operator or manager must record the estimated daily total, balance brought forward, and cumulative total round fish weight in the DFL, DCL, or DCPL each day on the day discards and donations occur for each discard or donation of groundfish species, groundfish species groups, and Pacific herring in pounds, or to at least the nearest 0.01 mt.

(B) The operator or manager must record the estimated daily total balance brought forward, and cumulative total numbers in the DFL, DCL, or DCPL each day on the day discards or donations occur for each discard and donation of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab.

(C) If there were no discards or donations, write “NO DISCARDS”, “0”, or “ZERO” for that day.

(ii) *Catcher vessel discards/donations.*

(A) For deliveries of unsorted codends, the catcher vessel is exempt from recording discards in the DFL and from submittal of the blue logsheet (discards copy) for that delivery. The operator of the catcher vessel is required to check the box entitled “unsorted codend,” and the blue DFL logsheet (discards copy) remains in the DFL.

(B) For presorted deliveries or in the event a catcher vessel has “bled” a codend prior to delivery to a processor, the operator of the catcher vessel must check the “presorted delivery” box, enter the amount of discards or donations by species, and submit the blue DFL logsheet (discards copy) to the mothership, buying station, or shoreside processor with each harvest delivery.

(iii) *Buying station discards/donations.*

(A) The operator or manager of a buying station must record in the DCL on a daily basis on the day discard occurs, all discards or donations that occur after receipt of harvest from a catcher vessel and prior to delivery of harvest to a mothership or shoreside processor.

(B) If a blue DFL logsheet is received from a catcher vessel and contains reports of discards or donations, the operator or manager of a buying station

must record in the DCL the discards and donations on the day the DFL logsheet is received from the catcher vessel.

(iv) *Catcher/processor discards/donations.* The operator of a catcher/processor must record in the DCPL on the day discards or donations occur, all discards or donations that occur prior to harvest, during harvest, and during processing.

(v) *Mothership or shoreside processor discards/donations.* (A) The operator of a mothership or manager of a shoreside processor must record in the DCPL on a daily basis on the day discards or donations occur, all discards or donations that occur on site after receipt of groundfish, and all discards or donations that occur during processing of groundfish.

(B) If an unsorted codend is received from a catcher vessel, the catcher vessel is not required to submit a blue discard logsheet to the mothership or shoreside processor. The operator of a mothership or manager of a shoreside processor must sort the catch received from the unsorted codends and must record the discards by species in the DCPL as discard at sea on the day the harvest is received from the catcher vessel.

(C) If discards are reported on a blue DFL logsheet from a catcher vessel delivering a presorted codend or if a catcher vessel reports an amount bled at sea, the operator of a mothership or manager of a shoreside processor must record in the DCPL the discards on the day the DFL logsheet is received from the catcher vessel.

(D) If a yellow DCL logsheet is received from a buying station and discards or donations are reported, the operator of a mothership or manager of a shoreside processor must record in the DCPL the discards or donations on the day the DCL logsheet is received from the buying station.

(11) *Contract processing.* (i) The manager of a shoreside processor or operator of a mothership who receives groundfish to be handled or processed under contract for another processor or business entity must report these fish to the Regional Director consistently throughout a fishing year using one of the following two methods:

(A) Record landings (if applicable), discards, and products of contract-processed groundfish routinely in the DCPL without separate identification; or

(B) Record landings (if applicable), discards, and products of contract-processed groundfish in a separate DCPL identified by the name, Federal processor permit number, Federal fisheries permit number (if applicable), and ADF&G processor code of the associated business entity.

(ii) If contract-processed groundfish records are kept separately from the routine DCPL, the operator of the mothership or manager of the shore-side processor must summarize and report that information on a WPR identified by the name, Federal processor permit number, Federal fisheries permit number (if applicable), and ADF&G processor code of the associated business entity.

(12) *Alteration of records.* (i) The operator, manager, or any other person may not alter or change any entry or record in a logbook, except that an inaccurate or incorrect entry or record may be corrected by lining out the original and inserting the correction, provided that the original entry or record remains legible.

(ii) No person except an authorized officer may remove any original page of any logbook.

(13) *Inspection of records.* The operator or manager must make all logbooks, reports, and forms required under this section available for inspection upon the request of an authorized officer.

(14) *Submittal of logbooks, reports and forms—(i) Logbooks.* (A) The operator of a catcher vessel, catcher/processor, or mothership, or the manager of a shore-side processor must submit the yellow logsheets on a quarterly basis to the NMFS Alaska Fisheries Science Center, Logbook Program, Seattle, WA, as follows: First quarter, by May 1 of that fishing year; second quarter, by August 1 of that fishing year; third quarter, by November 1 of that fishing year; and fourth quarter, by February 1 of the following fishing year.

(B) During an inactive period that extends across two or more successive quarters, the operator or manager must complete two logsheets: One to

indicate the last day of the first inactive quarter and the next page to indicate the first day of the second inactive quarter.

(ii) *Reports and forms.* Reports and forms may be submitted by the operator or manager by:

(A) Using the NMFS printed form and faxing it to the fax number on the form; or

(B) Transmitting a data file with required information and forms to NMFS by modem or satellite (specifically INMARSAT standards A, B, or C).

(15) *Record retention—(i) Original.* (A) The operator of a catcher vessel, catcher/processor, or mothership, and the manager of a shoreside processor, must retain the original (white) copy of all logbooks and a paper copy of all reports and forms, including those reports and forms that were originally submitted electronically and must make these documents available for inspection by an authorized officer:

(1) On site until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded in the logbook, reports, and forms are retained.

(2) For 3 years after the end of the fishing year during which the records were made.

(B) The operator or manager of a buying station must retain the original (white) copy of all DCLs on site until the buying station has concluded receiving groundfish from a catcher vessel for delivery to a shoreside processor or mothership and for as long as fish and fish products recorded in the DCL are retained by the buying station.

(ii) *Yellow DCL logsheet.* The operator of a mothership or manager of a shore-side processor must retain a photocopy of the yellow DCL logsheets submitted to NMFS under paragraph (a)(14) of this section that were received from associated buying stations until the mothership or shoreside processor receives the original DCL.

(iii) *Blue DFL logsheet.* (A) The operator of a mothership and the manager of a shoreside processor must retain the blue DFL logsheets (discard reports) submitted to them by operators of catcher vessels through the last day of the fishing year during which the records were made.

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(B) The operator or manager of a buying station must submit to the mothership or shoreside processor any blue logsheets (discard report) received from catcher vessels delivering groundfish to the buying station.

(iv) *Pink DCL logsheet.* The operator or manager of a buying station must retain the pink DCL logsheets for 3 years after the end of the fishing year during which the records were made.

(16) *Integration of buying station records.* (i) The operator or manager of a buying station must maintain a separate DCL for each mothership or shoreside processor to which the buying station delivers groundfish during a fishing year.

(ii) The operator or manager of a buying station must submit upon delivery of catch the yellow DCL logsheets to the shoreside processor or mothership to which it delivers groundfish, along with the blue DFL logsheets and ADF&G fish tickets or catch receipts for that delivery.

(iii) Upon conclusion of receiving groundfish for a shoreside processor or mothership, the operator or manager of a buying station must submit the original DCL to the manager of a shoreside processor or operator of a mothership to which deliveries were made.

(iv) If the mothership or shoreside processor receives fish from a buying station, the operator of the mothership or manager of the shoreside processor must incorporate all of the DCL information into the DCPL.

(b) *Representative.* The operator of a catcher vessel, mothership, catcher/processor, or buying station delivering to a mothership or manager of a shoreside processor or buying station delivering to a shoreside processor may identify one person to fill out and sign the logbook, complete the record-keeping and reporting forms, or both, and to identify the contact person for inquiries from NMFS. Designation of a representative under this paragraph does not relieve the owner, operator, or manager of responsibility for compliance under paragraph (a)(3) of this section.

(c) *Catcher vessel DFL and catcher/processor DCPL—(1) Pair trawls.* If two catcher vessels are dragging a trawl be-

tween them (pair trawl), a separate DFL must be maintained by each vessel. Each vessel operator must log the amount of the catch retained by that vessel and any fish discarded by the vessel.

(2) *Time limit and submittal.* (i) The operator of a catcher vessel or catcher/processor must record in the DFL or DCPL, the time, position, and estimated groundfish catch weight within 2 hours after gear retrieval.

(ii) The operator of a catcher vessel must record all other information required in the DFL by noon of the day following gear retrieval.

(iii) The operator of a catcher/processor must record all other information required in the DCPL by noon of the day following completion of production.

(iv) The operator of a catcher vessel must submit the blue DFL logsheets with delivery of the harvest to the operator of a mothership or a buying station delivering to a mothership, or to the manager of a shoreside processor or buying station delivering to a shoreside processor.

(v) Notwithstanding other time limits, the operator of a catcher vessel must record all information required in the DFL within 2 hours after the vessel's catch is offloaded.

(vi) Notwithstanding other time limits, the operator of a catcher/processor must record all information required in the DCPL within 2 hours after the vessel's catch is offloaded.

(3) *Information required—(i) General.* The operator of a catcher vessel or catcher/processor must record on each page:

(A) Page number as described in paragraph (a)(6)(iii)(A) of this section.

(B) The start date and end date of the fishing trip.

(C) If a catcher vessel, the vessel name and ADF&G vessel registration number.

(D) If a catcher/processor, the name, ADF&G processor number, and Federal processor number of the catcher/processor.

(E) The signature of the operator of the catcher vessel or catcher/processor.

(F) Whether catcher vessel or catcher/processor is in an active or inactive

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period as described in paragraph (a)(7) of this section.

(ii) *Haul/set information.* The operator of a catcher vessel or catcher/processor must record the following for each haul or set:

(A) Date (month-day-year).

(B) The number of haul or set, by sequence; begin time and position coordinates of gear deployment; average sea depth and average gear depth, recorded to the nearest meter or fathom.

(C) The date, time, and position coordinates of gear retrieval. If the vessel is using longline hook-and-line gear, the number of skates set. If the vessel is using longline pot or single pot gear, the total number of pots set.

(D) The estimated total round fish weight of the groundfish catch.

(E) The species code of the intended target species from Table 2 of this part.

(F) The estimated IFQ sablefish amounts in the "comments" column.

(iii) *Discard/donated species information.* The operator of a catcher vessel or catcher/processor must record discard/donation information as described in paragraph (a)(10) of this section.

(iv) *Catcher vessels.* If a catcher vessel, the operator must record:

(A) The date of delivery.

(B) The name, ADF&G processor code, and ADF&G fish ticket number(s) provided by the operator of the mothership or buying station delivering to a mothership, or the manager of a shoreside processor or buying station delivering to a shoreside processor.

(v) *Catcher/processors.* If a catcher/processor, the operator must record product information as set forth in paragraph (a)(9) of this section.

(d) *Buying station DCL—(1) Time limits.* (i) The operator or manager of each buying station subject to this part must record entries in the DCL as to catcher vessel delivery information within 2 hours after completion of receipt of the groundfish.

(ii) All other information required in the DCL must be recorded by noon of the day following the day the receipt of groundfish was completed or discard occurred.

(2) *Information required—(i) General.* The operator or manager of a buying station must record for each page:

(A) Page number as described in paragraph (a)(6)(iii)(A) of this section.

(B) The date.

(C) The buying station name and, if a vessel, the ADF&G vessel number.

(D) The operator's or manager's signature.

(E) Whether the buying station is in an active or inactive period as described in paragraph (a)(7) of this section.

(F) The name and ADF&G processor code of the mothership or shoreside processor to which groundfish deliveries were made.

(G) The number of crew.

(ii) *Groundfish deliveries.* The operator or manager of a buying station must record the following information for each delivery of groundfish:

(A) The ADF&G fish ticket number issued to each catcher vessel delivering groundfish. If a fish ticket was not issued, the catch receipt number of the transaction.

(B) Whether blue DFL logsheets were received from the catcher vessel delivering the groundfish.

(C) The time when receipt of groundfish catch was completed.

(D) The name and ADF&G vessel registration number of the catcher vessel delivering the groundfish.

(E) The total groundfish delivery weight.

(iii) *Discard/donated species information.* The operator or manager of the buying station must record discard/donation information as described in paragraph (a)(10) of this section.

(e) *Mothership DCPL—(1) Time limits.*

(i) The operator of each mothership must record entries in the DCPL as to catcher vessel or buying station delivery information within 2 hours after completion of the groundfish receipt.

(ii) All other information required in the DCPL must be recorded by noon of the day following the day the catch receipt, discard, or production occurred.

(2) *Information required—(i) General.* The operator of each mothership must record on each page:

(A) Page number as described in paragraph (a)(6)(iii)(A) of this section.

(B) The date.

(C) The name, ADF&G processor number, and Federal processor number.

(D) The operator's signature.

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(E) Whether mothership is in an active or inactive period as described in paragraph (a)(7) of this section.

(ii) *Deliveries*. The operator or each mothership must record for each delivery:

(A) Whether delivery is from a catcher vessel or a buying station.

(B) The name and ADF&G vessel registration number (if applicable) of the catcher vessel or buying station delivering the groundfish.

(C) The time and position coordinates of the mothership when groundfish catch is received.

(D) The estimated total ground fish weight of the groundfish catch.

(E) The ADF&G fish ticket number issued to each catcher vessel delivering groundfish. If a fish ticket is not issued, record the catch receipt number of the transaction.

(iii) *Discard/donation*. The operator of each mothership must record discard/donation information as described in paragraph (a)(10) of this section.

(iv) *Production information*. The operator of each mothership must record product information as described in paragraph (a)(9) of this section.

(f) *Shoreside processor DCPL*—(1) *Time limits*. (i) The manager of each shoreside processor must record in the DCPL all catcher vessel or buying station delivery information within 2 hours after completion of the groundfish receipt.

(ii) All other information required in the DCPL must be recorded by noon of the day following the day the catch receipt, discard, or production occurred.

(2) *Information required*—(i) *Part IA*. The manager of each shoreside processor must record on each page:

(A) If a page is for an individual day, the date. If a page is for 1 week, the week-ending date. See also paragraph (a)(6)(iii)(A) of this section.

(B) Participant identification information as described in paragraph (a)(5) of this section.

(C) The signature of the manager.

(D) Whether the shoreside processor is in an active or inactive period as described in paragraph (a)(7) of this section.

(ii) *Part IB*. The manager of each shoreside processor must record the following information for each delivery:

(A) Date and time when receipt of groundfish catch was completed.

(B) Whether delivery is from catcher vessel or buying station.

(C) Whether blue DFL logsheets were submitted by catcher vessel.

(D) The name and ADF&G vessel registration number (if applicable) of the catcher vessel or buying station delivering the groundfish.

(E) The total scale weight of groundfish delivery in pounds or to the nearest 0.01 mt.

(F) The ADF&G fish ticket number issued to the catcher vessel delivering groundfish. If a fish ticket is not issued, record the catch receipt number of the transaction.

(iii) *Landings information, Part IC*. The manager must record:

(A) The date next to the appropriate day of the week (SUN through SAT).

(B) Landings information as described in paragraph (a)(8) of this section.

(iv) *Discarded/donated species information (Part ID)*. The manager of each shoreside processor must record:

(A) The date next to the appropriate day of the week (SUN through SAT).

(B) Discard information, as described in paragraph (a)(10) of this section.

(v) *Part II*. The manager of each shoreside processor must record:

(A) Page numbers must be consecutive within Part II, beginning with page one for the first day product was produced after the start of the fishing year and continuing throughout the section for the remainder of the fishing year.

(B) The name, ADF&G processor code number, and Federal processor number of shoreside processor.

(C) The signature of the manager of the shoreside processor.

(D) *Product information*. (1) The week-ending date.

(2) The management area (BSAI or GOA).

(3) The date next to the appropriate day of the week (SUN through SAT).

(4) Product information as described in paragraph (a)(9) of this section.

(g) *Groundfish Product Transfer Report (PTR)*—(1) *Applicability*. (i) The operator of a mothership or catcher/processor or the manager of a shoreside

processor must record each transfer of groundfish product on a separate PTR.

(ii) The manager of a shoreside processor must report on a PTR those fish products that are subsequently transferred to an offsite meal reduction plant.

(iii) The operator of a mothership or catcher/processor or manager of a shoreside processor must report on a PTR, daily sales or transfer of groundfish to vessels for bait. Individual sales of groundfish for bait purposes during a day may be aggregated when recording the amount of product leaving a facility that day.

(2) *Time limits and submittal.* The operator of a mothership or catcher/processor or manager of a shoreside processor must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the transfer.

(ii) Submit by fax a copy of each PTR to the Regional Director within 24 hours of completion of transfer.

(3) *Information required*—(i) *General.* The operator of a mothership or catcher/processor or manager of a shoreside processor must record on each page of a PTR:

(A) Whether the PTR is an original or revised report, as described in paragraph (a)(6)(iii)(G) of this section.

(B) Page numbers must be numbered consecutively, starting with the first transfer of the fishing year as page 1 and continuing throughout the remainder of the fishing year.

(C) “RECEIPT,” if product (including raw fish) is received; “OFFLOAD,” if product (including raw fish) is offloaded from a mothership or catcher/processor; “SHIPMENT,” if product (including raw fish) is shipped from a shoreside processor.

(D) Representative identification information, as described in paragraph (a)(5)(vi) of this section.

(E) If a catcher/processor or mothership, the participant identification information as described in paragraph (a)(5) of this section and USCG documentation number. If a shoreside processor, the participant identification information as described in paragraph (a)(5) of this section.

(ii) *Transfer information.* The operator of a catcher/processor or mothership or

manager of a shoreside processor must record on each page the following information for each transfer:

(A) If another vessel is involved with the transfer, the name and call sign of the vessel receiving or delivering groundfish or groundfish products.

(B) If a mothership or catcher/processor and the transfer takes place in port, the port of landing and country, if a foreign location.

(C) If the transfer is made to an agent, the agent’s name. For purposes of this section, “agent” is defined as the transport company, the buyer, or the distributor.

(D) *Intended first destination of product.* (1) If an offload or shipment, the intended destination of the vessel or agent receiving the groundfish or groundfish product.

(2) If an offload or shipment has several destinations, the first intended destination.

(3) If offload or shipment has a single destination but requires loading on multiple vans, trucks, or airline flights, the transfer may be recorded on a single PTR page.

(E) *Date and time of product transfer*—

(1) *Start date.* The date, as described in paragraph (a)(6)(iii)(B) of this section, and time, as described in paragraph (a)(6)(iii)(C) of this section, the transfer starts.

(2) *Finish date.* The date and time the transfer is completed, as follows:

(i) If shipment is an individual van load or flight, the date and time when each shipment leaves the plant.

(ii) If shipment involves multiple vans or trucks, the date and time when loading of vans or trucks is completed for each day.

(iii) If shipment involves airline flights, record date, as described in paragraph (a)(6)(iii)(B) of this section, and time, as described in paragraph (a)(6)(iii)(C) of this section, when the last airline flight shipment of the day leaves the plant.

(F) *Position transferred.* If a catcher/processor or mothership and transfer of product is made at sea, the transfer position coordinates.

(iii) *Products and quantities offloaded, shipped, or received.* The operator of a catcher/processor or mothership or

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manager of a shoreside processor must record the following information:

(A) If a catcher/processor or mothership, the Harvest Zone code of the area in which groundfish were harvested as defined in Table 8 of this part.

(B) The species code and product code for each product transferred as defined in Tables 1 and 2 of this part.

(C) The number of cartons or production units transferred.

(D) The average net weight of one carton for each species and product code in kilograms or pounds.

(E) The total net weight (fish product weight, to the nearest 0.01 mt) of the products transferred.

(iv) *Total or partial offload.* If a catcher/processor or mothership, whether the transfer is a total or partial offload. If partial offload, the total fish product weight, to the nearest 0.01 mt, of the products (by harvest zone, species and product codes) remaining on board after this transfer.

(h) *Check-in/check-out report*—(1) *Applicability*—(i) *Transit between reporting areas.* If a vessel is transiting through a reporting area and is not fishing or receiving fish, a check-in or check-out report is not required from that area.

(ii) *Multiple vessel operations categories*—(A) *Check-in report.* If a catcher/processor is functioning simultaneously as a mothership in the same reporting area, the operator must submit a separate check-in report for each vessel operations category.

(B) *Check-out report.* Upon completion of each activity, the operator must submit a check-out report for each vessel operations category.

(2) *Time limits and submittal*—(i) *Check-in report (BEGIN message)*—(A) *Catcher/processor.* Before the operator of a catcher/processor commences harvest of groundfish in Alaska State or Federal waters of any reporting area except 300, 400, 550, or 690, the operator must submit by fax a check-in report (BEGIN message) to the Regional Director.

(B) *Mothership, shoreside processor, buying station.* Before a mothership, shoreside processor, or buying station commences receipt of groundfish from Alaska State or Federal waters of any reporting area except 300, 400, 550, or

690, the operator or manager must submit by fax a check-in report (BEGIN message) to the Regional Director.

(ii) *Check-out report (CEASE message)*—(A) *Catcher/processor.* If a catcher/processor departs a reporting area or moves between Alaska State and Federal waters in a reporting area, and gear retrieval is complete from that area, the operator must submit by fax a check-out report to the Regional Director within 24 hours after departing a reporting area or leaving either the Alaska State or Federal part of a reporting area.

(B) *Mothership or buying station delivering to a mothership.* If a mothership or buying station delivering to a mothership completes receipt of groundfish, the operator must submit by fax a check-out report to the Regional Director within 24 hours after departing a reporting area or leaving either the Alaska State or Federal part of a reporting area.

(C) *Shoreside processor.* If a shoreside processor, the manager must submit by fax a check-out report to the Regional Director within 48 hours after the end of the applicable weekly reporting period that a shoreside processor ceases to process groundfish for the fishing year or has not processed groundfish for more than one weekly reporting period.

(D) *Buying station delivering to a shoreside processor.* If a buying station delivering to a shoreside processor completes delivery of groundfish, the operator or manager of the buying station must submit by fax a check-out report to the Regional Director within 24 hours after departing a reporting area or leaving either the Alaska State or Federal part of a reporting area.

(E) *End of fishing year.* If a check-out report has not previously been submitted during a fishing year, the operator or manager must submit a check-out report at the end of that fishing year, December 31.

(3) *Information required*—(i) *General.* The operator of a catcher/processor, mothership, or buying station delivering to a mothership or the manager of a shoreside processor or buying station delivering to a shoreside processor must record on each page:

(A) Whether it is an original or revised report as described in paragraph (a)(6)(iii)(G) of this section.

(B) Participant identification information as described in paragraph (a)(5) of this section.

(C) Representative identification information as described in paragraph (a)(5)(vi) of this section.

(D) For a mothership or catcher/processor, the processor type and gear type used to harvest the groundfish. If groundfish are received by a mothership in the same reporting area from more than one gear type, or if groundfish are caught by a catcher/processor in the same reporting area using more than one gear type, the operator must submit a separate form for each gear type.

(E) Whether harvest is under a CDQ Program; if yes, the CDQ number.

(F) If a buying station, the number of crew on the last day of the reporting week.

(ii) *BEGIN message.* The operator of a catcher/processor, mothership, or buying station delivering to a mothership or the manager of a shoreside processor or buying station delivering to a shoreside processor must record:

(A) For a catcher/processor, date and time that gear is deployed. For a mothership, date and time that receipt of groundfish begins.

(B) For a catcher/processor, position coordinates where gear is set. For a mothership, position coordinates where groundfish receipt begins.

(C) For a catcher/processor, the reporting area code of gear deployment and whether gear deployment was in Federal or Alaska State waters. For a mothership or buying station delivering to a mothership, the reporting area code where groundfish receipt begins and whether receipt of groundfish occurred in Federal or Alaska State waters.

(D) For a shoreside processor, the date receipt of groundfish will begin, whether checking in for the first time in fishing year or checking in to restart receipt and processing of groundfish after filing a check-out report.

(E) For a mothership or catcher/processor, the primary and secondary species expected to be harvested. For a buying station, the intended primary

target expected to be harvested. A change in intended target species within the same reporting area does not require a new BEGIN message.

(iii) *CEASE message.* The operator of a catcher/processor, mothership, or buying station delivering to a mothership or the manager of a shoreside processor or buying station delivering to a shoreside processor must report:

(A) If a catcher/processor, mothership or buying station delivering to a mothership, the date, time and position coordinates where the vessel departed the reporting area or moved to Federal waters from Alaska State waters within a reporting area, or vice versa.

(B) If a shoreside processor or buying station delivering to a shoreside processor, the date that receipt of groundfish ceased.

(iv) *Fish or fish product held at plant.* The manager of a shoreside processor must report the weight of the fish or fish products in pounds or to the nearest 0.01 mt by species and product codes.

(i) *Weekly Production Report (WPR)*—

(1) *Applicability.* (i) The operator of a catcher/processor or mothership or the manager of a shoreside processor must submit a WPR for any week the mothership, catcher/processor, or shoreside processor is checked in pursuant to paragraph (h)(2)(i) of this section.

(ii) The operator of a vessel that is authorized to conduct operations as both a catcher/processor and as a mothership must submit separate WPRs to report production and discard as a catcher/processor and production and discard as a mothership.

(2) *Time limits and submittal.* The operator or manager must submit a WPR by fax to the Regional Director by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period.

(3) *Information required*—(i) *General.* The operator of a catcher/processor or mothership, or the manager of a shoreside processor must record on each page:

(A) Whether an original or revised report, as described in paragraph (a)(6)(iii)(G) of this section.

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(B) Participant identification information as described in paragraph (a)(5) of this section.

(C) Representative identification information as described in paragraph (a)(5)(vi) of this section and date WPR was completed.

(D) If a mothership or catcher/processor, the processor type and gear type used to harvest the groundfish.

(E) Whether harvest is under a CDQ Program; if yes, the CDQ number.

(F) The week-ending date.

(G) The primary and secondary target codes for the next week.

(H) If a mothership or catcher/processor, the number of crew on the last day of the reporting week.

(ii) *Landings information.* The manager of a shoreside processor must report landings information as described in paragraph (a)(8) of this section.

(iii) *Discarded/donated species information (Part ID).* The operator of a catcher/processor or mothership, or the manager of a shoreside processor must report discard/donated species information as described in paragraph (a)(10) of this section.

(iv) *Product information.* The operator of a catcher/processor or mothership, or the manager of a shoreside processor must report product information as described in paragraph (a)(9) of this section.

(v) *Catcher vessel delivery information.* If ADF&G fish tickets are issued, the operator of the mothership or manager of the shoreside processor must list the fish ticket numbers issued to catcher vessels for the weekly reporting period.

(j) *Daily Production Report (DPR)—(1) Notification.* If the Regional Director determines that DPRs are necessary to avoid exceeding a groundfish TAC or prohibited species bycatch allowance, NMFS may require submission of DPRs from motherships, catcher/processors, and shoreside processors for reporting one or more specified species, in addition to a WPR. NMFS will publish notification in the FEDERAL REGISTER specifying the fisheries that require DPRs and the dates that submittal of DPRs are required.

(2) *Applicability.* (i) If a catcher/processor, mothership, or shoreside processor is checked in to the specified reporting area and is harvesting, receiving,

processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the operator of catcher/processor or mothership or the manager of a shoreside processor must submit a DPR.

(ii) The operator of a catcher/processor or mothership or the manager of a shoreside processor must use a separate DPR for each gear type, processor type, and CDQ number.

(3) *Time limit and submittal.* The operator or manager must submit a DPR by fax to the Regional Director by 1200 hours, A.l.t., the day following each day of landings, discard, or production.

(4) *Information required—(i) General.* The operator of a catcher/processor or mothership, or the manager of a shoreside processor must record on each page:

(A) Whether it is an original or revised report as described in paragraph (a)(6)(iii)(G) of this section.

(B) Participant identification information as described in paragraph (a)(5) of this section, and processor type.

(C) Representative identification information as described in paragraph (a)(5)(vi) of this section.

(D) The gear type used to harvest the groundfish, date landings were received, and Federal reporting area where landings were harvested.

(E) Whether harvest is under a CDQ Program; if yes, the CDQ number.

(ii) *Landings information.* The manager of a shoreside processor must report landings information as described in paragraph (a)(8) of this section.

(iii) *Product information.* The operator of a mothership or catcher/processor must report product information as described in paragraph (a)(9) of this section.

(iv) *Discard/donated species information.* The operator of a mothership or catcher/processor and the manager of a shoreside processor must report discard/donated species information as described in paragraph (a)(10) of this section.

(k) *U.S. Vessel Activity Report (VAR)—(1) Applicability.* The operator of a catcher vessel, catcher/processor, or mothership regulated under this part must submit a VAR by fax to NMFS Alaska Enforcement Division, Juneau,

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AK, before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(2) *Information required*—(i) *General*. The operator of each catcher vessel, catcher/processor, or mothership must record on each page:

(A) Whether an original or revised report as described in paragraph (a)(6)(iii)(G) of this section.

(B) Participant identification information as described in paragraph (a)(5) of this section.

(C) Representative identification information as described in paragraph (a)(5)(vi) of this section, and date VAR was completed.

(D) If the vessel is crossing into the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia, the operator must indicate “return” report.

(E) If the vessel is crossing out of the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into Canadian waters, the operator must indicate “depart” report.

(F) Port of landing.

(G) Whether the vessel is returning from fishing or departing to fish in the Russian Zone.

(H) Date and time the vessel will cross the seaward boundary of the EEZ off Alaska or the U.S.-Canadian international boundary between Alaska and British Columbia.

(I) Latitude and longitude at the point of crossing the seaward boundary of the EEZ off Alaska or U.S.-Canadian international boundary between Alaska and British Columbia.

(ii) *Fish or fish products*. The operator of a catcher vessel, catcher/processor, or mothership must record the fish or fish product on board the vessel when crossing the seaward boundary of the EEZ off Alaska or U.S.-Canadian international boundary as follows:

(A) The Harvest Zone code of the area in which groundfish were harvested as defined in Table 8 of this part.

(B) The species code and product code for each species on board as defined in Tables 1 and 2 of this part.

(C) The fish product weight of products on board in pounds or to the nearest 0.01 mt.

(1) *IFQ recordkeeping and reporting requirements*. In addition to the recordkeeping and reporting requirements in this section and as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to §300.62 of chapter III of this title, the following reports are required.

(1) *IFQ landings report*—(i) *Prior notice of IFQ landing*. Except as provided in paragraph (1)(1)(i)(C) of this section, the operator of any vessel making an IFQ landing must notify the Alaska Region, NMFS, no fewer than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearing officer.

(A) Notification of an IFQ landing must be made to the toll-free telephone number specified on the IFQ permit between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(B) Notification must include: Name and location of the registered buyer(s) to whom the IFQ halibut or IFQ sablefish will be landed, vessel identification, estimated weight of the IFQ halibut or IFQ sablefish that will be landed, identification number(s) of the IFQ card(s) that will be used to land the IFQ halibut or IFQ sablefish, and anticipated date and time of landing.

(C) The operator of a category B, C, or D vessel, as defined at §679.40(a)(5), making an IFQ landing of IFQ halibut of 500 lb (0.227 mt) or less of weight determined pursuant to §679.42(c)(ii) and concurrent with a legal landing of salmon is exempt from the prior notice of landing required by this section.

(ii) *Registered buyer reports IFQ landings*. (A) A registered buyer must report an IFQ landing in the manner prescribed on the registered buyer permit within 6 hours after all such fish are landed and prior to shipment or departure of the delivery vessel from the landing site.

(B) An IFQ landing may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless:

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(1) Permission to land at a different time is granted in advance by a clearing officer; or

(2) IFQ halibut of 500 lb (0.227 mt) or less of weight determined pursuant to § 679.42(c)(ii) is landed concurrently with a legal landing of salmon by a category B, C, or D vessel, as defined at § 679.40(a)(5).

(iii) *Verification and inspection.* (A) Each IFQ landing and all fish retained on board the vessel making an IFQ landing are subject to verification, inspection, and sampling by authorized officers, clearing officers, or observers. Each IFQ halibut landing is subject to sampling for biological information by persons authorized by the IPHC.

(B) A copy of all reports and receipts required by this section must be retained by registered buyers and be made available for inspection by an authorized officer or a clearing officer for a period of 3 years.

(iv) *Information required.* Information contained in a complete IFQ landing report shall include: Date, time, and location of the IFQ landing; names and permit numbers of the IFQ card holder and registered buyer; product type landed; and fish product weight of sablefish and halibut landed.

(2) *IFQ shipment report*—(i) *Applicability.* Each registered buyer, other than those conducting dockside sales, must report on a shipment report any shipments or transfers of IFQ halibut and IFQ sablefish to the first destination beyond the location of the IFQ landing.

(ii) *Submittal.* (A) A shipment report must be submitted to NMFS Alaska Enforcement Division prior to shipment or transfer, in a manner prescribed on the registered buyer permit.

(B) A shipment report must specify: Species and product type being shipped, number of shipping units, fish product weight, names of the shipper and receiver, names and addresses of the consignee and consignor, mode of transportation, and intended route.

(iii) *Registered Buyer.* A registered buyer must:

(A) Complete a Shipment Report for each shipment or transfer from that registered buyer prior to shipment and assure that the Shipment Report is submitted to, and received by, the NMFS Alaska Enforcement Division,

within 7 days of the date shipment or transfer commenced;

(B) Assure that a copy of the Shipment Report or a bill of lading that contains the same information accompanies the shipment to its first destination beyond the location of the IFQ landing; and

(C) Submit a revised Shipment Report if any information on the original Shipment Report changes prior to the first destination of the shipment. A revised Shipment Report must be clearly labeled “Revised Shipment Report,” and must be received by the NMFS Alaska Enforcement Division, within 7 days of the change.

(iv) *Dockside sale and outside landing.* (A) A person holding a valid IFQ permit, IFQ card, and registered buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish to a person who has not been issued a registered buyer permit.

(B) The person making such an IFQ landing must submit an IFQ landing report in the manner prescribed in paragraph (1)(1) of this section before any fish are sold, transferred, or removed from the immediate vicinity of the vessel with which they were harvested.

(C) A receipt that includes the date of sale or transfer, the registered buyer permit number, and the fish product weight of the sablefish or halibut transferred must be issued to each individual receiving IFQ halibut or IFQ sablefish through a dockside sale.

(D) A person holding a valid IFQ permit, IFQ card, and registered buyer permit may conduct a IFQ landing outside an IFQ regulatory area or the State of Alaska to a person who does not hold a registered buyer permit. The person making such an IFQ landing must submit an IFQ landing report in the manner prescribed in paragraph (1)(1) of this section.

(v) *Transshipment.* No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization from a clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence. Requests for authorization

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must specify the date and location of the transshipment.

(3) *IFQ vessel clearance*—(i) *Applicability*. A person who makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must obtain prelanding written clearance of the vessel and provide the weight of IFQ halibut and IFQ sablefish on board to the clearing officer.

(ii) *State of Alaska*. A vessel obtaining prelanding written clearance at a port in the State of Alaska must obtain that clearance prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska.

(iii) *State other than Alaska*. (A) A vessel obtaining prelanding written clearance at a port in a state other than Alaska must provide a departure report to NMFS, Alaska Region, prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska.

(B) The departure report must include the weight of the IFQ halibut or IFQ sablefish on board and the intended date and time the vessel will obtain prelanding written clearance at that port in a state other than Alaska.

(iv) *Foreign port other than Canada*. A vessel operator who lands IFQ species in a foreign port must first obtain vessel clearance from a clearing officer located at a primary port in the State of Alaska.

(v) *Canadian ports*. No person shall make an IFQ landing in Canada other than at the ports of Port Hardy, Prince Rupert, or Vancouver, British Columbia.

(vi) *Reporting requirements*. (A) A vessel operator must land and report all IFQ species on board at the same time and place as the first landing of any species harvested during a fishing trip.

(B) Any person requesting a vessel clearance must have valid IFQ and registered buyer permits and one or more valid IFQ cards on board that indicate that IFQ holdings are equal to or greater than all IFQ halibut and IFQ sablefish on board, and must report the

intended date, time, and location of IFQ landing.

(C) Any person granted a vessel clearance must submit an IFQ landing report, required under this section, for all IFQ halibut, IFQ sablefish, and products thereof that are on board the vessel at the first landing of any fish from the vessel.

(vii) *Inspection*. A vessel seeking clearance is subject to inspection of all fish, log books, permits, and other documents on board the vessel, at the discretion of the clearing officer.

(viii) *Primary ports*. Unless specifically authorized on a case-by-case basis, vessel clearances will be issued only by clearing officers at the following primary ports:

Port	North latitude	West longitude
Akutan	54°08'05"	165°46'20"
Bellingham	48°45'04"	122°30'02"
Cordova	60°33'00"	145°45'00"
Craig	55°28'30"	133°09'00"
Dutch Harbor/Unalaska.	53°53'27"	166°32'05"
Excursion Inlet	58°25'00"	135°26'30"
Homer	59°38'40"	151°33'00"
Ketchikan	55°20'30"	131°38'45"
King Cove	55°03'20"	162°19'00"
Kodiak	57°47'20"	152°24'10"
Pelican	57°57'30"	136°13'30"
Petersburg	56°48'10"	132°58'00"
St. Paul	57°07'20"	170°16'30"
Sand Point	55°20'15"	160°30'00"
Seward	60°06'30"	149°26'30"
Sitka	57°03'	135°20'
Yakutat	59°33'	139°44'

[61 FR 31230, June 19, 1996, as amended at 61 FR 35578, July 5, 1996; 61 FR 41525, Aug. 9, 1996; 61 FR 49981, Sept. 24, 1996]

§ 679.6 Experimental fisheries.

(a) *General*. For limited experimental purposes, the Regional Director may authorize, after consulting with the Council, fishing for groundfish in a manner that would otherwise be prohibited. No experimental fishing may be conducted unless authorized by an experimental fishing permit issued by the Regional Director to the participating vessel owner in accordance with the criteria and procedures specified in this section. Experimental fishing permits will be issued without charge and will expire at the end of a calendar year unless otherwise provided for under paragraph (e) of this section.

(b) *Application.* An applicant for an experimental fishing permit shall submit to the Regional Director, at least 60 days before the desired effective date of the experimental fishing permit, a written application including, but not limited to, the following information:

- (1) The date of the application.
- (2) The applicant's name, mailing address, and telephone number.
- (3) A statement of the purpose and goal of the experiment for which an experimental fishing permit is needed, including a general description of the arrangements for disposition of all species harvested under the experimental fishing permit.
- (4) Technical details about the experiment, including:
 - (i) Amounts of each species to be harvested that are necessary to conduct the experiment, and arrangement for disposition of all species taken.
 - (ii) Area and timing of the experiment.
 - (iii) Vessel and gear to be used.
 - (iv) Experimental design (e.g., sampling procedures, the data and samples to be collected, and analysis of the data and samples).
 - (v) Provision for public release of all obtained information, and submission of interim and final reports.
- (5) The willingness of the applicant to carry observers, if required by the Regional Director, and a description of accommodations and work space for the observer(s).
- (6) Details for all coordinating parties engaged in the experiment and signatures of all representatives of all principal parties.
- (7) Information about each vessel to be covered by the experimental fishing permit, including:
 - (i) Vessel name.
 - (ii) Name, address, and telephone number of owner and master.
 - (iii) USCG documentation, state license, or registration number.
 - (iv) Home port.
 - (v) Length of vessel.
 - (vi) Net tonnage.
 - (vii) Gross tonnage.
- (8) The signature of the applicant.
- (9) The Regional Director may request from an applicant additional information necessary to make the determinations required under this section.

Any application that does not include all necessary information will be considered incomplete. An incomplete application will not be considered to be complete until the necessary information is provided in writing. An applicant for an experimental fishing permit need not be the owner or operator of the vessel(s) for which the experimental fishing permit is requested.

(c) *Review procedures.* (1) The Regional Director, in consultation with the Alaska Fishery Science Center, will review each application and will make a preliminary determination whether the application contains all the information necessary to determine if the proposal constitutes a valid fishing experiment appropriate for further consideration. If the Regional Director finds any application does not warrant further consideration, the applicant will be notified in writing of the reasons for the decision.

(2) If the Regional Director determines any application is complete and warrants further consideration, he or she will initiate consultation with the Council by forwarding the application to the Council. The Council's Executive Director shall notify the applicant of a meeting at which the Council will consider the application and invite the applicant to appear in support of the application, if the applicant desires. If the Regional Director initiates consultation with the Council, NMFS will publish notification of receipt of the application in the FEDERAL REGISTER with a brief description of the proposal.

(d) *Notifying the applicant.* (1) The decision of the Regional Director, after consulting with the Council, to grant or deny an experimental fishing permit is the final action of the agency. The Regional Director shall notify the applicant in writing of the decision to grant or deny the experimental fishing permit and, if denied, the reasons for the denial, including:

- (i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with the application.
- (ii) According to the best scientific information available, the harvest to be conducted under the permit would

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detrimentally affect living marine resources, including marine mammals and birds, and their habitat in a significant way.

(iii) Activities to be conducted under the experimental fishing permit would be inconsistent with the intent of this section or the management objectives of the FMP.

(iv) The applicant has failed to demonstrate a valid justification for the permit.

(v) The activity proposed under the experimental fishing permit could create a significant enforcement problem.

(vi) The applicant failed to make available to the public information that had been obtained under a previously issued experimental fishing permit.

(vii) The proposed activity had economic allocation as its sole purpose.

(2) In the event a permit is denied on the basis of incomplete information or design flaws, the applicant will be provided an opportunity to resubmit the application, unless a permit is denied because experimental fishing would detrimentally affect marine resources, be inconsistent with the management objectives of the FMP, create significant enforcement problems, or have economic allocation as its sole purpose.

(e) *Terms and conditions.* The Regional Director may attach terms and conditions to the experimental fishing permit that are consistent with the purpose of the experiment, including, but not limited to:

(1) The maximum amount of each species that can be harvested and landed during the term of the experimental fishing permit, including trip limitations, where appropriate.

(2) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the experimental fishing permit.

(3) The time(s) and place(s) where experimental fishing may be conducted.

(4) The type, size, and amount of gear that may be used by each vessel operated under the experimental fishing permit.

(5) The condition that observers be carried aboard vessels operated under an experimental fishing permit.

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(6) Reasonable data reporting requirements.

(7) Such other conditions as may be necessary to assure compliance with the purposes of the experimental fishing permit and consistency with the FMP objectives.

(8) Provisions for public release of data obtained under the experimental fishing permit.

(f) *Effectiveness.* Unless otherwise specified in the experimental fishing permit or superseding notification or regulation, an experimental fishing permit is effective for no longer than 1 calendar year, but may be revoked, suspended, or modified during the calendar year. Experimental fishing permits may be renewed following the application procedures in paragraph (b) of this section.

§679.7 Prohibitions.

In addition to the general prohibitions specified in §600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) *Groundfish of the GOA and BSAI—*

(1) *Federal fisheries permit.* Fish for groundfish with a vessel of the United States that does not have on board a valid Federal fisheries permit issued pursuant to §679.4.

(2) *Inseason adjustment.* Conduct any fishing contrary to notification of inseason adjustment issued under §679.25.

(3) *Observer plan.* Fish for groundfish except in compliance with the terms of an observer plan as provided by subpart E of this part.

(4) *Pollock roe.* Retain pollock roe on board a vessel in violation of §679.20(g).

(5) *Bycatch rate standard.* Exceed a bycatch rate standard specified for a vessel under §679.21(f).

(6) *Gear.* Deploy any trawl, longline, single pot-and-line, or jig gear in an area when directed fishing for, or retention of, all groundfish by operators of vessels using that gear type is prohibited in that area, except that this paragraph (a)(6) shall not prohibit:

(i) Deployment of hook-and-line gear by operators of vessels fishing for halibut during seasons prescribed in the

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annual management measures published in the FEDERAL REGISTER pursuant to §300.62 of chapter III of this title.

(ii) Deployment of pot gear by operators of vessels fishing for crab during seasons governed by the State of Alaska.

(iii) Deployment of jig gear by operators of vessels fishing for salmon during seasons governed by the State of Alaska.

(7) *Inshore/offshore (Applicable through December 31, 1998).*

(i) Operate any vessel in more than one of the three categories included in the definition of “inshore component,” in §679.2, during any fishing year.

(ii) Operate any vessel under both the “inshore component” and “offshore component” definitions in §679.2 during the same fishing year.

(8) *Fishing in Donut Hole.* Except as authorized by permit issued pursuant to the section of the Donut Hole Convention implementing legislation authorizing NMFS to issue Donut Hole fishing permits (Public Law 104-43, section 104(d)), it is unlawful for any person to:

(i) Fish in the Donut Hole from a vessel for which a Federal fisheries permit has been issued pursuant to §679.4 during the year for which the permit was issued.

(ii) Possess within the EEZ fish harvested from the Donut Hole on board a vessel for which a Federal fisheries permit has been issued pursuant to §679.4 during the year for which the permit was issued.

(9) *Authorized fishing gear.* Retain groundfish taken with other than authorized fishing gear as defined in §679.2, except that groundfish incidentally taken by pot gear by a vessel while participating in an open crab season governed by the State of Alaska may be retained for use as unprocessed bait on board that vessel.

(10) *Recordkeeping and reporting.* Fail to comply with or fail to ensure compliance with requirements in §679.5.

(11) *Tender vessel.* Use a catcher vessel or catcher/processor as a tender vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

(12) *Salmon donation program.* Retain or possess salmon, except as permitted to do so under the Salmon Donation Program as provided by §679.26, or as authorized by other applicable law.

(b) *Prohibitions specific to GOA—(1) Observer.* Forcibly assault, resist, impede, intimidate, or interfere with an observer placed aboard a fishing vessel pursuant to this part.

(2) [Reserved]

(3) *Halibut.* With respect to halibut caught with hook-and-line gear deployed from a vessel fishing for groundfish, except for vessels fishing for halibut as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to §300.62 of chapter III of this title:

(i) Fail to release the halibut outboard a vessel's rails.

(ii) Release the halibut by any method other than—A) Cutting the gangion.

(B) Positioning the gaff on the hook and twisting the hook from the halibut.

(C) Straightening the hook by using the gaff to catch the bend of the hook and bracing the gaff against the vessel or any gear attached to the vessel.

(iii) Puncture the halibut with a gaff or other device.

(iv) Allow the halibut to contact the vessel, if such contact causes, or is capable of causing, the halibut to be stripped from the hook.

(4) *Crab, when fishing for groundfish with trawl gear.* Except for pollock by vessels using pelagic trawl gear, have on board, at any particular time, 20 or more crabs of any species that have a width of more than 1.5 inches (38 mm) at the widest dimension, and that are caught with trawl gear when directed fishing for groundfish with trawl gear.

(c) *Prohibitions specific to BSAI—(1) Trawl gear in Zone 1.* Use a vessel to fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear:

(i) In violation of §679.22(a)(1)(i) and (a)(2)(i), unless specifically allowed by NMFS as provided under §679.22(a)(1)(ii) and (a)(2)(ii).

(ii) At any time when no scientific data collection and monitoring program exists or after such program has been terminated.

(iii) Without complying fully with a scientific data collection and monitoring program.

(2) *Incidental salmon.* Discard any salmon taken incidental to a directed fishery for BSAI groundfish by vessels using trawl gear until notified by a NMFS-certified observer that the number of salmon has been determined and the collection of any scientific data or biological samples has been completed as provided in §679.21(c)(1).

(3) *Prohibited species.* Conduct any fishing contrary to a notification issued under §679.21.

(4) *Crab, when fishing for pollock with nonpelagic trawl gear.* Have on board at any particular time 20 or more crabs of any species that have a width of more than 1.5 inches (38 mm) at the widest dimension, caught with trawl gear when directed fishing for pollock with nonpelagic trawl gear.

(d) *CDQ (Applicable through December 31, 1998).* (1) Participate in a Western Alaska CDQ program in violation of subpart C of this part, submit information that is false or inaccurate with a CDP application or request for an amendment, or exceed a CDQ as defined in §679.2.

(2) Operate a vessel that harvests pollock for credit to a CDQ allocation when that allocation has been fully harvested.

(e) *Moratorium on entry.* (1) Submit false or inaccurate information on a moratorium permit application or application to transfer moratorium qualification.

(2) Alter, erase, or mutilate any moratorium permit.

(3) Catch and retain a moratorium species with a vessel that has a LOA greater than the maximum LOA for the vessel.

(4) Catch and retain a moratorium species with a vessel that has received an unauthorized transfer of moratorium qualification.

(5) Catch and retain moratorium crab species or conduct directed fishing for any moratorium groundfish species with a vessel that has not been issued a valid moratorium permit, unless the vessel is lawfully conducting directed fishing for sablefish under subparts C and D of this part.

(6) Catch and retain moratorium crab species or conduct directed fishing for any moratorium groundfish species with a vessel that does not have a valid moratorium permit on board, unless the vessel is lawfully conducting directed fishing for sablefish under subparts C and D of this part.

(f) *IFQ fisheries.* (1) Fail to submit, or submit inaccurate information on, any report, application, or statement required under this part.

(2) Intentionally submit false information on any report, application, or statement required under this part.

(3) Retain halibut or sablefish caught with fixed gear without a valid IFQ permit and without an IFQ card in the name of an individual aboard.

(4) Except as provided in §679.5(1)(3), retain IFQ halibut or IFQ sablefish on a vessel in excess of the total amount of unharvested IFQ, applicable to the vessel category and IFQ regulatory area in which the vessel is deploying fixed gear, and that is currently held by all IFQ card holders aboard the vessel, unless the vessel has an observer aboard under subpart E of this part and maintains the applicable daily fishing log prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to §300.62 of chapter III of this title and §679.5.

(5) Possess, buy, sell, or transport IFQ halibut or IFQ sablefish harvested or landed in violation of any provision of this part.

(6) Make an IFQ landing without an IFQ card in the name of the individual making the landing.

(7) Possess on a vessel or land IFQ sablefish concurrently with non-IFQ sablefish, except that CDQ sablefish may be possessed on a vessel and landed concurrently with IFQ sablefish.

(8) Discard Pacific cod or rockfish that are taken when IFQ halibut or IFQ sablefish are on board, unless Pacific cod or rockfish are required to be discarded under §679.20 or unless, in waters within the State of Alaska, Pacific cod or rockfish are required to be discarded by laws of the State of Alaska.

(9) Harvest on any vessel more IFQ halibut or IFQ sablefish than are authorized under §679.42.

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(10) Make an IFQ landing other than directly to (or by) a registered buyer.

(11) Discard halibut or sablefish caught with fixed gear from any catcher vessel when any IFQ card holder aboard holds unused halibut or sablefish IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating, unless:

(i) Discard of halibut is required as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title;

(ii) Discard of sablefish is required under § 679.20 or, in waters within the State of Alaska, discard of sablefish is required under laws of the State of Alaska; or

(iii) Discard of halibut or sablefish is required under other provisions.

(12) Make an IFQ landing without prior notice of landing and before 6 hours after such notice, except as provided in § 679.5.

(13) Possess processed and unprocessed IFQ species on board a vessel during the same trip except when fishing exclusively with IFQ derived from vessel category A QS;

(14) Any person who is issued a registered buyer permit under § 679.4(d)(2) and who also is required to obtain a Federal processor permit under § 679.4(f) may not transfer or receive sablefish harvested in Federal waters or halibut, unless the person possesses a valid Federal processor permit issued under § 679.4.

(15) Violate any other provision under subpart D of this part.

(16) Process fish on board a vessel on which a person aboard has unused IFQ derived from QS issued to vessel categories B, C, or D, except as provided in § 679.42(k) of this part;

(g) *Research Plan.* (1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer.

(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

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

(4) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5) Process or receive fish from a Research Plan fishery without a valid permit issued pursuant to this part.

(6) Deliver fish from a Research Plan fishery to a processor not possessing a valid permit issued pursuant to this part.

(7) Subtract from a billed fee assessment costs paid for observer coverage under provisions of § 679.50 that are based on false or inaccurate information.

(8) Fish for or process fish without observer coverage required under subpart E of this part.

(9) Require an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(h) *Scallop fishery off Alaska.* It is unlawful for any person to violate any provision of subpart F of this part while fishing for scallops in the Federal waters off Alaska.

[61 FR 31230, June 19, 1996, as amended at 61 FR 33385, June 27, 1996; 61 FR 35578 July 5, 1996; 61 FR 38104, July 23, 1996; 61 FR 38359, July 24, 1996; 61 FR 41525, Aug. 9, 1996]

§ 679.8 Facilitation of enforcement.

See § 600.740 of this chapter.

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§ 679.9 Penalties.

See § 600.735 of this chapter.

Subpart B—Management Measures

§ 679.20 General limitations.

This section applies to vessels engaged in directed fishing for groundfish in the GOA and BSAI.

(a) *Harvest limits*—(1) *OY*. The OY for BSAI and GOA target species and the “other species” category is a range that can be harvested consistently with this part, plus the amounts of “nonspecified species” taken incidentally to the harvest of target species and the “other species” category. The species categories are defined in Table 1 of the specifications as provided in paragraph (c) of this section.

(i) *BSAI*. The OY for groundfish in the BSAI regulated by this section and by part 600 of this chapter is 1.4 to 2.0 million mt.

(ii) *GOA*. The OY for groundfish in the GOA regulated by this section and by part 600 of this chapter is 116,000 to 800,000 mt.

(2) *TAC*. NMFS, after consultation with the Council, will specify and apportion the annual TAC and reserves for each calendar year among the GOA and BSAI target species and the “other species” categories. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (c) of this section. The sum of the TACs so specified must be within the OY range specified in paragraph (a)(1) of this section.

(3) *Annual TAC determination*. The annual determinations of TAC for each target species and the “other species” category, and the reapportionment of reserves may be adjusted, based upon a review of the following:

(i) *Biological condition of groundfish stocks*. Resource assessment documents prepared annually for the Council that provide information on historical catch trend; updated estimates of the MSY of the groundfish complex and its component species groups; assessments of the stock condition of each target species and the “other species” category; assessments of the multispecies and eco-

system impacts of harvesting the groundfish complex at current levels, given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species group.

(ii) *Socioeconomic considerations*. Socioeconomic considerations that are consistent with the goals of the fishery management plans for the groundfish fisheries of the BSAI and the GOA, including the need to promote efficiency in the utilization of fishery resources, including minimizing costs; the need to manage for the optimum marketable size of a species; the impact of groundfish harvests on prohibited species and the domestic target fisheries that utilize these species; the desire to enhance depleted stocks; the seasonal access to the groundfish fishery by domestic fishing vessels; the commercial importance of a fishery to local communities; the importance of a fishery to subsistence users; and the need to promote utilization of certain species.

(4) *Sablefish TAC*—(i) *GOA Eastern Area*. Vessels in the Eastern Area of the GOA using trawl gear will be allocated 5 percent of the sablefish TAC for bycatch in other trawl fisheries.

(ii) *GOA Central and Western Areas*—(A) *Hook-and-line gear*. Vessels in the Central and Western Areas of the GOA using hook-and-line gear will be allocated 80 percent of the sablefish TAC in each of the Central and Western areas.

(B) *Trawl gear*. Vessels using trawl gear will be allocated 20 percent of the sablefish TAC in these areas.

(iii) *Bering Sea subarea*—(A) *Hook-and-line or pot gear*. Vessels in the Bering Sea subarea using hook-and-line or pot gear will be allocated 50 percent of each TAC for sablefish.

(B) *Trawl gear*. Vessels in the Bering Sea subarea using trawl gear will be allocated 50 percent of each TAC for sablefish.

(iv) *Aleutian Islands subarea*—(A) *Hook-and-line or pot gear*. Vessels in the Aleutian Islands subarea using hook-and-line or pot gear will be allocated 75 percent of each TAC for sablefish.

(B) *Trawl gear*. Vessels in the Aleutian Islands subarea using trawl gear will be allocated 25 percent of each TAC for sablefish.

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(5) *Pollock TAC*—(i) *BSAI*—(A) *Seasonal allowances*. The TAC of pollock in each subarea or district of the BSAI will be divided, after subtraction of reserves, into two allowances. The first allowance will be available for directed fishing from 0001 hours Alaska local time (A.l.t.) January 1 through 1200 hours, A.l.t., April 15. The second allowance will be available for directed fishing from 1200 hours, A.l.t., September 1 through 1200 hours A.l.t., November 1, of each fishing year. Within any fishing year, unharvested amounts of the first allowance will be added to the second allowance, and harvests in excess of the first allowance will be deducted from the second allowance.

(B) *Apportionment to vessels using nonpelagic trawl gear*—(1) *General*. NMFS, in consultation with the Council, may limit the amount of pollock TAC that may be taken in the directed fishery for pollock using nonpelagic trawl gear.

(2) *Factors to be considered*. The Regional Director must consider the following information when limiting the amount of pollock TAC that is apportioned to the directed fishery for pollock using nonpelagic trawl gear:

(i) The PSC limits and PSC bycatch allowances established under § 679.21.

(ii) The projected bycatch of prohibited species that would occur with and without a limit in the amount of pollock TAC that may be taken in the directed fishery for pollock using nonpelagic trawl gear.

(iii) The cost of a limit in terms of amounts of pollock TAC that may be taken with nonpelagic trawl gear on the nonpelagic and pelagic trawl fisheries.

(iv) Other factors pertaining to consistency with the goals and objectives of the FMP.

(3) *Notification*. NMFS will publish proposed and final apportionment of pollock TAC to the directed fishery for pollock using nonpelagic trawl gear in the FEDERAL REGISTER with notification of proposed and final specifications defined in § 679.20.

(ii) *GOA*—(A) *Apportionment by area*. The TAC for pollock in the combined GOA Western and Central Regulatory Areas will be apportioned among statistical areas 610, 620, and 630 in propor-

tion to the distribution of the pollock biomass as determined by the most recent NMFS surveys.

(B) *Seasonal allowances*. Each apportionment will be divided into three seasonal allowances of 25 percent, 25 percent, and 50 percent of the apportionment, respectively, corresponding to the three fishing seasons defined at § 679.23(d)(2).

(1) Within any fishing year, any unharvested amount of any seasonal allowance will be added proportionately to all subsequent seasonal allowances, resulting in a sum for each allowance not to exceed 150 percent of the initial seasonal allowance.

(2) Within any fishing year, harvests in excess of a seasonal allowance will be deducted proportionately from all subsequent seasonal allowances.

(6) *Inshore/offshore apportionments (Applicable through December 31, 1998)*—

(i) *BSAI pollock*. The apportionment of pollock in each BSAI subarea or district, and for each seasonal allowance defined in paragraph (a)(5)(i) of this section, will be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component.

(ii) *GOA pollock*. The apportionment of pollock in all GOA regulatory areas and for each seasonal allowance described in paragraph (a)(5)(ii) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component after subtraction of an amount that is projected by the Regional Director to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species.

(iii) *GOA Pacific cod*. The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component.

(iv) *Directed fishing allowances and prohibitions*. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (d) of this section for:

(A) *BSAI pollock*. Vessels catching pollock in the BSAI for processing by

the inshore component and for vessels catching pollock for processing by the offshore component.

(B) *GOA pollock*. Vessels catching pollock in the GOA for processing by the inshore component and for vessels catching pollock for processing by the offshore component.

(C) *GOA Pacific cod*. Vessels catching Pacific cod in the GOA for processing by the inshore component and for vessels catching Pacific cod for processing by the offshore component.

(v) *Reallocation*—(A) *BSAI pollock*. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to process the entire amount of pollock in the BSAI allocated to vessels catching pollock for processing by that component, NMFS will publish notification in the FEDERAL REGISTER that reallocates the projected unused amount of pollock to vessels catching pollock for processing by the other component.

(B) *GOA pollock*. If the Regional Director determines that the inshore component will not be able to process the entire amount of pollock in the GOA allocated to vessels catching pollock for processing by the inshore component during a fishing year, NMFS will publish notification in the FEDERAL REGISTER that reallocates the projected unused amount of pollock to vessels catching pollock for processing by the offshore component.

(C) *GOA Pacific cod*. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to process the entire amount of Pacific cod in the GOA allocated to vessels catching Pacific cod for processing by that component, NMFS will publish notification in the FEDERAL REGISTER that reallocates the projected unused amount of Pacific cod to vessels catching Pacific cod for processing by the other component.

(7) *Pacific cod TAC, BSAI (Applicable through December 31, 1996)*—(i) *TAC by gear*. (A) The BSAI TAC of Pacific cod, after subtraction of reserves, will be allocated 2 percent to vessels using jig gear, 44 percent to vessels using hook-and-line or pot gear, and 54 percent to vessels using trawl gear.

(B) The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (d) of this section for vessels harvesting Pacific cod using jig gear, hook-and-line or pot gear, or trawl gear.

(ii) *Unused gear allocation*. If, during a fishing year, the Regional Director determines that vessels using trawl gear or hook-and-line or pot gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraph (a)(7)(i) of this section, NMFS may reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through notification in the FEDERAL REGISTER.

(iii) *Reallocation of TAC specified for jig gear*. On or about September 1 of each year, the Regional Director will reallocate 45 percent of any unused amount of Pacific cod in the BSAI allocated to vessels using jig gear to vessels using hook-and-line or pot gear and 55 percent of any unused amount of Pacific cod allocated to vessels using jig gear to vessels using trawl gear through publication in the FEDERAL REGISTER.

(iv) *Seasonal TAC apportionment*—(A) *Allocation periods*. In the publications of proposed and final harvest limit specifications required under paragraph (c) of this section, NMFS, after consultation with the Council, may seasonally apportion the amount of Pacific cod TAC in the BSAI allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i) of this section among the following three periods: January 1 through April 30; May 1 through August 31; and September 1 through December 31.

(B) *Factors to be considered*. NMFS will base any seasonal apportionment of the Pacific cod allocation to vessels using hook-and-line or pot gear on the following information:

(1) Seasonal distribution of Pacific cod relative to prohibited species distribution.

(2) Expected variations in prohibited species bycatch rates experienced in the Pacific cod fisheries throughout the fishing year.

(3) Economic effects of any seasonal apportionment of Pacific cod on the hook-and-line and pot-gear fisheries.

(8) *All other groundfish TAC.* The initial TAC for each target species and the “other species” category will be 85 percent of the TAC as provided under paragraph (b) of this section.

(b) *Reserves*—(1) *BSAI*—(i) *General.* Fifteen percent of the BSAI TAC for each target species and the “other species” category, except the hook-and-line and pot gear allocation for sablefish, is automatically placed in a reserve, and the remaining 85 percent of the TAC is apportioned for each target species and the “other species” category, except the hook-and-line and pot gear allocation for sablefish.

(ii) *Nonspecified reserve.* The reserve is not designated by species or species group, and any amount of the reserve may be apportioned to a target species, except the hook-and-line gear and pot gear allocation for sablefish, or the “other species” category, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species or the “other species” category.

(iii) *Inshore/offshore reapportionment (Applicable through December 31, 1998).* Any amounts of the BSAI nonspecific reserve that are reapportioned to pollock as provided by this paragraph (b) must be apportioned between inshore and offshore components in the same proportion specified in paragraph (a)(6)(i) of this section.

(iv) *Pacific cod (Applicable through December 31, 1996).* Any amounts of the BSAI nonspecific reserve that are apportioned to Pacific cod as provided by this paragraph (b) must be apportioned between vessels using jig, hook-and-line or pot, and trawl gear in the same proportion specified in paragraph (a)(7)(i) of this section, unless the Regional Director determines under paragraph (a)(7) (ii) or (iii) of this section that vessels using a certain gear type will not be able to harvest the additional amount of Pacific cod. In this case, the nonspecific reserve will be apportioned to vessels using the other gear type(s).

(2) *GOA.* Initial reserves are established for pollock, Pacific cod, floun-

der, and “other species,” which are equal to 20 percent of the TACs for these species or species groups.

(3) *Apportionment of BSAI reserves*—(i) *Notification.* (A) As soon as practicable after April 1, June 1, and August 1, and on such other dates as NMFS determines appropriate, NMFS will, by notification in the FEDERAL REGISTER, apportion all or part of the BSAI reserve in accordance with this paragraph (b).

(B) No apportionment, retention, or PSC limit adjustment may take effect until notification has been published in the FEDERAL REGISTER with a statement of the findings upon which the apportionment, retention, or adjustment is based.

(ii) *Apportionment*—(A) *General.* Except as provided in paragraph (b)(3)(ii)(B) of this section, NMFS will apportion the amount of BSAI reserve that will be harvested by U.S. vessels during the remainder of the year.

(B) *Exception.* Part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

(iii) *Public comment*—(A) *Prior comment.* NMFS will provide all interested persons an opportunity to comment on the proposed apportionments, retentions, or PSC limit adjustments under this paragraph (b) before such apportionments, retentions, or adjustments are made, unless NMFS finds that there is good cause for not providing a prior comment opportunity, and publishes the reasons therefor in the notification of apportionment, retention, or adjustment.

(B) *Submittal dates.* Comments provided for in this paragraph (b)(3)(iii) must be received by NMFS not later than 5 days before April 1, June 1, and August 1, or other dates that may be specified.

(C) *Subsequent comment.* If NMFS determines for good cause that notification of apportionment, retention or PSC limit adjustment must be issued without providing interested persons a prior opportunity for public comment, comments on the apportionment, retention or adjustment will be received for a period of 15 days after its effective date.

(D) *Response to comments.* NMFS will consider all timely comments in deciding whether to make a proposed apportionment, retention, or PSC limit adjustment or to modify an apportionment, retention, or adjustment that previously has been made, and shall publish responses to those comments in the FEDERAL REGISTER as soon as practicable.

(E) *Data available.* The Regional Director will make available to the public during business hours the aggregate data upon which any preliminary TAC or PSC limit figure is based or the data upon which any apportionment or retention of surplus or reserve, or PSC limit adjustment was or is proposed to be based. These data will be available for a sufficient period to facilitate informed comment by interested persons.

(c) *Annual specifications*—(1) *Proposed specifications*—

(i) *General*—(A) *Notification.* As soon as practicable after consultation with the Council, NMFS will publish proposed specifications for the succeeding fishing year. The proposed specifications will reflect as accurately as possible the projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur during the coming year.

(B) *Public comment.* NMFS will accept public comment on the proposed specifications for 30 days from the date of publication in the FEDERAL REGISTER.

(ii) *GOA.* The GOA proposed specifications will specify annual TAC amounts for each target species and the “other species” category and apportionments thereof established under § 679.20(a)(2), halibut prohibited species catch amounts established under § 679.21, seasonal allowances of pollock, and inshore/offshore Pacific cod.

(iii) *BSAI.* The BSAI proposed specifications will specify the annual TAC and initial TAC amounts for each target species and the “other species” category and apportionments thereof established under § 679.20(a)(2), prohibited species catch allowances established under § 679.21, seasonal allowances of pollock TAC, and reserve amounts established under § 679.31(a) and (c) for pollock CDQ and sablefish CDQ.

(2) *Interim specifications.* Interim harvest specifications will be in effect on January 1 and will remain in effect until superseded by the filing of the final specifications by the Office of the Federal Register. Interim specifications will be established as follows:

(i) *GOA.* One-fourth of each proposed TAC and apportionment thereof (not including the reserves or the first seasonal allowance of pollock), one-fourth of the proposed halibut prohibited species catch amounts, and the proposed first seasonal allowance of pollock.

(ii) *BSAI.* Except for the hook-and-line and pot gear allocation of sablefish, one-fourth of each proposed initial TAC and apportionment thereof (not including the first seasonal allowance of pollock), one-fourth of the proposed prohibited species catch allowance established under § 679.21, and the proposed first seasonal allowance of pollock.

(3) *Final specifications*—(i) *Notification.* NMFS will consider comments on the proposed specifications received during the comment period and, after consultation with the Council, will publish final specifications in the FEDERAL REGISTER. The final specifications will supersede the interim specifications.

(ii) *GOA.* The final specifications will specify the annual TAC for each target species and the “other species” category and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock.

(iii) *BSAI.* The final specifications will specify the annual TAC for each target species and the “other species” category and apportionments thereof, prohibited species catch allowances, seasonal allowances of the pollock TAC, and the sablefish CDQ reserve amount established under § 679.31(c).

(4) *Inshore/offshore allocations (Applicable through December 31, 1998).* The proposed, interim, and final specifications will specify the allocation of GOA Pacific cod, GOA pollock, and BSAI pollock for processing by the inshore and offshore components, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(7) of this section.

(5) *BSAI Pacific cod gear allocations (Applicable through December 31, 1996).*

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The proposed, interim, and final specifications will specify the allocation of BSAI Pacific cod among gear types as authorized under paragraph (a)(7) of this section.

(d) *Fishery closures*—(1) *Directed fishing allowance*—(i) *General*. If the Regional Director determines that any allocation or apportionment of a target species or “other species” category specified under paragraph (c) of this section has been or will be reached, the Regional Director may establish a directed fishing allowance for that species or species group.

(ii) *Specified fishery amounts*—(A) *Inseason adjustments*. The category allocations or apportionments established under paragraph (c) of this section may be revised by inseason adjustments for a given species or species group or pollock allowance, as identified by regulatory area, subarea, or district, and, if applicable, as further identified by gear type.

(B) *Incidental catch*. In establishing a directed fishing allowance, the Regional Director shall consider the amount of the allocation or apportionment established under paragraph (c) of this section that will be taken as incidental catch in directed fishing for other species in the same subarea, regulatory area, or district.

(iii) *Directed fishing closure*—(A) *Notification*. If the Regional Director establishes a directed fishing allowance for a fishery allocation or apportionment under this paragraph (d), and that allowance has been or will be reached before the end of the fishing season or year, NMFS will publish notification in the FEDERAL REGISTER prohibiting directed fishing in the specified subarea, regulatory area, or district.

(B) *Retention of bycatch species*. If directed fishing for a target species or the “other species” category is prohibited, a vessel may not retain that bycatch species in an amount that exceeds the maximum retainable bycatch amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

(2) *Groundfish as prohibited species closure*. When the Regional Director determines that the TAC of any target species or the “other species” category specified under paragraph (c) of this

section has been or will be achieved prior to the end of a year, NMFS will publish notification in the FEDERAL REGISTER requiring that target species or the “other species” be treated in the same manner as a prohibited species, as described under § 679.21(b), for the remainder of the year.

(3) *Overfishing closure*—(i) *Notification*. If, in making a determination under paragraph (d)(2) of this section, the Regional Director also determines that fishing for other target species or species groups in the area, district or part thereof where the notification applies, may lead to the overfishing of the species or species group for which the allocation or apportionment has been or will be reached, NMFS will publish notification in the FEDERAL REGISTER specifying limitations or prohibitions designed to prevent overfishing of that species or species group.

(ii) *Limitations and prohibitions*. These limitations and prohibitions may prohibit directed fishing for other species or species groups in the area, district, or part thereof where the notification applies, or may limit time, area, or gear types that may be used in directed fishing for the other species or species groups.

(iii) *Factors to be considered*. When making the determinations specified under paragraphs (d)(1), (d)(2), and (d)(3) of this section, the Regional Director may consider allowing fishing to continue or resume with certain gear types or in certain areas and times based on findings of:

(A) The risk of biological harm to a groundfish species or species group for which the TAC or PSC limit is or will be reached.

(B) The risk of socioeconomic harm to authorized users of the groundfish for which the TAC or PSC limit will be or has been reached.

(C) The impact that the continued closure might have on the socioeconomic well-being of other domestic fisheries.

(e) *Maximum retainable bycatch amounts*—(1) *Proportion of basis species*. The maximum retainable bycatch amount for a bycatch species or species group is calculated as a proportion of the basis species retained on board the vessel using the retainable percentages

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in Table 10 to this part for the GOA species categories and in Table 11 to this part for the BSAI species categories.

(2) *Calculation.* (i) To calculate the maximum retainable bycatch amount for a specific bycatch species, an individual retainable bycatch amount must be calculated with respect to each basis species that is retained on board that vessel.

(ii) To obtain these individual retainable bycatch amounts, multiply the appropriate retainable percentage for the bycatch species/basis species combination, set forth in Table 10 to this part for the GOA species categories and Table 11 to this part for the BSAI species categories, by the amount of that basis species, in round-weight equivalents.

(iii) The maximum retainable bycatch amount for that specific bycatch species is the sum of the individual retainable bycatch amounts.

(f) *Directed fishing calculations and determinations—*(1) *Round-weight equivalents.* Any determination concerning directed fishing, the amount or percentage of any species, species group, or any fish or fish products must be calculated in round-weight equivalents.

(2) *Retainable amounts.* Arrowtooth flounder, or any groundfish species for which directed fishing is closed, may not be used to calculate retainable amounts of other groundfish species.

(g) *Allowable retention of pollock roe—*(1) *Percentage of pollock roe.* (i) Pollock roe retained on board a vessel at any

time during a fishing trip must not exceed 7 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product on board the vessel during the same fishing trip.

(ii) Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip.

(iii) Pollock or pollock products from previous fishing trips that are retained on board a vessel may not be used to determine the allowable retention of pollock roe for that vessel.

(2) *Primary product.* (i) For purposes of this paragraph (g), only one primary pollock product per fish, other than roe, may be used to calculate the round-weight equivalent.

(ii) A primary pollock product that contains roe (such as headed and gutted pollock with roe) may not be used to calculate the round-weight equivalent of pollock.

(iii) The primary pollock product must be distinguished from ancillary pollock products in the DCPL required under §679.5. Ancillary products are those such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.

(3) *Pollock product recovery rates (PRRs).* Only the following product types and standard PRRs may be used to calculate round-weight equivalents for pollock for purposes of this paragraph (g):

Product code	Product description	Standard product recovery rate
07	Headed and gutted, western cut	0.65
08	Headed and gutted, eastern cut	0.56
10	Headed and gutted, without tail	0.50
20	Fillets with skin & ribs	0.35
21	Fillets with skin on, no ribs	0.30
22	Fillets with ribs, no skin	0.30
23	Fillets, skinless, boneless	0.21
24	Deep skin fillets	0.16
30	Surimi	0.16
31	Mince	0.22
32	Meal	0.17

(4) *Calculation of retainable pollock roe—*(i) *Round-weight equivalent.* (A) To calculate the amount of pollock roe that can be retained on board during a

fishing trip, first calculate the round-weight equivalent by dividing the total amount of primary product on board by the appropriate PRR.

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(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during the same fishing trip, multiply the round-weight equivalent by 0.07.

(C) Pollock roe retained on board from previous fishing trips will not be counted.

(ii) *Two or more products from different fish.* (A) If two or more products, other than roe, are made from different fish, round-weight equivalents are calculated separately for each product.

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during a fishing trip, add the round-weight equivalents together; then, multiply the sum by 0.07.

(iii) *Two or more products from same fish.* If two or more products, other than roe, are made from the same fish, the maximum amount of pollock roe that can be retained during a fishing trip is determined from the primary product.

(5) *Primary pollock product—(i) Process prior to transfer.* Any primary pollock product used to calculate retainable amounts of pollock roe must be frozen, canned, or reduced to meal by the vessel retaining the pollock roe prior to any transfer of the product to another vessel.

(ii) *No discard of processed product.* Any pollock product that has been frozen, canned, or reduced to meal may not be discarded at sea.

(h) *Standard product types and standard PRRs—(1) Calculating round-weight equivalents from standard PRRs.* Round-weight equivalents for groundfish products are calculated using the product codes and standard PRRs specified in Table 3 of this part.

(2) *Adjustments.* The Regional Director may adjust standard PRRs and product types specified in Table 3 of this part if he or she determines that existing standard PRRs are inaccurate or if new product types are developed.

(i) Adjustments to any standard PRR listed in Table 3 of this part that are within and including 15 percent of that standard PRR may be made without providing notification and opportunity for prior public comment.

(ii) Adjustments of any standard PRR during a calendar year, when ag-

gregated with all other adjustments made during that year, will not exceed 15 percent of the standard PRR listed in Table 3 of this part at the beginning of that calendar year.

(iii) No new product type will be announced until NMFS publishes the proposed adjustment and/or new product type in the FEDERAL REGISTER and provides the public with at least 30 days opportunity for public comment.

(iv) Any adjustment of a PRR that acts to further restrict the fishery will not be effective until 30 days after the date of publication in the FEDERAL REGISTER.

(v) If NMFS makes any adjustment or announcement without providing a prior notification and opportunity for prior public comment, the Regional Director will receive public comments on the adjustment or announcement for a period of 15 days from the date of publication in the FEDERAL REGISTER.

[61 FR 31230, June 19, 1996, as amended at 61 FR 39602, July 30, 1996]

§ 679.21 Prohibited species bycatch management.

(a) *Applicability.* (1) This section applies to all vessels required to have a Federal fisheries permit under § 679.4.

(2) Except as otherwise provided, this section also applies to all motherships and shoreside processors that receive groundfish from vessels required to have a Federal fisheries permit under § 679.4.

(b) *General—(1) Definition.* Prohibited species, for the purpose of this part, means any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Oncorhynchus mykiss*), halibut, Pacific herring (*Clupea harengus pallasii*), king crab, and Tanner crab caught by a vessel regulated under this part while fishing for groundfish in the BSAI or GOA, unless retention is authorized by other applicable laws, including the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of this title.

(2) *Prohibited species catch restrictions.* The operator of each vessel engaged in directed fishing for groundfish in the GOA or BSAI must:

(i) Minimize its catch of prohibited species.

(ii) Sort its catch as soon as possible after retrieval of the gear and, except as provided under paragraph (c) of this section or § 679.26, must return all prohibited species or parts thereof to the sea immediately, with a minimum of injury, regardless of its condition, after allowing for sampling by an observer if an observer is aboard.

(3) *Rebuttable presumption.* Except as provided under paragraph (c) of this section, it will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

(4) *Prohibited species taken seaward of the EEZ off Alaska.* No vessel fishing for groundfish in the GOA or BSAI may have on board any species listed in this paragraph (b) that was taken in waters seaward of these management areas, regardless of whether retention of such species was authorized by other applicable laws.

(c) *Salmon taken in BSAI trawl fishery—* (1) *Salmon discard.* Except as provided in paragraph (c)(3) of this section, the operator of a vessel and the manager of a shoreside processor must not discard any salmon or transfer or process any salmon under the SDP at § 679.26, if the salmon were taken incidental to a directed fishery for BSAI groundfish by vessels using trawl gear until the number of salmon has been determined by a NMFS-certified observer and the collection of any scientific data or biological samples from the salmon has been completed.

(2) *Salmon retention and storage.* (i) Operators of vessels carrying observers aboard and whose fishing operations allow for sorting of BSAI groundfish catch for salmon must retain all salmon bycatch from each haul in a separate bin or other location that allows an observer free and unobstructed physical access to the salmon to count each fish and collect any scientific data or biological samples. Salmon from different hauls must be retained separately in a manner that identifies the haul from which the salmon were taken.

(ii) Operators of vessels not carrying observers aboard or whose fishing operations do not allow for sorting of BSAI groundfish catch for salmon must ice,

freeze, or store in a refrigerated salt-water tank all salmon taken as bycatch in trawl operations for delivery to the processor receiving the vessel's BSAI groundfish catch.

(iii) Processors receiving BSAI groundfish harvested in a directed fishery for groundfish using trawl gear must retain all salmon delivered by each trawl vessel during a weekly reporting period in separate bins marked with the vessel's name and ADF&G fish ticket number(s) for each delivery until a NMFS-certified observer has counted each salmon and collected any scientific data or biological samples from the salmon delivered to the processor by that vessel. Processors without an observer present must store whole salmon in an iced or frozen state until an observer is available to count each fish. Salmon must be stored at a location that allows an observer free and unobstructed physical access to each salmon.

(3) *Exemption.* Motherships and shoreside processors that are exempt from obtaining observer coverage during a month under § 679.52 are exempt from mandatory retention of salmon.

(4) *Assignment of crew to assist observer.* Operators of vessels and managers of shoreside processors that are required to retain salmon under paragraph (c)(1) of this section must designate and identify to the NMFS-certified observer aboard the vessel or at the shoreside processor a crew person or employee to be responsible for sorting, retention, and storage of salmon. Upon request of the NMFS-certified observer, the designated crew person or employee also is responsible for counting salmon and taking biological samples from retained salmon under the direction of the observer.

(5) *Release of salmon.* Salmon must be returned to Federal waters as soon as is practicable, with a minimum of injury, regardless of condition, following notification by a NMFS-certified observer that the number of salmon has been determined and the collection of any scientific data or biological samples has been completed.

(d) *GOA halibut PSC limits.* This section is applicable for vessels engaged in directed fishing for groundfish in the GOA.

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(1) *Notification*—(i) *Proposed and final limits and apportionments*. NMFS will publish annually in the FEDERAL REGISTER proposed and final halibut PSC limits and apportionments thereof in the notification required under §679.20.

(ii) *Modification of limits*. NMFS, by notification in the FEDERAL REGISTER, may change the halibut PSC limits during the year for which they were specified, based on new information of the types set forth in this paragraph (d)(1).

(2) *Public comment*. NMFS will accept public comment on the proposed halibut PSC limits, and apportionments thereof, for a period of 30 days from the date of publication in the FEDERAL REGISTER. NMFS will consider comments received on proposed halibut limits and, after consultation with the Council, will publish notification in the FEDERAL REGISTER specifying the final halibut PSC limits and apportionments thereof.

(3) *Trawl gear proposed halibut limit*—(i) *Notification*. After consultation with the Council, NMFS will publish notification in the FEDERAL REGISTER specifying the proposed halibut PSC limit for vessels using trawl gear.

(ii) *Bycatch allowance*. The halibut PSC limit specified for vessels using trawl gear may be further apportioned as bycatch allowances to the fishery categories listed in paragraph (d)(3)(iii) of this section, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all bycatch allowances will equal the halibut PSC limit established under this paragraph (d).

(iii) *Trawl fishery categories*. For purposes of apportioning the trawl halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those GOA groundfish species for which a TAC has been specified under § 679.20:

(A) *Shallow-water species fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate catch of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and “other

species” that is greater than the retained aggregate amount of other GOA groundfish species or species group.

(B) *Deep-water species fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained catch of groundfish and is not a shallow-water species fishery as defined under paragraph (d)(3)(iii)(A) of this section.

(4) *Hook-and-line and pot gear fisheries*—(i) *Notification*. After consultation with the Council, NMFS will publish notification in the FEDERAL REGISTER specifying the proposed and final halibut PSC limits for vessels using hook-and-line gear. The notification also may specify a halibut PSC limit for the pot gear fisheries.

(ii) *Halibut bycatch allowance*. The halibut PSC limit specified for vessels using hook-and-line gear may be further apportioned, as bycatch allowances, to the fishery categories listed in paragraph (d)(4)(iii) of this section, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all bycatch allowances will equal the halibut PSC limit established under this paragraph (d).

(iii) *Hook-and-line fishery categories*. For purposes of apportioning the hook-and-line halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those GOA groundfish species for which a TAC has been specified under § 679.20.

(A) *Demersal shelf rockfish in the Southeast Outside District*. Fishing with hook-and-line gear in the Southeast Outside District of the GOA Eastern Regulatory Area (SEEO) during any weekly reporting period that results in a retained catch of demersal shelf rockfish that is greater than the retained amount of any other fishery category defined under this paragraph (d)(4)(iii).

(B) *Sablefish fishery*. Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is greater than the retained amount of any other

fishery category defined under this paragraph (d)(4)(iii).

(C) *Other hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of groundfish and is not a demersal shelf rockfish fishery or a sablefish fishery defined under paragraphs (d)(4)(iii)(A) and (B) of this section.

(5) *Seasonal apportionments*—(i) *General.* NMFS, after consultation with the Council, may apportion each halibut PSC limit or bycatch allowance specified under this paragraph (d) on a seasonal basis.

(ii) *Factors to be considered.* NMFS will base any seasonal apportionment of a halibut PSC limit or bycatch allowance on the following types of information:

(A) Seasonal distribution of halibut.

(B) Seasonal distribution of target groundfish species relative to halibut distribution.

(C) Expected halibut bycatch needs, on a seasonal basis, relative to changes in halibut biomass and expected catches of target groundfish species.

(D) Expected variations in bycatch rates throughout the fishing year.

(E) Expected changes in directed groundfish fishing seasons.

(F) Expected start of fishing effort.

(G) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

(iii) *Unused seasonal apportionments.* Unused seasonal apportionments of halibut PSC limits specified for trawl, hook-and-line, or pot gear will be added to the respective seasonal apportionment for the next season during a current fishing year.

(iv) *Seasonal apportionment exceeded.* If a seasonal apportionment of a halibut PSC limit specified for trawl, hook-and-line, or pot gear is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year.

(6) *Apportionment among regulatory areas and districts.* Each halibut PSC limit specified under this paragraph (d) also may be apportioned among the GOA regulatory areas and districts.

(7) *Halibut PSC closures*—(i) *Trawl gear fisheries.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in either of the trawl fishery categories listed in paragraph (d)(3)(iii) (A) or (B) of this section will catch the halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the FEDERAL REGISTER closing the entire GOA or the applicable regulatory area or district to directed fishing with trawl gear for each species and/or species group that comprises that fishing category; provided, however, that when the halibut bycatch allowance, or seasonal apportionment thereof, specified for the shallow-water species fishery is reached, fishing for pollock by vessels using pelagic trawl gear may continue, consistent with other provisions of this part.

(ii) *Hook-and-line fisheries.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the three hook-and-line gear fishery categories listed under paragraph (d)(4)(iii) of this section will catch the halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the FEDERAL REGISTER closing the entire GOA or the applicable regulatory area or district to directed fishing with hook-and-line gear for each species and/or species group that comprises that fishing category.

(iii) *Pot gear fisheries.* If, during the fishing year, the Regional Director determines that the catch of halibut by operators of vessels using pot gear to participate in a directed fishery for groundfish will reach the halibut PSC limit, or seasonal apportionment thereof, NMFS will publish notification in the FEDERAL REGISTER prohibiting directed fishing for groundfish by vessels using pot gear for the remainder of the season to which the halibut PSC limit or seasonal apportionment applies.

(iv) *Nonpelagic trawl gear fisheries*—(A) *Continued fishing under specified conditions.* When the vessels to which a halibut PSC limit applies have caught an amount of halibut equal to that

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PSC, the Regional Director may, by notification in the FEDERAL REGISTER, allow some or all of those vessels to continue to fish for groundfish using nonpelagic trawl gear under specified conditions, subject to the other provisions of this part.

(B) *Factors to be considered.* In authorizing and conditioning such continued fishing with bottom-trawl gear, the Regional Director will take into account the following considerations, and issue relevant findings:

(1) The risk of biological harm to halibut stocks and of socio-economic harm to authorized halibut users posed by continued bottom trawling by these vessels.

(2) The extent to which these vessels have avoided incidental halibut catches up to that point in the year.

(3) The confidence of the Regional Director in the accuracy of the estimates of incidental halibut catches by these vessels up to that point in the year.

(4) Whether observer coverage of these vessels is sufficient to assure adherence to the prescribed conditions and to alert the Regional Director to increases in their incidental halibut catches.

(5) The enforcement record of owners and operators of these vessels, and the confidence of the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources.

(e) *BSAI PSC limits*—(1) *Trawl gear*—(i) *Red king crab.* The PSC limit of red king crab caught while conducting any trawl fishery for groundfish in Zone 1 during any fishing year is 200,000 red king crabs.

(ii) *Tanner crab* (*C. bairdi*), *Zone 1.* The PSC limit of *C. bairdi* Tanner crabs caught while conducting any trawl fishery for groundfish in Zone 1 during any fishing year is 1 million animals.

(iii) *Tanner crab* (*C. bairdi*), *Zone 2.* The PSC limit of *C. bairdi* Tanner crabs caught while conducting any trawl fishery for groundfish in Zone 2 during any fishing year is 3 million animals.

(iv) *Halibut.* The PSC limit of halibut caught while conducting any trawl fishery for groundfish in the BSAI during any fishing year is an amount of halibut equivalent to 3,775 mt of halibut mortality.

(v) *Pacific herring.* The PSC limit of Pacific herring caught while conducting any domestic trawl fishery for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. The PSC limit will be apportioned into annual herring PSC allowances, by target fishery, and will be published along with the annual herring PSC limit in the FEDERAL REGISTER with the proposed and final groundfish specifications defined in § 679.20.

(vi) *Chinook salmon.* The PSC limit of chinook salmon caught while conducting any trawl fishery for groundfish in the BSAI between January 1 and April 15 is 48,000 fish.

(vii) *Non-chinook salmon.* The PSC limit of non-chinook salmon caught by vessels using trawl gear during August 15 through October 14 in the CVOA is 42,000 fish.

(2) *Nontrawl gear, halibut.* The PSC limit of halibut caught while conducting any nontrawl fishery for groundfish in the BSAI during any fishing year is an amount of halibut equivalent to 900 mt of halibut mortality.

(3) *PSC apportionment to trawl fisheries*—(i) *General.* NMFS, after consultation with the Council, will apportion each PSC limit set forth in paragraphs (e)(1)(i) through (vii) of this section into bycatch allowances for fishery categories defined in paragraph (e)(3)(iv) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

(ii) *Red king crab, C. bairdi Tanner crab, and halibut*—(A) *General.* For vessels engaged in directed fishing for groundfish in the GOA or BSAI, the PSC limits for red king crab, *C. bairdi* Tanner crab, and halibut will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv) (B) through (F) of this section.

(B) *Incidental catch in midwater pollock fishery.* Any amount of red king crab, *C. bairdi* Tanner crab, or halibut that is incidentally taken in the

midwater pollock fishery as defined in paragraph (e)(3)(iv)(A) of this section will be counted against the bycatch allowances specified for the pollock/Atka mackerel/“other species” category defined in paragraph (e)(3)(iv)(F) of this section.

(iii) *Pacific herring*. The PSC limit for Pacific herring will be apportioned to the BSAI trawl fishery categories defined in paragraphs (e)(3)(iv) (A) through (F) of this section.

(iv) *Trawl fishery categories*. For purposes of apportioning trawl PSC limits among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

(A) *Midwater pollock fishery*. Fishing with trawl gear during any weekly reporting period that results in a catch of pollock that is 95 percent or more of the total amount of groundfish caught during the week.

(B) *Flatfish fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rock sole, “other flatfish,” and yellowfin sole that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

(1) *Yellowfin sole fishery*. Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under this paragraph (e)(3)(iv)(B) and results in a retained amount of yellowfin sole that is 70 percent or more of the retained aggregate amount of rock sole, “other flatfish,” and yellowfin sole.

(2) *Rock sole/flathead sole/“other flatfish” fishery*. Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under this paragraph (e)(3)(iv)(B) and is not a yellowfin sole fishery as defined under paragraph (e)(3)(iv)(B)(1) of this section.

(C) *Greenland turbot/arrowtooth flounder/sablefish fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Greenland turbot, arrowtooth flounder, and sablefish that is greater than the retained amount of

any other fishery category defined under this paragraph (e)(3)(iv).

(D) *Rockfish fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rockfish species of the genera *Sebastes* and *Sebastolobus* that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

(E) *Pacific cod fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (e)(3)(iv).

(F) *Pollock/Atka mackerel/“other species”*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of pollock other than pollock harvested in the midwater pollock fishery defined under paragraph (e)(3)(iv)(A) of this section, Atka mackerel, and “other species” that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

(4) *Halibut apportionment to nontrawl fishery categories*—(i) *General*. NMFS, after consultation with the Council, may apportion the halibut PSC limit for nontrawl gear set forth under paragraph (e)(2) of this section into bycatch allowances for nontrawl fishery categories defined under paragraph (e)(4)(ii) of this section, based on each category’s proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the nontrawl halibut PSC limit. The sum of all halibut bycatch allowances will equal the halibut PSC limit established in paragraph (e)(2) of this section.

(ii) *Nontrawl fishery categories*. For purposes of apportioning the nontrawl halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those BSAI groundfish species for which a TAC has been specified under § 679.20.

(A) *Pacific cod hook-and-line fishery*. Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of Pacific cod

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that is greater than the retained amount of any other groundfish species.

(B) *Sablefish hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is greater than the retained amount of any other groundfish species.

(C) *Groundfish jig gear fishery.* Fishing with jig gear during any weekly reporting period that results in a retained catch of groundfish.

(D) *Groundfish pot gear fishery.* Fishing with pot gear under restrictions set forth in § 679.24(b) during any weekly reporting period that results in a retained catch of groundfish.

(E) *Other nontrawl fisheries.* Fishing for groundfish with nontrawl gear during any weekly reporting period that results in a retained catch of groundfish and does not qualify as a Pacific cod hook-and-line fishery, a sablefish hook-and-line fishery, a jig gear fishery, or a groundfish pot gear fishery as defined under paragraph (e)(4)(ii) of this section.

(5) *Seasonal apportionments of bycatch allowances*—(i) *General.* NMFS, after consultation with the Council, may apportion fishery bycatch allowances on a seasonal basis.

(ii) *Factors to be considered.* NMFS will base any seasonal apportionment of a bycatch allowance on the following types of information:

(A) Seasonal distribution of prohibited species;

(B) Seasonal distribution of target groundfish species relative to prohibited species distribution;

(C) Expected prohibited species bycatch needs on a seasonal basis relevant to change in prohibited species biomass and expected catches of target groundfish species;

(D) Expected variations in bycatch rates throughout the fishing year;

(E) Expected changes in directed groundfish fishing seasons;

(F) Expected start of fishing effort; or

(G) Economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry.

(iii) *Seasonal trawl fishery bycatch allowances*—(A) *Unused seasonal apportionments.* Unused seasonal apportionments of trawl fishery bycatch allowances made under this paragraph (e)(5) will be added to its respective fishery bycatch allowance for the next season during a current fishing year.

(B) *Seasonal apportionment exceeded.* If a seasonal apportionment of a trawl fishery bycatch allowance made under paragraph (d)(5) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from its respective apportionment for the next season during a current fishing year.

(iv) *Seasonal nontrawl fishery bycatch allowances*—(A) *Unused seasonal apportionments.* Any unused portion of a seasonal nontrawl fishery bycatch allowance made under this paragraph (e)(5) will be reapportioned to the fishery's remaining seasonal bycatch allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (e)(5)(ii) of this section.

(B) *Seasonal apportionment exceeded.* If a seasonal apportionment of a nontrawl fishery bycatch allowance made under this paragraph (e)(5) is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the fishery's remaining seasonal bycatch allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (e)(5)(ii) of this section.

(6) *Notification*—(i) *General.* NMFS will publish annually in the FEDERAL REGISTER the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required under this paragraph (e).

(ii) *Public comment.* Public comment will be accepted by NMFS on the proposed bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period of 30 days

from the date of publication in the FEDERAL REGISTER.

(7) *Trawl PSC closures*—(i) *Exception*. When a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/“other species” fishery category is reached, only directed fishing for pollock is closed to trawl vessels using nonpelagic trawl gear.

(ii) *Red king crab or C. bairdi Tanner crab, Zone 1, closure*. Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the Zone 1 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the FEDERAL REGISTER the closure of Zone 1 to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(iii) *Red king crab or C. bairdi Tanner crab, Zone 2, closure*. Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the Zone 2 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the FEDERAL REGISTER the closure of Zone 2 to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(iv) *Halibut closure*. Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section in the BSAI will catch the halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph

(e)(3) of this section, NMFS will publish in the FEDERAL REGISTER the closure of the entire BSAI to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(v) *Pacific herring*—(A) *Closure*. Except as provided in paragraph (e)(7)(v)(B) of this section, if, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(A) through (F) of this section in the BSAI will catch the herring bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the FEDERAL REGISTER the closure of the Herring Savings Area as defined in Figure 4 of this part to directed fishing for each species and/or species group in that fishery category.

(B) *Exceptions*—(1) *Midwater pollock*. When the midwater pollock fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, the Herring Savings Areas are closed to directed fishing for pollock with trawl gear.

(2) *Pollock/Atka mackerel/ “other species”*. When the pollock/Atka mackerel/“other species” fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, the Herring Savings Areas are closed to directed fishing for pollock by trawl vessels using nonpelagic trawl gear.

(vi) *Chum salmon*—(A) *Trawling prohibitions*. (1) Trawling is prohibited from August 1 through August 31 in the Chum Salmon Savings Area.

(2) If the Regional Director determines that 42,000 non-chinook salmon have been caught by vessels using trawl gear during August 15 through October 14 in the CVOA defined under § 679.22(a)(5), NMFS will prohibit fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area as defined in paragraph (e)(7)(vi)(B) of this section.

(B) *Chum Salmon Savings Area of the CVOA*. The Chum Salmon Savings Area

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is an area defined by straight lines connecting the following coordinates in the order listed:

56°00' N. lat., 167°00' W. long.
56°00' N. lat., 165°00' W. long.
55°30' N. lat., 165°00' W. long.
55°30' N. lat., 164°00' W. long.
55°00' N. lat., 164°00' W. long.
55°00' N. lat., 167°00' W. long.
56°00' N. lat., 167°00' W. long.

(vii) *Chinook salmon*—(A) *Closure*. When the Regional Director determines that 48,000 chinook salmon have been caught by vessels using trawl gear in the BSAI during the time period from January 1 through April 15, NMFS will prohibit fishing with trawl gear for the remainder of that period within the Chinook Salmon Savings Area defined in paragraph (e)(7)(vii)(B) of this section.

(B) *Chinook Salmon Savings Area*. The Chinook Salmon Savings Area is defined in the following three areas of the BSAI:

(1) The area defined by straight lines connecting the following coordinates in the order listed:

56°30' N. lat., 171°00' W. long.
56°30' N. lat., 169°00' W. long.
56°00' N. lat., 169°00' W. long.
56°00' N. lat., 171°00' W. long.
56°30' N. lat., 171°00' W. long.

(2) The area defined by straight lines connecting the following coordinates in the order listed:

54°00' N. lat., 171°00' W. long.
54°00' N. lat., 170°00' W. long.
53°00' N. lat., 170°00' W. long.
53°00' N. lat., 171°00' W. long.
54°00' N. lat., 171°00' W. long.

(3) The area defined by straight lines connecting the following coordinates in the order listed:

56°00' N. lat., 165°00' W. long.
56°00' N. lat., 164°00' W. long.
55°00' N. lat., 164°00' W. long.
55°00' N. lat., 165°00' W. long.
54°30' N. lat., 165°00' W. long.
54°30' N. lat., 167°00' W. long.
55°00' N. lat., 167°00' W. long.
55°00' N. lat., 166°00' W. long.
55°30' N. lat., 166°00' W. long.
55°30' N. lat., 165°00' W. long.
56°00' N. lat., 165°00' W. long.

(8) *Nontrawl halibut closures*. If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the

nontrawl fishery categories listed under paragraph (e)(4) of this section will catch the halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (e)(4)(ii) of this section, NMFS will publish in the FEDERAL REGISTER the closure of the entire BSAI to directed fishing with the relevant gear type for each species and/or species group in that fishery category.

(f) *Program to reduce prohibited species bycatch rates*—(1) *Requirements*—(i) *General*. A vessel's bycatch rate, as calculated at the end of a fishing month under paragraph (f)(8)(ii) of this section, while participating in the fisheries identified in paragraph (f)(2) of this section, shall not exceed bycatch rate standards referenced in paragraph (f)(3) of this section.

(ii) *Applicability*. A vessel is subject to this paragraph (f) if the groundfish catch of the vessel is observed on board the vessel, or on board a mothership that receives unsorted codends from the vessel, at any time during a weekly reporting period, and the vessel is assigned to one of the fisheries defined under paragraph (f)(2) of this section.

(2) *Assigned fisheries*. During any weekly reporting period, a vessel's observed catch composition of groundfish species for which a TAC has been specified in the GOA or BSAI will determine the fishery to which the vessel is assigned, as follows:

(i) *GOA midwater pollock fishery* means fishing with trawl gear in the GOA that results in an observed catch of groundfish from the GOA during any weekly reporting period that is composed of 95 percent or more of pollock when the directed fishery for pollock by vessels using trawl gear other than pelagic trawl gear is closed.

(ii) *GOA other trawl fishery* means fishing with trawl gear in the GOA that results in an observed catch of groundfish from the GOA during any weekly reporting period that does not qualify as a midwater pollock fishery under paragraph (f)(2)(i) of this section.

(iii) *BSAI midwater pollock fishery* means fishing with trawl gear in the BSAI that results in an observed catch of groundfish from the BSAI during any weekly reporting period that is

composed of 95 percent or more of pollock when the directed fishery for pollock by vessels using trawl gear other than pelagic trawl gear is closed.

(iv) *BSAI yellowfin sole fishery* means fishing with trawl gear in the BSAI that results in a retained aggregate amount of rock sole, "other flatfish," and yellowfin sole caught in the BSAI during any weekly reporting period that is greater than the retained amount of any other fishery under this paragraph (f)(2) and results in a retained amount of BSAI yellowfin sole that is 70 percent or more of the retained aggregate amount of BSAI rock sole, "other flatfish," and yellowfin sole.

(v) *BSAI bottom pollock fishery* means fishing with trawl gear in the BSAI that results in a retained amount of pollock caught in the BSAI during any weekly reporting period other than pollock harvested in the midwater pollock fishery in the BSAI defined in paragraph (f)(2)(iii) of this section, that is greater than the retained amount of any other fishery defined under this paragraph (f)(2).

(vi) *BSAI other trawl fishery* means fishing with trawl gear in the BSAI that results in a retained amount of groundfish caught in the BSAI during any weekly reporting period that does not qualify as a midwater pollock, yellowfin sole, or bottom pollock fishery.

(3) *Notification of bycatch rate standards*—(i) *Prior notice*. Prior to January 1 and July 1 of each year, the Regional Director will publish notification in the FEDERAL REGISTER specifying bycatch rate standards for the fisheries identified in this paragraph (f) that will be in effect for specified seasons within the 6-month periods of January 1 through June 30 and July 1 through December 31, respectively.

(ii) *Adjustments*. The Regional Director may adjust bycatch rate standards as frequently as he or she considers appropriate.

(4) *Factors upon which bycatch rate standards are based*. Bycatch rate standards for a fishery and adjustments to such standards will be based on the following information and considerations:

(i) Previous years' average observed bycatch rates for that fishery.

(ii) Immediately preceding season's average observed bycatch rates for that fishery.

(iii) The bycatch allowances and associated fishery closures specified under paragraphs (d) and (e) of this section.

(iv) Anticipated groundfish harvests for that fishery.

(v) Anticipated seasonal distribution of fishing effort for groundfish.

(vi) Other information and criteria deemed relevant by the Regional Director.

(5) *Public comment*—(i) *Prior comment*. Bycatch rate standards or adjustments to such standards specified under this section will not take effect until NMFS has published the proposed bycatch rate standards or adjustments to such standards in the FEDERAL REGISTER for public comment for a period of 30 days, unless NMFS finds for good cause that such notification and public comment are impracticable, unnecessary, or contrary to the public interest.

(ii) *Comment after notification*. If NMFS decides, for good cause, that bycatch rate standards or adjustments to such standards are to be made effective without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, bycatch rate standards or adjustments to such standards will be received by the Regional Director for a period of 15 days after the effective date of notification.

(iii) *Public inspection of data*. During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which bycatch rate standards or adjustments to such standards were based.

(iv) *Written comments*. If written comments are received during any such 15-day period that oppose or protest bycatch rate standards or adjustments to such standards issued under this section, NMFS will reconsider the necessity for the bycatch standards or adjustment to such standards and, as soon as practicable after that reconsideration, will either—

(A) Publish in the FEDERAL REGISTER notification of continued effectiveness

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of bycatch rate standards or adjustment to such standards, responding to comments received; or

(B) Modify or rescind bycatch rate standards or adjustment to such standards.

(6) *Notification of adjustment to bycatch rate standards.* Notification of adjustments to bycatch rate standards issued by NMFS under paragraph (f)(3) of this section will include the following information:

(i) A description of the adjustment to one or more bycatch rate standards specified for a fishery.

(ii) The reasons for the adjustment and the determinations required under paragraph (f)(4) of this section.

(iii) The effective date and any termination date of such adjustment. If no termination date is specified, the adjustment will remain in effect until revised by subsequent notification in the FEDERAL REGISTER.

(7) *Vessel bycatch rates*—(i) *Observed data.* For purposes of this section, observed data collected for each haul sampled during a day will include: Date; Federal reporting area where trawl gear for the haul was retrieved; total round weight of groundfish, in metric tons in the portion of the haul sampled by groundfish species or species group for which a TAC has been specified under § 679.20; and total round weight of halibut, in kilograms, in the portion of the haul sampled. Observer data from the BSAI trawl fisheries also will include the total number of red king crab in the portion of the haul sampled.

(ii) *Observer sampling procedures.* (A) NMFS will randomly predetermine the hauls to be sampled by an observer during the time the observer is on a vessel.

(B) An observer will take samples at random from throughout the haul, and take samples prior to sorting of the haul by the crew for processing or discarding of the catch.

(C) An observer will sample a minimum of 100 kg of fish from each haul sampled.

(D) While an observer is at sea, the observer will report to NMFS, on at least a weekly basis, the data for sampled hauls.

(E) Upon request, the observer will allow the vessel operator to see all ob-

served data set forth under paragraph (f)(7)(i) of this section that the observer submits to NMFS.

(8) *Determination of individual vessel bycatch rates.* For each vessel, the Regional Director will aggregate from sampled hauls the observed data collected during a weekly reporting period on the total round weight, in metric tons, of each groundfish species or species group for which a TAC has been specified under § 679.20 to determine to which of the fisheries described in paragraph (f)(8)(i) of this section the vessel should be assigned for that week.

(i) *Vessel assignment to fisheries*—(A) *BSAI catcher/processors.* Catcher/processors will be assigned to fisheries at the end of each weekly reporting period based on the round-weight equivalent of the retained groundfish catch composition reported on a vessel's WPR that is submitted to the Regional Director under § 679.5.

(B) *BSAI catcher vessel delivery in Federal waters.* Catcher vessels that deliver to motherships in Federal waters during a weekly reporting period will be assigned to fisheries based on the round-weight equivalent of the retained groundfish catch composition reported on the WPR submitted to the Regional Director for that week by the mothership under § 679.5.

(C) *BSAI catcher vessel delivery in Alaska State waters.* Catcher vessels delivering groundfish to shoreside processors or to motherships in Alaska State waters during a weekly reporting period will be assigned to fisheries based on the round-weight equivalent of the groundfish retained by the processor and reported on an ADF&G fish ticket as required under Alaska State regulations at A.S. 16.05.690.

(ii) *Calculation of monthly bycatch rates*—(A) *Assigned fishery.* At the end of each fishing month during which an observer sampled at least 50 percent of a vessel's total number of trawl hauls retrieved while an observer was aboard (as recorded in the vessel's DFL), the Regional Director will calculate the vessel's bycatch rate based on observed data for each fishery to which the vessel was assigned for any weekly reporting period during that fishing month.

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(B) *Verified observer data.* Only observed data that have been checked, verified, and analyzed by NMFS will be used to calculate vessel bycatch rates for purposes of this section.

(C) *Calculation.* The bycatch rate of a vessel for a fishery defined under paragraph (f)(2) of this section during a fishing month is a ratio of halibut to groundfish that is calculated by using the total round weight of halibut (in kilograms), or total number of red king crab, in samples during all weekly reporting periods in which the vessel was assigned to that fishery and the total round weight of the groundfish (in metric tons) for which a TAC has been specified under § 679.20 in samples taken during all such periods.

(9) *Compliance with bycatch rate standards.* A vessel has exceeded a bycatch rate standard for a fishery if the vessel's bycatch rate for a fishing month, as calculated under paragraph (f)(8)(ii) of this section exceeds the bycatch rate standard established for that fishery under paragraph (f)(2) of this section.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35579, July 5, 1996; 61 FR 38359, July 24, 1996]

§ 679.22 Closures.

(a) *BSAI—(1) Zone 1 (512) closures to trawl gear—(i) Year-round closures.* No fishing with trawl gear is allowed at any time in reporting area 512 of Zone 1 in the Bering Sea subarea (see Figure 1 of this part), except as described in paragraph (a)(1)(ii) of this section.

(ii) *Partial closures (Port Moller).* NMFS may allow fishing for Pacific cod with trawl gear in that portion of reporting area 512 that lies south of a straight line connecting the coordinates 56°43' N. lat., 160°00' W. long., and 56°00' N. lat., 162°00' W. long., provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the halibut, Tanner and king crab stocks in the area.

(2) *Zone 1 (516) closures to trawl gear—(i) Seasonal closures.* No fishing with trawl gear is allowed at any time in re-

porting area 516 of Zone 1 in the Bering Sea Subarea (see Figure 1 of this part) during the period March 15 through June 15, except as described in paragraph (a)(2)(ii) of this section.

(ii) *Partial closures (Port Moller).* During the period March 15 through June 15, NMFS may allow fishing for Pacific cod with trawl gear in that portion of reporting area 516 that lies south of the line connecting 56°00' N. lat., 162° W. long., and 55°38' N. lat., 163°00' W. long., provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the halibut, Tanner crab, and king crab stocks in the area.

(3) *Red king crab closures.* If the Regional Director determines that vessels fishing with trawl gear in reporting areas 512 and 516 will catch the PSC limit of 12,000 red king crabs, he or she will immediately prohibit all fishing with trawl gear in those areas by notification in the FEDERAL REGISTER.

(4) *Walrus protection areas.* From April 1 through September 30 of any fishing year, vessels with a Federal fisheries permit under § 679.4 are prohibited in that part of the Bering Sea subarea between 3 and 12 nm seaward of the baseline used to measure the territorial sea around islands named Round Island and The Twins, as shown on National Ocean Survey Chart 16315, and around Cape Pierce (58°33' N. lat., 161°43' W. long.).

(5) *Catcher Vessel Operational Area (CVOA) (applicable through December 31, 1998)—(i) Inshore component.* The CVOA is established annually from the beginning of the second season of directed fishing for pollock defined at § 679.23(e) until either the date that NMFS determines that the pollock quota for processing by the inshore component has been harvested, or December 31, whichever is earlier.

(ii) *Offshore component.* (A) Vessels in the offshore component are prohibited from conducting directed fishing for pollock in the CVOA unless they are

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operating under a CDP approved by NMFS.

(B) Vessels in the offshore component that do not catch groundfish but do process pollock caught in a directed fishery for pollock may operate within the CVOA to process pollock.

(iii) *Other than pollock.* Vessels that catch or process groundfish in directed fisheries for species other than pollock may operate within the CVOA.

(6) *Pribilof Island Area Habitat Conservation Zone.* Trawling is prohibited at all times in the area bounded by a straight line connecting the following pairs of coordinates in the following order:

57°57.0' N. lat., 168°30.0' W. long.
56°55.2' N. lat., 168°30.0' W. long.
56°48.0' N. lat., 169°2.4' W. long.
56°34.2' N. lat., 169°2.4' W. long.
56°30.0' N. lat., 169°25.2' W. long.
56°30.0' N. lat., 169°44.1' W. long.
56°55.8' N. lat., 170°21.6' W. long.
57°13.8' N. lat., 171°0.0' W. long.
57°57.0' N. lat., 171°0.0' W. long.
57°57.0' N. lat., 168°30.0' W. long.

(7) *Steller sea lion protection areas, Bering Sea Subarea and Bogoslof District*—(i) *Year-round closures.* Trawling is prohibited within 10 nm (18.5 km) of each of the eight Steller sea lion rookeries shown in Table 4a of this part.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited within 20 nm (37 km) of each of the six Steller sea lion rookeries shown in Table 4b of this part.

(8) *Steller sea lion protection areas, Aleutian Islands Subarea*—(i) *Year-round closures.* Trawling is prohibited within 10 nm (18.4 km) of each of the 19 Steller sea lion rookeries shown in Table 5a of this part.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited within 20 nm (37 km) of each of the two Steller sea lion rookeries shown in Table 5b of this part.

(b) *GOA*—(1) *Kodiak Island, trawls other than pelagic trawls*—(i) *Type I closures.* No person may trawl in waters of the EEZ within the vicinity of Kodiak Island, as shown in Figure 5 of this part as Type I areas, from a vessel having

any trawl other than a pelagic trawl either attached or on board.

(ii) *Type II closures.* From February 15 to June 15, no person may trawl in waters of the EEZ within the vicinity of Kodiak Island, as shown in Figure 5 of this part as Type II areas, from a vessel having any trawl other than a pelagic trawl either attached or on board.

(iii) *Type III closures.* Type III areas are open to any trawl other than a pelagic trawl gear year round.

(2) *Steller sea lion protection areas*—(i) *Year-round closures.* Trawling is prohibited in the GOA within 10 nm of the 14 Steller sea lion rookeries designated in Table 6a of this part.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited in the GOA within 20 nm of each of the three Steller sea lion rookeries presented in Table 6b of this part.

(c) *Directed fishing closures.* See § 679.20(d).

(d) *Groundfish as prohibited species closures.* See § 679.20(d).

(e) *Overfishing closures.* See § 679.20(d).

(f) *Prohibited species closures.* See § 679.21.

§ 679.23 Seasons.

(a) *General.* Fishing for groundfish in the GOA and BSAI is authorized from 0001 hours, A.l.t., January 1, through 2400 hours, A.l.t., December 31, subject to the other provisions of this part, except as provided in paragraph (c) of this section.

(b) *Time of groundfish openings and closures.* The time of all openings and closures of fishing seasons, other than the beginning and end of the calendar fishing year, is 1200 hours, A.l.t.

(c) *GOA and BSAI trawl groundfish.* Notwithstanding other provisions of this part, fishing for groundfish with trawl gear in the GOA and BSAI is prohibited from 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., January 20.

(d) *GOA seasons*—(1) *Directed fishing for trawl rockfish.* Directed fishing for rockfish of the genera *Sebastes* and *Sebastolobus* with trawl gear is authorized from 1200 hours, A.l.t., on the first day of the third quarterly reporting period of a fishing year through 2400

hours, A.l.t., December 31, subject to other provisions of this part.

(2) *Directed fishing for pollock.* Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the three seasons:

(i) From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., April 1;

(ii) From 1200 hours, A.l.t., June 1, through 1200 hours, A.l.t., July 1; and

(iii) From 1200 hours, A.l.t., September 1, through 2400 hours, A.l.t., December 31.

(e) *BSAI seasons*—(1) *Directed fishing for arrowtooth flounder and Greenland turbot.* Directed fishing for arrowtooth flounder and Greenland turbot in the BSAI is authorized from 1200 hours, A.l.t., May 1, through 2400 hours, A.l.t., December 31, subject to the other provisions of this part.

(2) *Directed fishing for pollock.* (i) Subject to other provisions of this part, and except as provided in paragraphs (e)(2)(ii) and (e)(2)(iii) of this section, directed fishing for pollock is authorized from 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., April 15, and from 1200 hours A.l.t., September 1, through 1200 hours A.l.t., November 1, of each fishing year.

(ii) *Applicable through December 31, 1998.* (A) Subject to other provisions of this part and except as provided in paragraphs (e)(2)(ii)(B) and (e)(2)(ii)(C) of this section, directed fishing for pollock by the offshore component, defined at § 679.2 of this part, or by vessels delivering pollock to the offshore component, is authorized from 1200 hours A.l.t., January 26, through 1200 hours A.l.t., April 15.

(B) Directed fishing for pollock by the offshore component, or vessels delivering pollock to the offshore component is prohibited through 1200 hours, A.l.t., February 5, for those vessels that are used to fish prior to 1200 hours, A.l.t., January 26, for groundfish in the BSAI, groundfish in the GOA, as defined at § 679.2, or king or Tanner crab in the BSAI, as defined at § 679.2.

(C) Neither paragraphs (e)(2)(ii)(B) nor (e)(2)(iii) of this section apply to vessels used to fish exclusively in a directed fishery for pollock prior to 1200 hours, A.l.t., January 26, or during the

period that extends from 1200 hours, A.l.t., August 25, through 1200 hours A.l.t., September 1, under the Western Alaska Community Development Quota program pursuant to subpart C and § 679.23(e)(2)(ii)(D) of this section.

(D) Directed fishing for pollock under the Western Alaska Community Development Quota program pursuant to subpart C of this part is authorized from 0001 hours A.l.t., January 1, through the end of the fishing year.

(iii) Directed fishing for pollock is prohibited during the second pollock season defined at paragraph (e)(2)(i) of this section through 1200 hours, A.l.t., September 8, for any vessel that is used to fish with trawl gear for groundfish in the BSAI or the GOA as defined at § 679.2 of this part, between 1200 hours A.l.t., August 25, and 1200 hours A.l.t., September 1.

(3) *CDQ fishing seasons.* (i) *CDQ halibut.* Fishing for CDQ halibut with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ fishing may occur only during the fishing periods specified in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title.

(ii) *CDQ sablefish.* Fishing for CDQ sablefish with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ directed fishing may occur only during the IFQ fishing season specified in paragraph (g)(1) of this section.

(f) *IFQ halibut.* The fishing period(s) for IFQ halibut are established by the IPHC and are specified in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title. Catches of halibut by fixed gear at times other than during the specified fishing periods must be treated as prohibited species as prescribed at § 679.21(b).

(g) *IFQ sablefish.* (1) Directed fishing for sablefish using fixed gear in any IFQ regulatory area may be conducted in any fishing year during the period specified by the Regional Director and announced by publication in the FEDERAL REGISTER. The Regional Director will take into account the opening date of the halibut season when determining

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the opening date for sablefish for the purposes of reducing bycatch and regulatory discards between the two fisheries.

(2) Catches of sablefish by fixed gear during other periods may be retained up to the amounts provided for by the directed fishing standards specified at § 679.20 when made by an individual aboard the vessel who has a valid IFQ card and unused IFQ in the account on which the card was issued.

(3) Catches of sablefish in excess of the maximum retainable bycatch amounts and catches made without IFQ must be treated in the same manner as prohibited species.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35579, July 5, 1996; 61 FR 39602, July 30, 1996]

§ 679.24 Gear limitations.

Regulations pertaining to vessel and gear markings are set forth in this section and as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title.

(a) *Marking of gear—longline marker buoys.* (1) All longline marker buoys carried on board or used by any vessel regulated under this part shall be marked with the following:

(i) The vessel's name; and

(ii) The vessel's Federal fisheries permit number; or

(iii) The vessel's registration number.

(2) Markings shall be in characters at least 4 inches (10.16 cm) in height and 0.5 inch (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.

(b) *Gear restrictions—(1) Pots—(i) Biodegradable panel.* Each pot used to fish for groundfish must be equipped with a biodegradable panel at least 18 inches (45.72 cm) in length that is parallel to, and within 6 inches (15.24 cm) of, the bottom of the pot, and that is sewn up with untreated cotton thread of no larger size than No. 30.

(ii) *Tunnel opening.* Each pot used to fish for groundfish must be equipped with rigid tunnel openings that are no wider than 9 inches (22.86 cm) and no higher than 9 inches (22.86 cm), or soft tunnel openings with dimensions that are no wider than 9 inches (22.86 cm).

(iii) *Longline pot gear.* Any person using longline pot gear must treat any catch of groundfish as a prohibited species, except:

(A) In the Aleutian Islands subarea.

(B) While directed fishing for sablefish in the Bering Sea subarea, except as provided in paragraph (c)(4)(ii) of this section.

(2) *Net-sounder device.* Each person trawling in any GOA area limited to pelagic trawling under § 679.22 must maintain on that trawl a properly functioning, recording net-sounder device, and must retain all net-sounder recordings on board the fishing vessel during the fishing year.

(3) *Trawl footrope.* No person trawling in any GOA area limited to pelagic trawling under § 679.22 may allow the footrope of that trawl to be in contact with the seabed for more than 10 percent of the period of any tow, as indicated by the net-sounder device.

(c) *Gear restrictions for sablefish—(1) Gear allocations.* Gear allocations of sablefish TAC are set out under § 679.20.

(2) *GOA Eastern Area—(i) General.* (A) No person may use any gear other than hook-and-line and trawl gear when fishing for sablefish in the GOA Eastern Area.

(B) No person may use any gear other than hook-and-line gear to engage in directed fishing for sablefish.

(ii) *Sablefish as prohibited species—(A) Trawl gear.* When operators of vessels using trawl gear have harvested 5 percent of the TAC for sablefish in the GOA Eastern Regulatory Area during any year, further trawl catches of sablefish must be treated as prohibited species as provided by § 679.21(b).

(B) *Other gear.* Operators of vessels using gear types other than those specified in paragraph (c)(2)(i) of this section in the GOA Eastern Regulatory Area must treat any catch of sablefish as a prohibited species as provided by § 679.21(b).

(3) *GOA Central and Western Areas; sablefish as prohibited species.* Operators of vessels using gear types other than hook-and-line and trawl gear in the GOA Central and Western Regulatory Areas must treat any catch of sablefish in these areas as a prohibited species as provided by § 679.21(b).

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(4) *BSAI.* (i) Operators of vessels using gear types other than hook-and-line, longline pot, pot-and-line, or trawl gear in the BSAI must treat sablefish as a prohibited species as provided by § 679.21(b).

(ii) Longline pot gear is prohibited in directed fishing for sablefish from 0001 hrs, A.l.t., on June 1 until 1200 hrs, A.l.t., on June 30.

(d) *Trawl gear test areas*—(1) *General.* For purposes of allowing pelagic and nonpelagic trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) *Trawl gear testing.* For the purposes of this section, “trawl gear testing” means deploying trawl gear in areas designated in this paragraph (d) under the following conditions.

(i) The codend shall be unzipped while trawl gear testing.

(ii) Groundfish shall not be possessed on board when trawl gear testing.

(iii) Observers aboard vessels during the time spent trawl gear testing shall not fulfill observer requirements at subpart E of this part.

(3) *Criteria.* The establishment of test areas must comply with the following criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year.

(4) *Test areas.* Trawl gear testing is allowed in the following areas (Figure 7 of this part) bounded by straight lines connecting the coordinates in the order listed, at all times:

(i) *Kodiak Test Area.*

57°37' N. lat., 152°02' W. long.

57°37' N. lat., 151°25' W. long.

57°23' N. lat., 151°25' W. long.

57°23' N. lat., 152°02' W. long.

57°37' N. lat., 152°02' W. long.

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(ii) *Sand Point Test Area.*

54°50' N. lat., 161°00' W. long.

54°50' N. lat., 160°30' W. long.

54°35' N. lat., 160°30' W. long.

54°35' N. lat., 161°00' W. long.

54°50' N. lat., 161°00' W. long.

(iii) *Bering Sea Test Area.*

55°00' N. lat., 167°00' W. long.

55°00' N. lat., 166°00' W. long.

54°40' N. lat., 166°00' W. long.

54°40' N. lat., 167°00' W. long.

55°00' N. lat., 167°00' W. long.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35579, July 5, 1996; 61 FR 49077, Sept. 18, 1996]

§ 679.25 Inseason adjustments.

(a) *General*—(1) *Types of adjustments.* Inseason adjustments issued by NMFS under this section include:

(i) Closure, extension, or opening of a season in all or part of a management area.

(ii) Modification of the allowable gear to be used in all or part of a management area.

(iii) Adjustment of TAC and PSC limits.

(iv) Interim closures of statistical areas, or portions thereof, to directed fishing for specified groundfish species.

(2) *Determinations.* (i) Any inseason adjustment taken under paragraphs (a)(1)(i), (ii), or (iii) of this section must be based on a determination that such adjustments are necessary to prevent:

(A) Overfishing of any species or stock of fish or shellfish;

(B) Harvest of a TAC for any groundfish species or the taking of a PSC limit for any prohibited species that, on the basis of the best available scientific information, is found by NMFS to be incorrectly specified; or

(C) Underharvest of a TAC or gear share of a TAC for any groundfish species when catch information indicates that the TAC or gear share has not been reached.

(ii) Any inseason closure of a statistical area, or portion thereof, under paragraph (a)(1)(iv) of this section, must be based upon a determination that such closures are necessary to prevent:

(A) A continuation of relatively high bycatch rates of prohibited species

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specified under § 679.21(b) in a statistical area, or portion thereof;

(B) Take of an excessive share of PSC limits or bycatch allowances established under § 679.21(d) and (e) by vessels fishing in a statistical area, or portion thereof;

(C) Closure of one or more directed fisheries for groundfish due to excessive prohibited species bycatch rates occurring in a specified fishery operating within all or part of a statistical area; or

(D) Premature attainment of established PSC limits or bycatch allowances and associated loss of opportunity to harvest the groundfish OY.

(iii) The selection of the appropriate inseason management adjustments under paragraphs (a)(1)(i) and (ii) of this section must be from the following authorized management measures and must be based upon a determination by the Regional Director that the management adjustment selected is the least restrictive necessary to achieve the purpose of the adjustment:

(A) Any gear modification that would protect the species in need of conservation, but that would still allow other fisheries to continue;

(B) An inseason adjustment that would allow other fisheries to continue in noncritical areas and time periods;

(C) Closure of a management area and season to all groundfish fishing; or

(D) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species or the “other species” category.

(iv) The adjustment of a TAC or PSC limit for any species under paragraph (a)(1)(iii) of this section must be based upon a determination by the Regional Director that the adjustment is based upon the best available scientific information concerning the biological stock status of the species in question and that the currently specified TAC or PSC limit is incorrect. Any adjustment to a TAC or PSC limit must be reasonably related to the change in biological stock status.

(v) The inseason closure of a statistical area, or a portion thereof, under paragraph (a)(1)(iv) of this section shall not extend beyond a 60-day period unless information considered under para-

graph (b) of this section warrants an extended closure period. Any closure of a statistical area, or portion thereof, to reduce prohibited species bycatch rates requires a determination by the Regional Director that the closure is based on the best available scientific information concerning the seasonal distribution and abundance of prohibited species and bycatch rates of prohibited species associated with various groundfish fisheries.

(b) *Data.* All information relevant to one or more of the following factors may be considered in making the determinations required under paragraphs (a)(2)(i) and (ii) of this section:

(1) The effect of overall fishing effort within a statistical area;

(2) Catch per unit of effort and rate of harvest;

(3) Relative distribution and abundance of stocks of groundfish species and prohibited species within all or part of a statistical area;

(4) Condition of a stock in all or part of a statistical area;

(5) Inseason prohibited species bycatch rates observed in groundfish fisheries in all or part of a statistical area;

(6) Historical prohibited species bycatch rates observed in groundfish fisheries in all or part of a statistical area;

(7) Economic impacts on fishing businesses affected; or

(8) Any other factor relevant to the conservation and management of groundfish species or any incidentally caught species that are designated as prohibited species or for which a PSC limit has been specified.

(c) *Procedure.* (1) No inseason adjustment issued under this section will take effect until—

(i) NMFS has filed the proposed adjustment for public inspection with the Office of the Federal Register; and

(ii) NMFS has published the proposed adjustment in the FEDERAL REGISTER for public comment for a period of 30 days before it is made final, unless NMFS finds for good cause that such notification and public procedure is impracticable, unnecessary, or contrary to the public interest.

(2) If NMFS decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment will be received by the Regional Director for a period of 15 days after the effective date of notification.

(3) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which an adjustment was based.

(4) If written comments are received during any such 15-day period that oppose or protest an inseason adjustment issued under this section, NMFS will reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, will either—

(i) Publish in the FEDERAL REGISTER notification of continued effectiveness of the adjustment, responding to comments received; or

(ii) Modify or rescind the adjustment.

(5) Notifications of inseason adjustments issued by NMFS under paragraph (a) of this section will include the following information:

(i) A description of the management adjustment.

(ii) Reasons for the adjustment and the determinations required under paragraph (a)(2)(i) of this section.

(iii) The effective date and any termination date of such adjustment. If no termination date is specified, the adjustment will terminate on the last day of the fishing year.

§ 679.26 Salmon Donation Program.

(a) *Authorized distributors*—(1) *Application*. An applicant seeking to become an authorized distributor must provide the Regional Director with the following information:

(i) Proof of the applicant's tax-exempt status.

(ii) A description of the arrangements for processing, shipping, storing, and transporting donated salmon and an estimate of the associated costs.

(iii) A statement describing the applicant's expertise in providing for the distribution of food product from remote Alaskan locations to hunger relief agencies, food bank networks, or food bank distributors, including arrangements for transportation, dis-

tribution costs, and product quality control.

(iv) Documentation of support from cold storage and transportation facilities.

(v) A proposed operating budget that is adequate to ensure that salmon donated under this program will be distributed to hunger relief agencies, food bank networks, or food bank distributors and that the salmon will be maintained in a manner fit for human consumption.

(vi) Proof of the applicant's ability to obtain and maintain adequate funding for the distribution of salmon under the SDP.

(vii) A copy of the applicant's articles of incorporation and bylaws showing that the purpose of the applicant includes providing food resources to hunger relief agencies, food bank networks, or food bank distributors.

(viii) Proof of the applicant's ability to take full responsibility for the documentation and disposition of salmon received under the SDP, including sufficient liability insurance to cover public interests relating to the quality of salmon distributed for human consumption.

(ix) Quality control criteria to be followed by vessels, processors, hunger relief agencies, food bank networks, and food bank distributors.

(x) The number of vessels and processors that the applicant is capable of administering effectively.

(xi) A list of all vessels and processors, food bank networks and food bank distributors participating in the SDP. The list of vessels and processors must include:

(A) The vessel's or processor's Federal fisheries permit number or Federal processor permit number.

(B) The name of the vessel owner or responsible operator or the name of the owner or plant manager of the processor.

(C) The vessel's or processor's telephone number and fax number.

(D) The signature of the vessel owner or responsible operator or the owner or plant manager of the processor.

(xii) A signed statement from the applicant and all persons listed under paragraph (a)(1)(xi) of this section who would conduct activities pursuant to

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the SDP permit waiving any and all claims against the United States and its agents and employees for any liability for personal injury, death, sickness, damage to property directly or indirectly due to activities conducted under the SDP.

(xiii) A list of locations where salmon must be delivered by participating vessels and processors.

(2) *Selection.* The Regional Director may select one or more tax-exempt organizations to be authorized distributors under the SDP based on the information submitted by applicants under paragraph (a)(1) of this section. The number of authorized distributors selected by the Regional Director will be based on the following criteria:

(i) The number and qualifications of applicants for SDP permits.

(ii) The number of harvesters and the quantity of salmon that applicants can effectively administer.

(iii) The anticipated level of salmon bycatch based on the salmon bycatch from previous years.

(iv) The potential number of vessels and processors participating in the groundfish trawl fisheries.

(3) *SDP Permit.* (i) After review of qualified applicants, the Regional Director will announce the selection of authorized distributor(s) in the FEDERAL REGISTER and will issue SDP permit(s).

(ii) The Regional Director may impose additional terms and conditions on an SDP permit consistent with the objectives of the SDP.

(iii) An SDP permit may be suspended, modified, or revoked under 15 CFR part 904 for noncompliance with terms and conditions specified in the permit or for a violation of this section or other regulations in this part.

(iv) An SDP permit remains in effect for a 3-year period after the selection notice is published in the FEDERAL REGISTER unless suspended or revoked. An SDP permit may not be transferred. An SDP permit issued to an authorized distributor may be renewed following the application procedures in this section.

(v) If the authorized distributor modifies any information on the SDP permit application submitted under paragraph (a)(1)(xi) or (a)(1)(xiii) of this

section, the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Director.

(b) *Reporting and Recordkeeping Requirements.* (1) A vessel or processor retaining salmon under the SDP must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the SDP must comply with applicable regulations at §§679.7(c)(2), and 679.21(c) that allow for the collection of data and biological sampling by an NMFS-certified observer prior to processing any salmon under the SDP.

(2) Salmon retained under the SDP must be packaged, and all packages must be labeled with the date of processing, the name of the processing facility, the contents and the weight of the salmon contained in the package and the words, "NMFS SALMON DONATION PROGRAM—NOT FOR SALE—PERISHABLE PRODUCT—KEEP FROZEN".

(3) A processor retaining or receiving salmon under the SDP and an authorized distributor must keep on file and make available for inspection by an authorized officer all documentation including receipt and cargo manifests setting forth the origin, weight, and destination of all salmon. Such documentation must be retained until 1 year after the effective period of the SDP permit.

(c) *Processing, handling, and distribution.* (1) Processing and reprocessing of all salmon retained under the SDP must be carried out under the direction of the authorized distributor. A processor retaining or receiving salmon under the SDP, at a minimum, must head, gut, and freeze the salmon in a manner that makes it fit for human consumption.

(2) Salmon that are determined to be unfit for human consumption prior to delivery to an authorized distributor must be discarded under §679.21(b). Salmon that are determined to be unfit for human consumption after delivery to the authorized distributor must be destroyed in accordance with applicable sanitation laws and regulations.

(3) Authorized distributors and persons conducting activities supervised by authorized distributors may retain

salmon only for the purpose of processing and delivering the salmon to hunger relief agencies, food networks or food distributors as provided by this section. Such persons may not consume or retain salmon for personal use and may not sell, trade or barter, or attempt to sell, trade or barter any salmon that is retained under the SDP.

(4) No salmon bycatch may be retained by a vessel or processor, or delivered to a delivery location under this section, unless the vessel or processor and delivery location is included on the list provided to the Regional Director under paragraph (a)(1)(xi), (a)(1)(xiii), or (a)(3)(v) of this section.

[61 FR 38359, July 24, 1996]

Subpart C—Western Alaska Community Development Quota Program

§ 679.30 General CDQ regulations.

(a) *State of Alaska CDQ responsibilities*—(1) *Compliance*. The State of Alaska must be able to ensure implementation of the CDPs once approved by NMFS. To accomplish this, the State must establish a monitoring system that defines what constitutes compliance and non-compliance.

(2) *Public hearings*. Prior to granting approval of a CDP recommended by the Governor, NMFS shall find that the Governor developed and approved the CDP after conducting at least one public hearing, at an appropriate time and location in the geographical area concerned, so as to allow all interested persons an opportunity to be heard. Hearing(s) on the CDP do not have to be held on the actual documents submitted to the Governor under paragraph (b) of this section, but must cover the substance and content of the proposed CDP in such a manner that the general public, and particularly the affected parties, have a reasonable opportunity to understand the impact of the CDP. The Governor must provide reasonable public notification of hearing date(s) and location(s). The Governor must make available for public review, at the time of public notification of the hearing, all state materials pertinent to the hearing(s) and must include a transcript or summary of the

public hearing(s) with the Governor's recommendations to NMFS in accordance with this subpart. At the same time this transcript is submitted to NMFS, it must be made available, upon request, to the public. The public hearing held by the Governor will serve as the public hearing for purposes of NMFS review under paragraph (c) of this section.

(3) *Council consultation*. Before sending his/her recommendations for approval of CDPs to NMFS, the Governor must consult with the Council, and make available, upon request, CDPs that are not part of the Governor's recommendations.

(b) *CDP application*. The Governor, after consultation with the Council, shall include in his or her written findings to NMFS recommending approval of a CDP, that the CDP meets the requirements of these regulations, the Magnuson Act, the Alaska Coastal Management Program, and other applicable law. At a minimum, the submission must discuss the determination of a community as eligible; information regarding community development, including goals and objectives; business information; and a statement of the managing organization's qualifications. For purposes of this section, an eligible community includes any community or group of communities that meets the criteria set out in paragraph (d) of this section. Applications for a CDP must include the following information:

(1) *Community development information*. Community development information includes:

(i) *Project description*. A description of the CDP projects that are proposed to be funded by the CDQ and how the CDP projects satisfy the goals and purpose of the CDQ program.

(ii) *Allocation request*. The allocation of each CDQ species requested for each subarea or district of the BSAI, as defined at § 679.2 and for each IPHC regulatory area, as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title.

(iii) *Project schedule*. The length of time the CDQ will be necessary to achieve the goals and objectives of the CDP, including a project schedule with

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measurable milestones for determining progress.

(iv) *Employment.* The number of individuals to be employed under the CDP, the nature of the work provided, the number of employee-hours anticipated per year, and the availability of labor from the applicant's community(ies).

(v) *Vocational and educational programs.* Description of the vocational and educational training programs that a CDQ allocation under the CDP would generate.

(vi) *Existing infrastructure.* Description of existing fishery-related infrastructure and how the CDP would use or enhance existing harvesting or processing capabilities, support facilities, and human resources.

(vii) *New capital.* Description of how the CDP would generate new capital or equity for the applicant's fishing and/or processing operations.

(viii) *Transition plan.* A plan and schedule for transition from reliance on the CDQ allocation under the CDP to self-sufficiency in fisheries.

(ix) *Short- and long-term benefits.* A description of short- and long-term benefits to the applicant from the CDQ allocation.

(2) *Business information.* Business information includes:

(i) *Method of harvest.* Description of the intended method of harvesting the CDQ allocation, including the types of products to be produced; amounts to be harvested; when, where, and how harvesting is to be conducted; and names and permit numbers of the vessels that will be used to harvest a CDQ allocation.

(ii) *Target market and competition.* Description of the target market for sale of products and competition existing or known to be developing in the target market.

(iii) *Business relationships.* Description of business relationships between all business partners or with other business interests, if any, including arrangements for management, audit control, and a plan to prevent quota overages. For purposes of this section, business partners means all individuals who have a financial interest in the CDQ project.

(iv) *Profit sharing.* Description of profit sharing arrangements.

(v) *Funding.* Description of all funding and financing plans.

(vi) *Partnerships.* Description of joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties.

(vii) *General budget for implementing the CDP.* A general budget is a general account of estimated income and expenditures for each CDP project that is described in paragraph (b)(1)(i) of this section for the total number of calendar years that the CDP is in effect.

(viii) *Capital equipment.* A list of all capital equipment.

(ix) *Cash flow.* A cash flow and break-even analysis.

(x) *Income statement.* A balance sheet and income statement, including profit, loss, and return on investment for the proposed CDP.

(3) *Statement of managing organization's qualifications.* Statement of the managing organization's qualifications includes:

(i) *Structure and personnel.* Information regarding its management structure and key personnel, such as resumes and references; including the name, address, fax number, and telephone number of the managing organization's representative; and

(ii) *Management qualifications.* A description of how the managing organization is qualified to manage a CDQ allocation and prevent quota overages. For purposes of this section, a qualified managing organization means any organization or firm that would assume responsibility for managing all or part of the CDP and that meets the following criteria:

(A) *Official letter of support.* Documentation of support from each community represented by the applicant for a CDP through an official letter of support approved by the governing body of the community.

(B) *Legal relationship.* Documentation of a legal relationship between the CDP applicant and the managing organization (if the managing organization is different from the CDP applicant), which clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement.

(C) *Expertise.* Demonstration of management and technical expertise necessary to carry out the CDP as proposed by the CDP application (e.g., proven business experience as shown by a balance and income statement, including profit, loss, and the return on investment on all business ventures within the previous 12 months by the managing organization).

(c) *Review and approval of CDPs—(1) Consistent with criteria.* (i) Upon receipt by NMFS of the Governor's recommendation for approval of proposed CDPs, NMFS will review the record to determine whether the community eligibility criteria and the evaluation criteria set forth in paragraph (d) of this section have been met. NMFS shall then approve or disapprove the Governor's recommendation within 45 days of its receipt.

(ii) In the event of approval, NMFS shall notify the Governor and the Council in writing that the Governor's recommendations for CDPs are consistent with the evaluation criteria under paragraph (d) of this section and other applicable law, including NMFS reasons for approval.

(iii) Publication of the decision, including the percentage of each CDQ reserve for each subarea or district allocated under the CDPs and the availability of the findings, will be published in the FEDERAL REGISTER.

(iv) NMFS will allocate no more than 33 percent of the total CDQ to any approved CDP application.

(v) A CDQ community may not concurrently receive more than one pollock, halibut, or sablefish allocation and only one application for each type of CDP per CDQ applicant will be accepted.

(2) *Not consistent with criteria.* (i) If NMFS finds that the Governor's recommendations for CDQ allocations are not consistent with the evaluation criteria set forth in these regulations and disapproves the Governor's recommendations, NMFS shall so advise the Governor and the Council in writing, including the reasons therefor.

(ii) Notification of the decision will be published in the FEDERAL REGISTER.

(3) *Revised CDP.* (i) The CDP applicant may submit a revised CDP to the Governor for submission to NMFS.

(ii) Review by NMFS of a revised CDP application will be in accordance with the provisions set forth in this section.

(d) *Evaluation criteria.* NMFS will approve the Governor's recommendations for CDPs if NMFS finds the CDP is consistent with the requirements of these regulations, including the following:

(1) *CDP application.* Each CDP application is submitted in compliance with the application procedures described in paragraph (b) of this section.

(2) *NMFS review.* Prior to approval of a CDP recommended by the Governor, NMFS will review the Governor's findings to determine that each community that is part of a CDP is listed in Table 7 of this part or meets the following criteria for an eligible community:

(i) The community is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea.

(ii) The community is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Public Law 92-203) to be a native village.

(iii) The residents of the community conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI.

(iv) The community has not previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The community of Unalaska is excluded under this provision.

(3) *Qualified managing organization.* Each CDP application demonstrates that a qualified managing organization will be responsible for the harvest and use of the CDQ allocation pursuant to the CDP.

(4) *Exceeding the CDQ allocation.* Each CDP application demonstrates that its

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managing organization can effectively prevent exceeding the CDQ allocation.

(5) *Governor's findings.* The Governor has found for each recommended CDP that:

(i) The CDP and the managing organization are fully described in the CDP application, and have the ability to successfully meet the CDP milestones and schedule.

(ii) The managing organization has an adequate budget for implementing the CDP, and the CDP is likely to be successful.

(iii) A qualified applicant has submitted the CDP application and the applicant and managing organization have the support of each community participating in the proposed CDQ project as demonstrated through an official letter approved by the governing body of each such community.

(iv) The following factors have been considered:

(A) The number of individuals from applicant communities who will be employed under the CDP, the nature of their work, and career advancement.

(B) The number and percentage of low income persons residing in the applicant communities, and the economic opportunities provided to them through employment under the CDP.

(C) The number of communities co-operating in the application.

(D) The relative benefits to be derived by participating communities and the specific plans for developing a self-sustaining fisheries economy.

(E) The success or failure of the applicant and/or the managing organization in the execution of a prior CDP (e.g., exceeding a CDQ allocation or any other related violation may be considered a failure and may therefore result in partially or fully precluding a CDP from a future CDQ allocation).

(6) *Qualified applicant.* For purposes of this paragraph (d), "qualified applicant" means:

(i) A local fishermen's organization from an eligible community, or group of eligible communities, that is incorporated under the laws of the State of Alaska, or under Federal law, and whose board of directors is composed of at least 75 percent resident fishermen of the community (or group of commu-

nities) that is (are) making an application; or

(ii) A local economic development organization incorporated under the laws of the State of Alaska, or under Federal law, specifically for the purpose of designing and implementing a CDP, and that has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities) that is (are) making an application.

(7) *Resident fisherman.* For the purpose of this paragraph (d), "resident fisherman" means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in the community and is eligible to receive an Alaska Permanent Fund dividend at that address.

(8) *Board of directors.* If a qualified applicant represents more than one community, the board of directors of the applicant must include at least one member from each of the communities represented.

(e) *Monitoring of CDPs—(1) CDP reports.* The following reports must be submitted to NMFS:

(i) *Annual progress reports.* (A) CDP applicants are required to submit annual progress reports to the Governor by June 30 of the year following allocation.

(B) Annual progress reports will include information describing how the CDP has met its milestones, goals, and objectives.

(C) On the basis of those reports, the Governor will submit an annual progress report to NMFS and recommend whether CDPs should be continued.

(D) NMFS must notify the Governor in writing within 45 days of receipt of the Governor's annual progress report, accepting or rejecting the annual progress report and the Governor's recommendations.

(E) If NMFS rejects the Governor's annual progress report, NMFS will return it for revision and resubmission.

(F) The report will be deemed approved if NMFS does not notify the Governor in writing within 45 days of the report's receipt.

(ii) *Annual budget report.* (A) An annual budget report is a detailed estimation of income and expenditures for each CDP project as described in paragraph (b)(1)(i) of this section for a calendar year.

(B) The annual budget report must be submitted to NMFS by December 15 preceding the year for which the annual budget applies.

(C) Annual budget reports are approved upon receipt by NMFS, unless disapproved in writing by December 31. If disapproved, the annual budget report may be revised and resubmitted to NMFS.

(D) NMFS will approve or disapprove a resubmitted annual budget report in writing.

(iii) *Annual budget reconciliation report.* A CDQ group must reconcile each annual budget by May 30 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures, including the variance in dollars and variance in percentage for each CDP project that is described in paragraph (b)(1)(i) of this section. If a general budget, as described in paragraph (b)(2)(vii) of this section, is no longer correct due to the reconciliation of an annual budget, then the general budget must also be revised to reflect the annual budget reconciliation. The revised general budget must be included with the annual budget reconciliation report.

(2) *Increase in CDQ allocation.* If an applicant requests an increase in a CDQ, the applicant must submit a new CDP application for review by the Governor and approval by NMFS as described in paragraphs (b) and (c) of this section.

(3) *Substantial amendments.* (i) A CDP is a working business plan and must be kept up to date. Substantial amendments, as described in paragraph (e)(3)(iv) of this section, to a CDP will require written notification to the Governor and subsequent approval by the Governor and NMFS before any change in a CDP can occur. The Governor may recommend to NMFS that the request for an amendment be approved.

(ii) NMFS may notify the Governor in writing of approval or disapproval of the amendment within 30 days of receipt of the Governor's recommendation. The Governor's recommendation for approval of an amendment will be deemed approved if NMFS does not notify the Governor in writing within 30 calendar days of receipt of the Governor's recommendation.

(iii) If NMFS determines that the CDP, if changed, would no longer meet the criteria under paragraph (d) of this section, or if any of the requirements under this section would not be met, NMFS shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(iv) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to, any of the following:

(A) Any change in the applicant communities or replacement of the managing organization.

(B) A change in the CDP applicant's harvesting or processing partner.

(C) Funding a CDP project in excess of \$100,000 that is not part of an approved general budget.

(D) More than a 20-percent increase in the annual budget of an approved CDP project.

(E) More than a 20-percent increase in actual expenditures over the approved annual budget for administrative operations.

(F) A change in the contractual agreement(s) between the CDP applicant and its harvesting or processing partner, or a change in a CDP project, if such change is deemed by the Governor or NMFS to be a material change.

(v) Notification of an amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate.

(B) An explanation of why the proposed change to the CDP is an amendment according to paragraph (e)(3)(i) of this section.

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment.

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(D) A comparison of the original CDP text with the text of the proposed changes to the CDP, and the changed pages of the CDP for replacement in the CDP binder.

(E) Identification of any NMFS findings that would need to be modified if the amendment is approved along with the proposed modified text.

(F) A description of how the proposed amendment meets the requirements of this subpart. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(4) *Technical amendments.* (i) Any change to a CDP that is not a substantial amendment as defined in paragraph (e)(3)(iv) of this section is a technical amendment. It is the responsibility of the CDQ group to coordinate with the Governor to ensure that a proposed technical amendment does not meet the definition for a substantial amendment. Technical amendments require written notification to the Governor and NMFS before the change in a CDP occurs.

(ii) A technical amendment will be approved when the CDQ group receives a written notification from NMFS announcing the receipt of the technical amendment. The Governor may recommend to NMFS, in writing, that a technical amendment be disapproved at any time. NMFS may disapprove a technical amendment in writing at any time, with the reasons therefor.

(iii) Notification should include:

(A) The pages of the CDP, with the text highlighted to show deletions and additions.

(B) The changed pages of the CDP for replacement in the CDP binder.

(5) *Cease fishing operations.* It is the responsibility of the CDQ-managing organization to cease fishing operations once a CDQ allocation has been reached.

(f) *Suspension or termination of a CDP—(1) Governor's recommendation.* (i) NMFS, at any time, may partially suspend, suspend, or terminate any CDP upon written recommendation of the Governor setting out his or her reasons that the CDP recipient is not complying with these regulations.

(ii) After review of the Governor's recommendation and reasons for a partial suspension, suspension, or termination

of a CDP, NMFS will notify the Governor in writing of approval or disapproval of his or her recommendation within 45 days of its receipt.

(iii) In the event of approval of the Governor's recommendation, NMFS will publish an announcement in the FEDERAL REGISTER that the CDP has been partially suspended, suspended, or terminated, along with reasons therefor.

(2) *Non-compliance.* NMFS also may partially suspend, suspend, or terminate any CDP at any time if NMFS finds a recipient of a CDQ allocation pursuant to the CDP is not complying with these regulations, other regulations, or provisions of the Magnuson Act or other applicable law. Publication of suspension or termination will appear in the FEDERAL REGISTER, along with the reasons therefor.

(3) *Review of allocation.* An annual progress report, required under paragraph (e)(1)(i) of this section, will be used by the Governor to review each CDP to determine whether the CDP and CDQ allocation thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(i) If the Governor determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(ii) If the Governor recommends to NMFS that an allocation be decreased, the Governor's recommendation for decrease will be deemed approved if NMFS does not notify the Governor, in writing, within 30 days of receipt of the Governor's recommendation.

(iii) If the Governor determines that a CDP has not successfully met its goals and objectives, or appears unlikely to become successful, the Governor may submit a recommendation to NMFS that the CDP be partially suspended, suspended, or terminated. The Governor must set out, in writing, his or her reasons for recommending suspension or termination of the CDP.

(iv) After review of the Governor's recommendation and reasons therefor, NMFS will notify the Governor, in writing, of approval or disapproval of his or her recommendation within 30 days of its receipt. In the case of suspension or termination, NMFS will

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publish notification in the FEDERAL REGISTER, with reasons therefor.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35579, July 5, 1996; 61 FR 41745, Aug. 12, 1996]

§ 679.31 CDQ reserve.

(a) *Pollock CDQ reserve (applicable through December 31, 1998).* (1) In the proposed and final harvest specifications required under § 679.20(c), one-half of the pollock TAC placed in the reserve for each subarea or district will be assigned to a CDQ reserve for each subarea or district.

(2) NMFS may add any amount of a CDQ reserve back to the nonspecific reserve if, after September 30, the Regional Director determines that amount will not be used during the remainder of the fishing year.

(b) *Halibut CDQ reserve.* (1) NMFS will annually withhold from IFQ allocation the proportions of the halibut catch limit that are specified in this paragraph (b) for use as a CDQ reserve.

(2) Portions of the CDQ for each specified IPHC regulatory area may be allocated for the exclusive use of an eligible Western Alaska community or group of communities in accordance with a CDP approved by the Governor in consultation with the Council and approved by NMFS.

(3) The proportions of the halibut catch limit annually withheld for purposes of the CDQ program, exclusive of issued QS, are as follows for each IPHC regulatory area:

(i) *Area 4B.* In IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in or proximate to this regulatory area. For the purposes of this section, "proximate to" an IPHC regulatory area means within 10 nm from the point where the boundary of the IPHC regulatory area intersects land.

(ii) *Area 4C.* In IPHC regulatory area 4C, 50 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in IPHC regulatory area 4C.

(iii) *Area 4D.* In IPHC regulatory area 4D, 30 percent of the halibut quota shall be made available for the halibut

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CDQ program to eligible communities located in or proximate to IPHC regulatory areas 4D and 4E.

(iv) *Area 4E.* In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available for the halibut CDQ program to communities located in or proximate to IPHC regulatory area 4E. A fishing trip limit of 6,000 lb (2.7 mt) will apply to halibut CDQ harvesting in IPHC regulatory area 4E.

(c) *Sablefish CDQ reserve.* In the proposed and final harvest limit specifications required under § 679.20(c), NMFS will specify 20 percent of the fixed gear allocation of sablefish in each BSAI subarea as a sablefish CDQ reserve, exclusive of issued QS. Portions of the CDQ reserve for each subarea may be allocated for the exclusive use of CDQ applicants in accordance with CDPs approved by the Governor in consultation with the Council and approved by NMFS. NMFS will allocate no more than 33 percent of the total CDQ for all subareas combined to any one applicant with an approved CDP application.

§ 679.32 Estimation of total pollock harvest in the CDQ fisheries (applicable through December 31, 1998).

(a) *Recordkeeping and reporting requirements.* Vessels and processors participating in pollock CDQ fisheries must comply with recordkeeping and reporting requirements set out at § 679.5.

(b) *Total pollock harvests—(1) Observer estimates.* Total pollock harvests for each CDP will be determined by observer estimates of total catch and catch composition, as reported on the daily observer catch message.

(2) *Cease fishing.* The CDQ-managing organization must arrange to receive a copy of the observer daily catch message from processors in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocation has been exceeded. CDQ-managing organization representatives must also inform NMFS within 24 hours after the CDQ has been reached and fishing has ceased.

(3) *NMFS estimates.* If NMFS determines that the observer, the processor, or the CDQ-managing organization

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failed to follow the procedures described in paragraphs (c), (d), and (e) of this section for estimating the total harvest of pollock, or violated any other regulation in this subpart C of this part, NMFS reserves the right to estimate the total pollock harvest based on the best available data.

(c) *Observer coverage.* Vessel operators and processors participating in CDQ fisheries must comply with the following requirements for observer coverage:

(1) *Shoreside processor.* (i) Each shoreside processor participating in the CDQ fisheries must have one NMFS-certified observer present at all times while groundfish harvested under a CDQ are being received or processed.

(ii) The Regional Director is authorized to require more than one observer for a shoreside processor if:

(A) The CDQ delivery schedule requires an observer to be on duty more than 12 hours in a 24-hour period;

(B) Simultaneous deliveries of CDQ harvests by more than one vessel cannot be monitored by a single observer; or

(C) One observer is not capable of adequately monitoring CDQ deliveries.

(2) *Processor vessel.* Each processor vessel participating in the CDQ fisheries must have two NMFS-certified observers aboard the vessel at all times while groundfish harvested under a CDQ are being harvested, processed, or received from another vessel.

(3) *Catcher vessel.* Observer coverage requirements for catcher vessels participating in the CDQ fisheries are in addition to any observer coverage requirements in subpart E of this part. Each catcher vessel delivering groundfish harvested under a CDQ, other than a catcher vessel delivering only unsorted codends to a processor or another vessel, must have a NMFS-certified observer on the vessel at all times while the vessel is participating in the CDQ fisheries, regardless of the vessel length.

(d) *Shoreside processor equipment and operational requirements.* Each shoreside processor participating in the CDQ fisheries must comply with the following requirements:

(1) *Certified scale.* Groundfish harvested in the CDQ fisheries must be recorded and weighed on a scale certified

by the State of Alaska. Such a scale must measure catch weights at all times to at least 95-percent accuracy, as determined by a NMFS-certified observer or authorized officer. The scale and scale display must be visible simultaneously by the observer.

(2) *Access to scale.* Observers must be provided access to the scale used to weigh groundfish landings.

(3) *Retention of scale printouts.* Printouts of scale measurements of each CDQ delivery must be made available to observers and be maintained in the shoreside processor for the duration of the fishing year, or for as long after a fishing year as product from fish harvested during that year are retained in the shoreside processor.

(4) *Prior notice of offloading schedule.* The manager of each shoreside processor must notify the observer(s) of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the weighing of the entire delivery.

(e) *Processor vessel measurement requirements.* Each processor vessel participating in the CDQ fishery for pollock must estimate the total weight of its groundfish catch by the volumetric procedures specified in this paragraph (e).

(1) *Receiving bins.* Each processor vessel estimating its catch by volumetric measurement must have one or more receiving bins in which all fish catches are placed to determine total catch weight prior to sorting operations.

(2) *Bin volume.* The volume of each bin must be accurately measured, and the bin must be permanently marked and numbered in 10-cm increments on all internal sides of the bin. Marked increments, except those on the wall containing the viewing port or window, must be readable from the outside of the bin at all times. Bins must be lighted in a manner that allows marked increments to be read from the outside of the bin by a NMFS-certified observer or authorized officer.

(3) *Bin certification.* (i) The bin volume and marked and numbered increments must be certified by a registered engineer with no financial interest in fishing, fish processing, or fish tender vessels, or by a qualified organization

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that has been designated by the USCG Commandant, or an authorized representative thereof, for the purpose of classing or examining commercial fishing industry vessels under the provisions of 46 CFR 28.76.

(ii) Bin volumes and marked and numbered increments must be recertified each time a bin is structurally or physically changed.

(iii) The location of bin markings, as certified, must be described in writing. Tables certified under this paragraph (e)(1)(iii) indicating the volume of each certified bin in cubic meters for each 10-cm increment marked on the sides of the bins, must be submitted to the NMFS Observer Program prior to harvesting or receiving groundfish and must be maintained on board the vessel and made available to NMFS-certified observers at all times.

(iv) All bin certification documents must be dated and signed by the certifier.

(4) *Prior notification.* Vessel operators must notify observers prior to any removal or addition of fish from each bin used for volumetric measurements of catch in such a manner that allows an observer to take bin volume measurements prior to fish being removed from or added to the bin. Once a volumetric measurement has been taken, additional fish may not be added to the bin until at least half the original volume has been removed. Fish may not be removed from or added to a bin used for volumetric measurements of catch until an observer indicates that bin volume measurements have been completed and any samples of catch required by the observer have been taken.

(5) *Separation of fish.* Fish from separate hauls or deliveries from separate harvesting vessels may not be mixed in any bin used for volumetric measurements of catch.

(6) *Bin viewing port.* The receiving bins must not be filled in a manner that obstructs the viewing ports or prevents the observer from seeing the level of fish throughout the bin.

[61 FR 31230, June 19, 1996; 61 FR 37843, July 22, 1996 as amended at 61 FR 41745, Aug. 12, 1996]

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§ 679.33 Halibut and sablefish CDQ.

(a) *Permits.* The Regional Director will issue a halibut and/or sablefish CDQ permit to the managing organization responsible for carrying out an approved CDQ project. A copy of the halibut and/or sablefish CDQ permit must be carried on any fishing vessel operated by or for the managing organization, and be made available for inspection by an authorized officer. Each halibut and/or sablefish CDQ permit will be non-transferable and will be effective for the duration of the CDQ project or until revoked, suspended, or modified.

(b) *CDQ cards.* The Regional Director will issue halibut and/or sablefish CDQ cards to all individuals named on an approved CDP application. Each halibut and/or sablefish CDQ card will identify a CDQ permit number and the individual authorized by the managing organization to land halibut and/or sablefish for debit against its CDQ allocation.

(c) *Alteration.* No person may alter, erase, or mutilate a halibut and/or sablefish CDQ permit, card, registered buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, or mutilated will be invalid.

(d) *Landings.* All landings of halibut and/or sablefish harvested under an approved CDQ project, dockside sales, and outside landings of halibut and/or sablefish must be landed by a person with a valid halibut and/or sablefish CDQ card to a person with a valid registered buyer permit, and reported in compliance with § 679.5 (l)(1) and (l)(2).

(e) *CDQ fishing seasons.* See § 679.23(e)(4).

§ 679.34 CDQ halibut and sablefish determinations and appeals.

Section 679.43 describes the procedure for appealing initial administrative determinations for the halibut and sablefish CDQ program made under this subpart C of this part.

Subpart D—Individual Fishing Quota Management Measures

§ 679.40 Sablefish and halibut QS.

The Regional Director shall annually divide the TAC of halibut and sablefish that is apportioned to the fixed gear fishery pursuant to the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title and § 679.20, minus the CDQ reserve, among qualified halibut and sablefish quota share holders, respectively.

(a) *Initial allocation of QS*—(1) *General*. The Regional Director shall initially assign to qualified persons, on or after October 18, 1994, halibut and sablefish fixed gear fishery QS that are specific to IFQ regulatory areas and vessel categories. QS will be assigned as a block in the appropriate IFQ regulatory area and vessel category, if that QS would have resulted in an allocation of less than 20,000 lb (9 mt) of IFQ for halibut or sablefish based on the 1994 TAC for fixed gear in those fisheries for specific IFQ regulatory areas and the QS pools of those fisheries for specific IFQ regulatory areas as of October 17, 1994.

(2) *Qualified person*. (i) As used in this section, a “qualified person” means a “person,” as defined in § 679.2:

(A) That owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year; or

(B) That leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year. A person who owns a vessel cannot be a qualified person based on the legal fixed gear landings of halibut or sablefish made by a person who leased the vessel for the duration of the lease.

(ii) Qualified persons, or their successors-in-interest, must exist at the time of their application for QS.

(iii) A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for QS in proportion to his or her interest in the dissolved partnership or corporation.

(iv) Sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered in determining whether a person is a qualified person.

(3) *Qualification for QS*—(i) *Year*. A QS qualifying year is 1988, 1989, or 1990.

(ii) *Vessel ownership*. Evidence of vessel ownership shall be limited to the following documents, in order of priority:

(A) For vessels required to be documented under the laws of the United States, the USCG abstract of title issued in respect of that vessel.

(B) A certificate of registration that is determinative as to vessel ownership.

(C) A bill of sale.

(iii) *Vessel lease*. Conclusive evidence of a vessel lease will include a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Conclusive evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect. Other evidence, which may not be conclusive, but may tend to support a vessel lease, may also be submitted.

(iv) *Ownership interest*. Evidence of ownership interest in a dissolved partnership or corporation shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest.

(v) *Legal landing of halibut or sablefish*—(A) *Definition*. As used in this section, a “legal landing of halibut or sablefish” means halibut or sablefish harvested with fixed gear and landed in compliance with state and Federal regulations in effect at the time of the landing.

(B) *Documentation*. Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of halibut or sablefish harvested, the IPHC regulatory area or groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the

date of harvesting, landing, or reporting. State catch reports are Alaska, Washington, Oregon, or California fish tickets. Federal catch reports are WPRs required under § 679.5. Sablefish harvested within Prince William Sound or under a State of Alaska limited entry program will not be considered in determining qualification to receive QS, nor in calculating initial QS.

(4) *Calculation of initial QS*—(i) *Halibut QS*. The Regional Director shall calculate the halibut QS for any qualified person in each IFQ regulatory area based on that person's highest total legal landings of halibut in each IPHC regulatory area for any 5 years of the 7-year halibut QS base period 1984 through 1990. The sum of all halibut QS for an IFQ regulatory area will be the halibut QS pool for that area.

(ii) *Sablefish QS*. The Regional Director shall calculate the sablefish QS for any qualified person in each IFQ regulatory area based on that person's highest total legal landings of sablefish in each groundfish reporting area for any 5 years of the 6-year sablefish QS base period 1985 through 1990. The sum of all sablefish QS for an IFQ regulatory area will be the sablefish QS pool for that area.

(iii) *CDQ program*. Each initial QS calculation will be modified to accommodate the CDQ program prescribed at subpart C of this part.

(5) *Assignment of QS to vessel categories*—(i) *LOA*. Each qualified person's QS will be assigned to a vessel category based on the LOA of vessel(s) from which that person made fixed gear legal landings of groundfish or halibut in the most recent year of participation and the product type landed. As used in this paragraph (a)(5), "the most recent year of participation" means the most recent of 4 calendar years in which any groundfish or halibut were harvested using fixed gear, as follows: 1988, 1989, or 1990; or calendar year 1991 prior to September 26, 1991.

(ii) *Vessel categories*. QS and its associated IFQ assigned to vessel categories include:

(A) Category A QS and associated IFQ, which authorizes an IFQ cardholder to harvest and process IFQ species on a vessel of any length;

(B) Category B QS and associated IFQ, which authorizes an IFQ cardholder to harvest IFQ species on a vessel of any length;

(C) Category C QS and associated IFQ, which authorizes an IFQ cardholder to harvest IFQ species on a vessel less than or equal to 60 ft (18.3 m) LOA;

(D) Category D QS and associated IFQ, which authorizes an IFQ cardholder to harvest IFQ halibut on a vessel less than or equal to 35 ft (10.7 m) LOA;

(iii) *QS assignment*. A qualified person's QS will be assigned:

(A) To vessel category A if, at any time during his/her most recent year of participation, that person's vessel processed any groundfish or halibut caught with fixed gear.

(B) To vessel category B if, at any time during his/her most recent year of participation, that person's vessel was greater than 60 ft (18.3 m) LOA and did not process any groundfish or halibut caught with fixed gear.

(C) To each applicable vessel category in proportion to the landings of halibut or sablefish made by that person if, at any time during their most recent year of participation, that person used more than one vessel in different categories.

(iv) *Sablefish QS*. A qualified person's sablefish QS will be assigned:

(A) To vessel category C if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 60 ft (18.3 m) LOA and did not process any groundfish or halibut caught with fixed gear.

(B) To the vessel category in which halibut and groundfish were landed, or vessel categories in proportion to the total fixed gear landings of halibut and groundfish, if, at any time during the most recent year of participation, that person's vessel(s) makes no landing(s) of sablefish.

(v) *Halibut QS*. A qualified person's halibut QS will be assigned:

(A) To vessel category C if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 60 ft (18.3 m), but greater than 35 ft (10.7 m), LOA and did not process any groundfish or halibut caught with fixed gear.

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(B) To vessel category D if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 35 ft (10.7 m) LOA and did not process any groundfish or halibut caught with fixed gear.

(C) To the vessel category in which groundfish were landed, or vessel categories in proportion to the total fixed gear landings of groundfish, if, at any time during the most recent year of participation, that person's vessel(s) makes no landing(s) of halibut.

(vi) *Both species QS.* A qualified person's QS for both species will be assigned to the vessel category in which groundfish were landed in the most recent year of participation if, at any time during that year, that person landed halibut in one vessel category and sablefish in a different vessel category.

(6) *Application for initial QS—(i) Application form.* Upon request, the Regional Director shall make available to any person an application form for an initial allocation of QS. The application form sent to the person requesting a QS allocation will include all data on that person's vessel ownership and catch history of halibut and sablefish that can be released to the applicant under current state and Federal confidentiality rules, and that are available to the Regional Director at the time of the request.

(ii) *Application period.* An application period of no less than 180 days will be specified by notification in the FEDERAL REGISTER and other information sources that the Regional Director deems appropriate.

(iii) *Complete application.* Complete applications received by the Regional Director will be acknowledged. An incomplete application will be returned to the applicant with specific kinds of information identified that are necessary to make it complete.

(7) *Insufficient documentation.* Halibut and sablefish catch history, vessel ownership or lease data, and other information supplied by an applicant will be compared with data compiled by the Regional Director. If additional data presented in an application are not consistent with the data compiled by the Regional Director, the applicant will be notified of insufficient docu-

mentation. The applicant will have 90 days to submit corroborating documents (as specified in paragraph (a) of this section) in support of his/her application or to resubmit a revised application. All applicants will be limited to one opportunity to provide corroborating documentation or a revised application in response to notification of insufficient documentation.

(8) *Verified data.* Uncontested data in applications will be approved by the Regional Director. Based on these data, the Regional Director will calculate each applicant's initial halibut and sablefish QS, as provided in paragraph (b) of this section, for each IFQ regulatory area, respectively, and will add each applicant's halibut and sablefish QS for an IFQ regulatory area to the respective QS pool for that area.

(9) *Unverified data.* Catch history, vessel ownership, or lease data that cannot be verified by the Regional Director, following the procedure described in paragraph (a)(7) of this section, will not qualify for QS. An initial determination denying QS on the grounds that claimed catch history, vessel ownership or lease data were not verified may be appealed following the procedure described in § 679.43. Quota share reflecting catch history, vessel ownership, or lease data that are contested between two or more applicants, at least one of which is likely to qualify for QS when the dispute is resolved, will be assigned to a reserve that will be considered part of the QS pool for the appropriate IFQ regulatory area. Any QS and IFQ that results from agency action resolving the dispute will be assigned to the prevailing applicant(s) pursuant to paragraphs (a)(4), (a)(5), (b), and (c) of this section. If the assigned IFQ for the 1995 fishing season becomes moot by passage of time needed to resolve the dispute, the assignment of QS and IFQ for subsequent fishing seasons will be unaffected.

(b) *Annual allocation of IFQ.* The Regional Director shall assign halibut or sablefish IFQs to each person holding unrestricted QS for halibut or sablefish, respectively, up to the limits prescribed in § 679.42 (e) and (f). Each assigned IFQ will be specific to an IFQ regulatory area and vessel category, and will represent the maximum

amount of halibut or sablefish that may be harvested from the specified IFQ regulatory area and by the person to whom it is assigned during the specified fishing year, unless the IFQ assignment is changed by the Regional Director within the fishing year because of an approved transfer or because all or part of the IFQ is sanctioned for violating rules of this part.

(c) *Calculation of annual IFQ allocation*—(1) *General*. The annual allocation of IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the TAC of halibut or sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska CDQ Program) and that person's QS divided by the QS pool for that area. Overages will be subtracted from a person's IFQ pursuant to paragraph (d) of this section. Expressed algebraically, the annual IFQ allocation formula is as follows:

$$\text{IFQ}_{pa} = [(\text{fixed gear TAC}_a - \text{CDQ reserve}_a) \times (\text{QS}_{pa}/\text{QS pool}_a)] - \text{overage of IFQ}_{pa}.$$

(2) *QS amounts*. For purposes of calculating IFQs for any fishing year, the amount of a person's QS and the amount of the QS pool for any IFQ regulatory area will be the amounts on record with the Alaska Region, NMFS, as of 1200 hours, A.l.t., on January 31 of that year.

(3) *IFQ permit*. The Regional Director shall issue to each QS holder, pursuant to § 679.4, an IFQ permit accompanied by a statement specifying the maximum amount of halibut and sablefish that may be harvested with fixed gear in a specified IFQ regulatory area and vessel category as of January 31 of that year. Such IFQ permits will be mailed to each QS holder at the address on record for that person after the beginning of each fishing year but prior to the start of the annual IFQ fishing season.

(d) *Ten-percent adjustment policy*. A person's annual IFQ account will be adjusted in the year following a determination that the person harvested or landed IFQ species in an amount is greater than the amount available in the person's annual IFQ account and if the amount greater than the amount available does not exceed 10 percent of the amount available in the person's

annual IFQ account at the time of landing. The adjustment would be a deduction of the amount of IFQ species harvested or landed that was determined to exceed the amount available in the person's annual IFQ account and will apply to any person to whom the affected IFQ is allocated in the year following the determination.

(e) *Underages*. Underages of up to 10 percent of a person's total annual IFQ account for a current fishing year will be added to that person's annual IFQ account in the year following determination of the underage. This underage adjustment to the annual IFQ allocation will be specific to IFQ species, IFQ regulatory area, and vessel category for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an underage.

(f) *Harvesting privilege*. Quota shares allocated or permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the "takings" provision of the Fifth Amendment of the U.S. Constitution. Rather, such quota shares or permits represent only a harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson Act and other applicable law.

(g) *Tagged halibut and sablefish*. (1) Nothing contained in this part shall prohibit any person at any time from retaining and landing a Pacific halibut or sablefish that bears at the time of capture a research tag from any state, Federal, or international agency, provided that the halibut or sablefish is:

(i) A Pacific halibut landed pursuant to 50 CFR 300.18; or

(ii) A sablefish landed in accordance with the Tagged Groundfish Research Program.

(2) Tagged halibut or sablefish landed pursuant to paragraphs (1)(i) or (1)(ii) of this section shall not be calculated as part of an individual's IFQ harvest or be debited against an individual's halibut or sablefish IFQ.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35579, July 5, 1996; 61 FR 41525, Aug. 9, 1996; 61 FR 43314, Aug. 22, 1996]

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§ 679.41 Transfer of QS and IFQ.

(a) *General.* (1) Except as provided in paragraph (a)(2) of this section, transfer of QS or IFQ means any transaction requiring QS, or the use thereof in the form of IFQ, to pass from one person to another, permanently or for a fixed period of time.

(2) Transactions requiring IFQ cards to be issued in the name of a vessel master employed by an individual or a corporation are not transfers of QS or IFQ.

(b) *Transfer procedure*—(1) *Application for transfer.* An Application for Transfer of QS/IFQ (Application for Transfer) must be approved by the Regional Director before a person may use IFQ to harvest IFQ halibut or IFQ sablefish, whether the IFQ was the result of a direct transfer or the result of a QS transfer. An Application for Transfer will not be approved until the Regional Director has reviewed and approved the transfer agreement signed by the parties to the transaction. The Regional Director shall provide an Application for Transfer form to any person on request. Persons who submit an Application for Transfer to the Regional Director for approval will receive notification of the Regional Director's decision to approve or disapprove the Application for Transfer, and, if applicable, the reason(s) for disapproval, by mail posted on the date of that decision, unless another communication mode is requested on the Application for Transfer.

(2) *QS or IFQ accounts.* QS or IFQ accounts affected by an Application for Transfer approved by the Regional Director will change on the date of approval. Any necessary IFQ permits will be sent with the notification of the Regional Director's decision.

(c) *Application for Transfer approval criteria.* Except as provided in paragraph (f) of this section, an Application for Transfer will not be approved until the Regional Director has determined that:

(1) The person applying for transfer received the QS or IFQ to be transferred:

(i) By initial assignment by the Regional Director as provided in § 679.40(a); or

(ii) By approved transfer.

(2) The person applying to receive the QS or IFQ meets the requirements of eligibility in paragraph (d) of this section.

(3) The person applying for transfer and the person applying to receive the QS or IFQ have their notarized signatures on the Application for Transfer.

(4) There are no fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person.

(5) The person applying to receive the QS or IFQ currently exists.

(6) The transfer would not cause the person applying to receive the QS or IFQ to exceed the use limits in § 679.42 (e) or (f).

(7) The transfer would not violate the provisions of paragraph (g) of this section.

(8) Other pertinent information requested on the Application for Transfer has been supplied to the satisfaction of the Regional Director.

(d) *Eligibility to receive QS or IFQ by transfer*—(1) *Application for Eligibility.* All persons applying to receive QS or IFQ must submit an Application for Eligibility to Receive QS/IFQ (Application for Eligibility), containing accurate information, to the Regional Director. The Regional Director will not approve a transfer of IFQ or QS to a person until the Application for Eligibility for that person is approved by the Regional Director. The Regional Director shall provide an Application for Eligibility form to any person on request.

(2) *Type of eligibility.* A person must indicate on the Application for Eligibility whether the eligibility sought is as:

(i) An individual; or

(ii) A corporation, partnership, or other entity.

(3) *Application filing order.* A person may submit the Application for Eligibility with the Application for Transfer or file the Application for Eligibility prior to submitting the Application for Transfer. If a person, as described in paragraph (d)(2)(ii) of this section, files the Application for Eligibility prior to submitting the Application for Transfer, and that person's status subsequently changes, as described in

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§ 679.42(j), that person must resubmit an Application for Eligibility before submitting, or with, the Application for Transfer.

(4) *Notification of approval.* Applicants will be notified by mail of the Regional Director's approval of an application for eligibility.

(5) *Notification of disapproval.* The Regional Director will notify the applicant if an Application for Eligibility is disapproved. This notification of disapproval will include:

(i) The disapproved Application for Eligibility.

(ii) An explanation of why the Application for Eligibility was not approved.

(6) *Reasons for disapproval.* Reasons for disapproval of an Application for Eligibility may include, but are not limited to:

(i) Fewer than 150 days of experience working as an IFQ crewmember.

(ii) Lack of compliance with the U.S. citizenship or corporate ownership requirements specified by the definition of "person" at § 679.2.

(iii) An incomplete Application for Eligibility.

(iv) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations.

(e) *Transfers of QS blocks.* (1) A QS block must be transferred as an undivided whole, unless the size of the QS block exceeds the use limits specified at § 679.42. If the QS block to be transferred exceeds the use limits specified at § 679.42, the Regional Director will divide the block into two blocks, one block containing the maximum amount of QS allowable under the QS use limits and the other block containing the residual QS.

(2) QS blocks representing less than 1,000 lb (0.5 mt) of IFQ for halibut or less than 3,000 lb (1.9 mt) for sablefish, based on the factors listed in § 679.40(a), for the same IFQ regulatory area and vessel category, may be consolidated into larger QS blocks, provided that the consolidated QS blocks do not represent greater than 1,000 lb (0.5 mt) of IFQ for halibut or greater than 3,000 lb (1.4 mt) of IFQ for sablefish based on the factors listed in § 679.40(a). A consolidated QS block cannot be divided

and is considered a single block for purposes of use and transferability.

(f) *Transfer of QS or IFQ with restrictions.* If QS or IFQ must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS or IFQ by transfer does not meet all of the eligibility requirements of this section, the Regional Director will approve the Application for Transfer with restrictions. The Regional Director will not assign IFQ resulting from the restricted QS to any person. IFQ with restrictions may not be used for harvesting halibut or sablefish with fixed gear. The QS or IFQ will remain restricted until:

(1) The person who received the QS or IFQ with restrictions meets the eligibility requirements of this section and the Regional Director approves an Application for Eligibility for that person; or

(2) The Regional Director approves the Application for Transfer from the person who received the QS or IFQ with restrictions to a person who meets the requirements of this section.

(g) *Transfer restrictions.* (1) Except as provided in paragraph (f) or paragraph (g)(2) of this section, only persons who are IFQ crew members or who were initially issued QS assigned to vessel categories B, C, or D, and meet the other requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it.

(2) Except as provided in paragraph (g)(3) of this section, only persons who are IFQ crew members, and meet the other requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it, in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140° W. long. for sablefish.

(3) Individuals who were initially issued QS assigned to vessel categories B, C, or D may transfer that QS to a corporation that is solely owned by the same individual. Such transfers of QS assigned to vessel categories B, C, or D in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140° W. long. for sablefish will be governed by the use provisions of

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§ 679.42(i); the use provisions pertaining to corporations at § 679.42(j) shall not apply.

(4) The Regional Director will not approve an Application for Transfer of QS assigned to vessel categories B, C, or D subject to a lease or any other condition of repossession or resale by the person transferring QS, except as provided in paragraph (h) of this section, or by court order, operation of law, or as part of a security agreement. The Regional Director may request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

(h) *Transfer of IFQ.* (1) Pursuant to paragraph (a) of this section, an Application for Transfer must be approved by the Regional Director before a person may use any IFQ that results from a direct transfer to harvest halibut or sablefish. After approving the Application for Transfer, the Regional Director will change any IFQ accounts affected by the approved transfer and issue all necessary IFQ permits.

(2) (Applicable until January 2, 1998). A person may transfer no more than 10 percent of the total IFQ resulting from QS held by that person and assigned to vessel categories B, C, or D for any IFQ species in any IFQ regulatory area to one or more persons for any fishing year.

(i) *Transfer across catcher vessel categories*—(1) *CDQ compensation.* Persons issued CDQ compensation QS in a catcher vessel category, pursuant to § 679.41(j), and in an IFQ regulatory area in which they do not hold QS other than CDQ compensation QS, may use that CDQ compensation QS on any catcher vessel. This exemption from catcher vessel categories ends upon the first transfer of the CDQ compensation QS. CDQ compensation QS being transferred will be permanently assigned to a specific catcher vessel category as designated by the person receiving the transfer.

(2) *Redesignated catcher vessel category (Applicable until February 24, 1997).* Catcher vessel QS transferred as partial or total consideration for the transfer of CDQ compensation QS may be redesignated into a new catcher vessel category if the CDQ compensation

QS being transferred can be used on any catcher vessel pursuant to the exemption in paragraph (i)(1) of this section and the person to which that CDQ compensation QS was issued is party to the transfer.

(3) *CDQ compensation QS definition.* For purposes of this paragraph (i), CDQ compensation QS is QS issued as compensation for halibut and sablefish harvest privileges foregone due to the CDQ Program, as provided in paragraph (j) of this section.

(j) *Compensation for CDQ allocations.* (1) The Regional Director will compensate persons that receive a reduced halibut QS in IPHC regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC regulatory areas 2C, 3A, 3B, and 4A. This compensation of halibut QS from areas 2C, 3A, 3B, and 4A will be allocated in proportion to the amount of halibut QS foregone due to the CDQ allocation authorized by this section.

(2) The Regional Director will compensate persons that receive a reduced sablefish QS in any BSAI IFQ regulatory area because of the sablefish CDQ program by taking sablefish QS from the IFQ regulatory areas of the GOA and allocating it in proportion to the loss suffered by persons in the BSAI area. Such additional compensation of sablefish QS will be allocated in proportion to the amount of sablefish QS foregone due to the CDQ allocation authorized by this section.

(3) Persons initially issued QS for IFQ regulatory areas in which a portion of the TAC is allocated to the CDQ Program will be compensated for halibut and sablefish harvest privileges foregone due to the CDQ Program. If a person does not hold QS in an IFQ regulatory area on the date the compensation is issued, that person's compensation will be issued as unblocked. If a person does hold QS in an IFQ regulatory area on the date compensation is issued, that person's compensation will be added to their existing QS in that IFQ regulatory area. The resulting QS amount will be blocked or unblocked according to the criteria found at § 679.40(a). Compensation will be calculated for each non-CDQ area using the following formula:

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$$Q_N = \frac{(Q_C \times QSP_N \times RATE) / (SUM_{CDQ} - [RATE \times SUM_{TAC}])}{([1 - RATE] \times TAC_{AVE})(QSP_C \times [CDQ_{PCT} - RATE])}$$

Where:

Q_N = quota share in non-CDQ area

Q_C = quota share in CDQ area

QSP_N = quota share pool in non-CDQ area (as existing on January 31, 1995)

$RATE$ = SUM_{CDQ} /average of the TAC (1988–1994) for all CDQ and non-CDQ areas

TAC_{AVE} = average of the TAC (1988–1994) for CDQ area

QSP_C = quota share pool in CDQ area (as existing on January 31, 1995)

CDQ_{PCT} = CDQ percentage for CDQ area

SUM_{CDQ} = sum $[TAC_{AVE} \times CDQ_{PCT}]$

SUM_{TAC} = sum $[TAC_{AVE}]$

(k) *Transfer to the surviving spouse.* (1) On the death of an individual who holds QS or IFQ, the surviving spouse receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will that is probated. The Regional Director will approve an Application for Transfer to the surviving spouse when sufficient evidence has been provided to verify the death of the individual.

(2) The Regional Director will approve, for 3 calendar years following the date of death of an individual, an Application for Transfer of IFQ from the surviving spouse to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ in paragraph (g)(2) of this section.

[61 FR 31230, June 19, 1996, as amended at 61 FR 33385, June 27, 1996; 61 FR 41526, Aug. 9, 1996]

§ 679.42 Limitations on use of QS and IFQ.

(a) *IFQ regulatory area and vessel category.* The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area. Except as provided in paragraph (k) of this section or in § 679.41(i)(1) of this part, the IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category. Notwithstanding § 679.40(a)(5)(ii) of this part, IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or

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IFQ sablefish in the IFQ regulatory area east of 140° W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb (2.3 mt), based on the 1996 TAC for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.

(b) *Gear.* Halibut IFQ must be used only to harvest halibut with fishing gear authorized in § 679.2. Sablefish fixed gear IFQ must not be used to harvest sablefish with trawl gear in any IFQ regulatory area, or with pot gear in any IFQ regulatory area of the GOA.

(c) *Requirements.* Any individual who harvests halibut or sablefish with fixed gear must:

(1) Have a valid IFQ card.

(2) Be aboard the vessel at all times during fishing operations.

(3) Sign any required fish ticket or IFQ landing report for the amount of halibut or sablefish that will be debited against the IFQ associated with their IFQ card.

(i) *Sablefish PRRs.* The amount of sablefish to be reported to NMFS for debit from an IFQ account will be the round-weight equivalent determined by dividing the initial accurate scale weight of the sablefish product obtained at time of landing by the standard PRRs for sablefish in Table 3 to this part.

(ii) *Halibut PRRs.* The amount of halibut to be reported to NMFS for debit from an IFQ account will be the gutted, head-off weight determined by multiplying the initial accurate scale weight of the halibut obtained at the time of landing by the following conversion factors:

Product code	Product description	Conversion factor
01	Whole fish	0.75
04	Gutted, head on	0.90
05	Gutted, head off	1.00

(d) *Emergency waiver.* The requirement of paragraph (c) of this section for an individual IFQ card holder to be aboard the vessel during fishing operations and to sign the IFQ landing report may be waived in the event of extreme personal emergency involving the IFQ user during a fishing trip. The waiving of these requirements shall

apply only to IFQ halibut or IFQ sablefish retained on the fishing trip during which such emergency occurred.

(e) *Sablefish QS use.* (1) No person, individually or collectively, may use an amount of sablefish QS greater than 1 percent of the combined total sablefish QS for the GOA and BSAI IFQ regulatory areas, unless the amount in excess of 1 percent was received in the initial allocation of QS.

(2) In the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 1 percent of the total amount of QS for this area, unless the amount in excess of 1 percent was received in the initial allocation of QS.

(f) *Halibut QS use.* Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

(1) *IFQ regulatory area 2C.* One percent of the total amount of halibut QS for IFQ regulatory area 2C.

(2) *IFQ Regulatory areas 2C, 3A, and 3B.* One-half percent of the total amount of halibut QS for IFQ regulatory areas 2C, 3A, and 3B, combined.

(3) *IFQ Regulatory areas 4A, 4B, 4C, 4D, and 4E.* One-half percent of the total amount of halibut QS for IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E, combined.

(g) *Limitations on QS blocks—*(1) *Number of blocks per species.* (i) Except as provided in paragraph (g)(1)(ii) of this section, no person, individually or collectively, may hold more than two blocks for each species in any IFQ regulatory area.

(ii) If that person, individually or collectively, holds unblocked QS for a species in an IFQ regulatory area, such person may only hold one QS block for that species in that IFQ regulatory area.

(2) *Holding or to hold blocks of QS.* For purposes of this section, “holding” or “to hold” blocks of QS means being registered by NMFS as the person who received QS by initial assignment or approved transfer.

(h) *Vessel limitations—*(1) *Halibut.* (i) Except as provided in paragraph (h)(1)(ii) of this section, no vessel may be used, during any fishing year, to harvest more than one-half percent of

the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E.

(ii) In IFQ regulatory area 2C, no vessel may be used to harvest more than 1 percent of the halibut catch limit for this area.

(2) *Sablefish.* (i) Except as provided in paragraph (h)(2)(ii) of this section, no vessel may be used, during any fishing year, to harvest more than 1 percent of the combined fixed gear TAC of sablefish for the GOA and BSAI IFQ regulatory areas.

(ii) In the IFQ regulatory area east of 140° W. long., no vessel may be used to harvest more than 1 percent of the fixed gear TAC of sablefish for this area.

(3) *Excess.* A person who receives an approved IFQ allocation of halibut or sablefish in excess of these limitations may nevertheless catch and retain all of that IFQ with a single vessel. However, two or more persons may not catch and retain their IFQs with one vessel in excess of these limitations.

(i) *Use of IFQ resulting from QS assigned to vessel categories B, C, or D by individuals.* In addition to the requirements of paragraph (c) of this section, IFQ cards issued for IFQ resulting from QS assigned to vessel categories B, C, or D must be used only by the individual who holds the QS from which the associated IFQ is derived, except as provided in paragraph (i)(1) of this section.

(1) An individual who receives an initial allocation of QS assigned to vessel categories B, C, or D does not have to be on board and sign IFQ landing reports if that individual owns the vessel on which IFQ sablefish or halibut are harvested, and is represented on the vessel by a master employed by the individual who received the initial allocation of QS.

(2) The exemption provided in paragraph (i)(1) of this section does not apply to individuals who receive an initial allocation of QS assigned to vessel categories B, C, or D for halibut in IFQ regulatory area 2C or for sablefish QS in the IFQ regulatory area east of 140° W. long., and this exemption is not transferrable.

(j) *Use of IFQ resulting from QS assigned to vessel categories B, C, or D by*

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corporations and partnerships. A corporation or partnership that receives an initial allocation of QS assigned to vessel categories B, C, or D may use the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided the corporation or partnership owns the vessel on which its IFQ is used, and it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS. This provision is not transferrable and does not apply to QS assigned to vessel categories B, C, or D for halibut in IFQ regulatory area 2C or for sablefish in the IFQ regulatory area east of 140° W. long. that is transferred to a corporation or partnership. Such transfers of additional QS within these areas must be to an individual pursuant to § 679.41(c) of this part and be used pursuant to paragraphs (c) and (i) of this section.

(1) A corporation or partnership, except for a publicly-held corporation, that receives an initial allocation of QS assigned to vessel categories B, C, or D loses the exemption provided under paragraph (j) of this section on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.

(2) For purposes of this paragraph (j), “a change in the corporation or partnership” means the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership.

(3) The Regional Director must be notified of a change in a corporation or partnership as defined in this paragraph (j) within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph (j), is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership.

(4) QS assigned to vessel categories B, C, or D and IFQ resulting from that QS held in the name of a corporation or partnership that changes, as defined in this paragraph, must be transferred to an individual, as prescribed in § 679.41

of this part, before it may be used at any time after the effective date of the change.

(k) *Processing of fish other than IFQ halibut and IFQ sablefish.* Fish other than IFQ halibut or IFQ sablefish may be processed on a vessel on which persons:

(1) Are authorized to harvest IFQ halibut or IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel category A; or

(2) Are authorized to harvest IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel categories B or C unless any person aboard the vessel is authorized to harvest IFQ halibut based on allocations of IFQ resulting from QS assigned to vessel categories B, C, or D.

[61 FR 31230, June 19, 1996, as amended at 61 FR 33385, June 27, 1996; 61 FR 43314, Aug. 22, 1996]

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made under this subpart D, portions of subpart C of this part that apply to the halibut and sablefish CDQ program, and § 679.4(c).

(b) *Who may appeal.* Any person whose interest is directly and adversely affected by an initial administrative determination may file a written appeal. For purposes of this section, such persons will be referred to as “applicant” or “appellant.”

(c) *Submission of appeals.* Appeals must be in writing and must be submitted in original form to the Regional Director. Contact the Regional Director for appeals address. Appeals transmitted by electronic means will not be accepted.

(d) *Timing of appeals.* (1) If an applicant appeals an initial administrative determination, the appeal must be filed not later than 60 days after the date the determination is issued.

(2) The time period within which an appeal may be filed begins to run on the date the initial administrative determination is issued. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

(e) *Address of record.* NMFS will establish as the address of record the address used by the applicant in initial correspondence to Chief, RAM Division, after the application period has begun. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(f) *Statement of reasons for appeals.* Applicants must timely submit a full written statement in support of the appeal, including a concise statement of the reasons the initial administrative determination has a direct and adverse effect on the applicant and should be reversed or modified. If the applicant requests a hearing on any issue presented in the appeal, such request for hearing must be accompanied by a concise written statement raising genuine and substantial issues of adjudicative fact for resolution and a list of available and specifically identified reliable evidence upon which the factual issues can be resolved. The appellate officer will limit his/her review to the issues stated in the appeal; all issues not set out in the appeal will be waived.

(g) *Hearings.* The appellate officer will review the applicant's appeal and request for hearing, and has discretion to proceed as follows:

(1) Deny the appeal;

(2) Issue a decision on the merits of the appeal, if the record contains sufficient information on which to reach final judgment; or

(3) Order that a hearing be conducted. The appellate officer may so order only if the appeal demonstrates the following:

(i) There is a genuine and substantial issue of adjudicative fact for resolution at a hearing. A hearing will not be ordered on issues of policy or law.

(ii) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be ordered on the basis of mere allegations or denials or general descriptions of positions and contentions.

(iii) The evidence described in the request for hearing, if established at hearing, would be adequate to justify resolution of the factual issue in the way sought by the applicant. A hearing will not be ordered if the evidence described is insufficient to justify the factual determination sought, even if accurate.

(iv) Resolution of the factual issue in the way sought by the applicant is adequate to justify the action requested. A hearing will not be ordered on factual issues that are not determinative with respect to the action requested.

(h) *Types of hearings.* If the appellate officer determines that a hearing should be held to resolve one or more genuine and substantial issues of adjudicative fact, he/she may order:

(1) A written hearing, as provided in paragraph (m) of this section; or

(2) An oral hearing, as provided in paragraph (n) of this section.

(i) *Authority of the appellate officer.* The appellate officer is vested with general authority to conduct all hearings in an orderly manner, including the authority to:

(1) Administer oaths.

(2) Call and question witnesses.

(3) Issue a written decision based on the record.

(j) *Evidence.* All evidence that is relevant, material, reliable, and probative may be included in the record. Formal rules of evidence do not apply to hearings conducted under this section.

(k) *Appellate officers' decisions.* The appellate officer will close the record and issue a decision after determining there is sufficient information to render a decision on the record of the proceedings and that all procedural requirements have been met. The decision must be based solely on the record of the proceedings. Except as provided in paragraph (o) of this section, an appellate officer's decision takes effect 30 days after it is issued and, upon taking effect, is the final agency action for purposes of judicial review.

(l) *Disqualification of an appellate officer.* (1) The appellate officer will withdraw from an appeal at any time he/she deems himself/herself disqualified.

(2) The appellate officer may withdraw from an appeal on an appellant's motion if:

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(i) The motion is entered prior to the appellate officer's issuance of a decision; and

(ii) The appellant demonstrates that the appellate officer has a personal bias or any other basis for disqualification.

(3) If the appellate officer denies a motion to withdraw, he/she will so rule on the record.

(m) *Written hearing.* (1) An appellate officer may order a written hearing under paragraph (h)(1) of this section if he/she:

(i) Orders a hearing as provided in paragraph (g)(3) of this section; and

(ii) Determines that the issues to be resolved at hearing can be resolved by allowing the appellant to present written materials to support his/her position.

(2) After ordering a written hearing, the appellate officer will:

(i) Provide the appellant with notification that a written hearing has been ordered.

(ii) Provide the appellant with a statement of issues to be determined at hearing.

(iii) Provide the appellant with 30 days to file a written response. The appellant may also provide documentary evidence to support his/her position. The period to file a written response may be extended at the sole discretion of the appellate officer, if the appellant shows good cause for the extension.

(3) The appellate officer may, after reviewing the appellant's written response and documentary evidence:

(i) Order that an oral hearing be held, as provided in paragraph (h)(2) of this section, to resolve issues that cannot be resolved through the written hearing process;

(ii) Request supplementary evidence from the appellant before closing the record; or

(iii) Close the record.

(4) The appellate officer will close the record and issue a decision after determining that the information on the record is sufficient to render a decision.

(n) *Oral hearing.* (1) The appellate officer may order an oral hearing under paragraphs (h)(2) and (m)(3)(i) of this section if he/she:

(i) Orders a hearing as provided in paragraph (g)(3) of this section; and

(ii) Determines that the issues to be resolved at hearing can best be resolved through the oral hearing process.

(2) After ordering an oral hearing, the appellate officer will:

(i) Provide the appellant with notification that an oral hearing has been ordered.

(ii) Provide the appellant with a statement of issues to be determined at hearing.

(iii) Provide the appellant with notification, at least 30 days in advance, of the place, date, and time of the oral hearing. Oral hearings will be held in Juneau, AK, at the prescribed date and time, unless the appellate officer determines, based upon good cause shown, that a different place, date, or time will better serve the interests of justice. A continuance of the oral hearing may be ordered at the sole discretion of the appellate officer if the appellant shows good cause for the continuance.

(3) The appellate officer may, either at his/her own discretion or on the motion of the appellant, order a pre-hearing conference, either in person or telephonically, to consider:

(i) The simplification of issues.

(ii) The possibility of obtaining stipulations, admissions of facts, and agreements to the introduction of documents.

(iii) The possibility of settlement or other means to facilitate resolution of the case.

(iv) Such other matters as may aid in the disposition of the proceedings.

(4) The appellate officer must provide the appellant with notification of a pre-hearing conference, if one is ordered, at least 30 days in advance of the conference. All action taken at the pre-hearing conference will be made part of the record.

(5) At the beginning of the oral hearing, the appellate officer may first seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he/she may wish to have evidence presented. Issues to be resolved at the hearing will be limited to those identified by the appellate officer as provided in

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paragraph (g)(3) of this section. The appellant will then be given an opportunity to present his/her case.

(6) During the oral hearing, the appellant has the right to present reliable and material oral or documentary evidence and to conduct such cross-examination as may be required in the interests of justice.

(7) After the conclusion of the oral hearing, the appellant may be given time by the appellate officer to submit any supplementary information that may assist in the resolution of the case.

(8) The appellate officer will close the record and issue a decision after determining that the information on the record is sufficient to render a decision.

(o) *Review by the Regional Director.* An appellate officer's decision is subject to review by the Regional Director, as provided in this paragraph (o).

(1) The Regional Director may affirm, reverse, modify, or remand the appellate officer's decision before the 30-day effective date of the decision provided in paragraph (k) of this section.

(2) The Regional Director may take any of these actions on or after the 30-day effective date by issuing a stay of the decision before the 30-day effective date. An action taken under paragraph (o)(1) of this section takes effect immediately.

(3) The Regional Director must provide a written explanation why an appellate officer's decision has been reversed, modified, or remanded.

(4) The Regional Director must promptly notify the appellant(s) of any action taken under this paragraph (o).

(5) The Regional Director's decision to affirm, reverse, or modify an appellate officer's decision is a final agency action for purposes of judicial review.

§ 679.44 Penalties.

Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson Act or Halibut Act, or any regulation issued under the Magnuson Act or Halibut Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act or Halibut Act, to part 600 of this chapter, to 15

CFR part 904 (Civil Procedures), and to other applicable law. Penalties include but are not limited to permanent or temporary sanctions to QS and associated IFQ.

Subpart E—Observer Requirements/North Pacific Fisheries Research Plan

§ 679.50 Research Plan fee.

(a) *Fee percentage.* The fee percentage will be set annually under procedures at § 679.53, such that the total fees equal the lesser of the following:

(1) The cost of implementing the Research Plan, including nonpayments, minus any other Federal funds that support the Research Plan and any existing surplus in the North Pacific Fishery Observer Fund; or

(2) Two percent of the exvessel value of all Research Plan fisheries.

(b) *Fee assessment—(1) Fee assessments applicable from January 1, 1995, through August 31, 1995—(i) General.* NMFS will calculate bimonthly fee assessments for each processor of Research Plan fisheries based on the best available information received by the Regional Director since the last bimonthly billing period on the amount of fish retained by the processor from Research Plan fisheries. Fee assessments will not be calculated for the retained amounts of whole fish processed into meal product.

(ii) *Groundfish calculation.* The bimonthly fee assessment is calculated by NMFS for each shoreside processor or mothership retaining groundfish, as follows:

$$A_g = (G_1 \times \$_{\text{exvessel}} \times \frac{1}{2}F) + (G_2 \times \$_{\text{exvessel}} \times F)$$

Where:

(A) A_g is the bimonthly fee assessment for groundfish.

(B) G_1 is the round weight or round-weight equivalent of retained catch of each groundfish species delivered by catcher vessels equal to and greater than 60 ft (18.3 m) LOA determined by the best available information received by the Regional Director since the last bimonthly billing period.

(C) G_2 is the round weight or round-weight equivalent of retained catch of each groundfish species delivered by catcher vessels less than 60 ft (18.3 m)

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LOA determined by the best available information received by the Regional Director since the last bimonthly billing period.

(D) F is the fee percentage established pursuant to § 679.53 for the calendar year.

(E) \$_{exvessel} is the standard exvessel price established pursuant to § 679.53 for the calendar year.

(iii) *Crab calculation.* The bimonthly fee assessment is calculated by NMFS for each processor retaining king or Tanner crab, as follows:

$$A_c = (C_1 \times \$_{\text{exvessel}} \times \frac{1}{2}F) + (C_2 \times \$_{\text{exvessel}} \times F)$$

Where:

(A) A_c is the bimonthly fee assessment for crab.

(B) C₁ is the round weight or round-weight equivalent of retained catch of red king crab or brown king crab harvested from ADF&G's statistical area R (Adak), defined at 5 AAC 34.700, brown king crab harvested from ADF&G's statistical area O (Dutch Harbor), defined at 5 AAC 34.600, *Chionoecetes tanneri* Tanner crab, *C. angulatus* Tanner crab, and *Lithodes cousei* king crab determined by the best available information received by the Regional Director since the last bimonthly billing period.

(C) C₂ is, except for those species listed under paragraph (b)(1)(iii)(B) of this section, the round weight or round-weight equivalent of retained catch of king or Tanner crab, determined by the best available information received by the Regional Director since the last bimonthly billing period.

(D) \$_{exvessel} is the standard exvessel price established pursuant to § 679.53 for the calendar year.

(E) F is the fee percentage established pursuant to § 679.53 for the calendar year.

(iv) *Groundfish and halibut calculation.* Except as provided in paragraph (b)(1)(ii) of this section, the bimonthly fee assessment is calculated by NMFS for each processor that retains groundfish or halibut, as follows:

$$A_{h,g} = (H \times \$_{\text{exvessel}} \times F)$$

Where:

(A) A_{h,g} is the bimonthly fee assessment for groundfish or halibut.

(B) H is the round weight or round-weight equivalent of retained catch of groundfish or halibut determined by the best available information received by the Regional Director since the last bimonthly billing period.

(C) \$_{exvessel} is the standard exvessel price established pursuant to § 679.53 for the calendar year.

(D) F is the fee percentage established pursuant to § 679.53 for the calendar year.

(2) *Fee assessments applicable from September 1, 1995, through December 31, 1996.* Processors of Research Plan fisheries will not be assessed fees based on catch from Research Plan fisheries that is retained during the period September 1, 1995, through December 31, 1996.

(3) *Fee assessments applicable after December 31, 1996.* (i) The bimonthly fee assessment is calculated by NMFS for each processor of Research Plan fisheries, as follows:

$$A_{RP} = (R \times \$_{\text{exvessel}} \times F)$$

Where:

(A) A_{RP} is the bimonthly fee assessment for Research Plan fisheries.

(B) R is the round weight or round-weight equivalent of retained catch for each species from Research Plan fisheries determined by the best available information received by the Regional Director since the last bimonthly billing period.

(C) \$_{exvessel} is the standard exvessel price established pursuant to § 679.53 for the calendar year.

(D) F is the fee percentage established pursuant to § 679.53 for the calendar year.

(ii) Fee assessments will not be calculated for the retained amounts of whole fish processed into meal product.

(c) *Fee payments.* (1) NMFS will bill each processor of Research Plan fisheries for bimonthly fee assessments calculated under paragraph (b) of this section. Each processor must collect and pay the bimonthly fee assessments. Bimonthly fee assessment payments must be in the form of certified check, draft, or money order payable in U.S. currency to "The Department of Commerce/NOAA."

(2) Except as provided in paragraphs (d) and (f) of this section, payment in full must be received by the financial institution authorized by the U.S.

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Treasury to receive these funds within 30 calendar days from the date of issuance of each bimonthly fee assessment bill. Payments will be deposited in the North Pacific Fishery Observer Fund within the U.S. Treasury.

(d) *Credit for observer coverage costs incurred from January 1, 1995, through August 31, 1995*—(1) *General*. Subject to the limitations set out in paragraph (d)(2) of this section, each processor may subtract from its portion of the processor's billed fee assessment the cost of observer coverage paid by the processor to an observer contractor(s) for the processor's compliance with observer coverage requirements at § 679.51.

(2) *Limitations*. (i) Only those payments to observer contractors for observer coverage required under § 679.51 that are received by observer contractors prior to April 1, 1996, will be credited against a processor's billed fee assessment under this paragraph (d).

(ii) The amount that may be subtracted from a catcher/processor's billed fee assessment for retained catch of groundfish is limited to the actual cost of observer coverage required under § 679.51 up to an amount equal to the fee assessment calculated under paragraph (b)(1)(iv) of this section.

(iii) The amount that may be subtracted from a shoreside processor's or mothership processor vessel's billed fee assessment for retained catch of groundfish is limited to the actual cost of observer coverage required under § 679.51 up to an amount equal to the sum of the fee assessment calculated under paragraph (b)(1)(ii)(B) of this section plus one half the fee assessment calculated under paragraph (b)(1)(ii)(C) of this section.

(iv) The amount that may be subtracted from a catcher/processor or mothership processor vessel's billed fee assessment for retained catch of king or Tanner crab is limited to the actual cost of observer coverage required under § 679.51 up to an amount equal to the sum of the fee assessment calculated under paragraph (b)(1)(iii)(B) of this section plus one half the fee assessment calculated under paragraph (b)(1)(iii)(C) of this section.

(3) *Credit applied by NMFS to bimonthly fee assessments*. If a processor's cost for observer coverage required

under § 679.51 during a bimonthly period exceeds the calculated fee assessment for that period, the Regional Director will credit the processor's next bimonthly fee assessment up to an amount equal to the remaining observer coverage costs as reported to the Regional Director under paragraph (e) of this section, or the bimonthly fee assessment, whichever is less.

(e) *Recordkeeping and reporting*—(1) *Processor requirements*. (i) All processors that subtract costs for observer coverage from their bimonthly fee assessment under this paragraph (e) must submit to the Regional Director a copy of each paid invoice for observer coverage and a copy of the check, money order, or other form of payment sent to the observer contractor in payment for observer coverage listed on the invoice.

(ii) The information required under paragraph (e)(1)(i) of this section must be sent at the time the processor submits the payment of the bimonthly fee assessment to the Department of Commerce/NOAA under paragraph (c) of this section.

(2) *Observer contractor requirements*. (i) Observer contractors must submit to the Regional Director a completed Observer Coverage Payment Receipt Form for each payment received from a processor for compliance with observer coverage requirements at § 679.51 and a copy of the check, money order, or other form of payment. Each completed form and the attached copy of the record of payment must be submitted to NMFS Alaska Fisheries Science Center in Seattle, WA, within 7 days after payment is received.

(ii) *Observer coverage payment receipt form*. Observer contractors may obtain Observer Coverage Payment Receipt Forms from the Regional Director. The form requests the following information:

(A) Observer contractor name and signature of a person serving as a representative for the observer contractor;

(B) Identification of the processor vessel or shoreside processor that received observer coverage;

(C) Name of the observer(s) and date(s) of deployment for observer coverage;

(D) The name and mailing address of the person who paid for observer coverage; and

(E) The total amount paid for observer coverage and the date payment for observer coverage was received; and

(F) Copies of the check, money order, or other form of payment.

(f) *Disputed fee assessments.* (1) A processor must notify the Regional Director, in writing, within 30 days of issuance of a bimonthly fee assessment bill, if any portion of the bimonthly fee assessment bill is disputed. The processor must pay the undisputed amount of the bimonthly fee assessment bill within 30 days of its issuance, and provide documentation supporting the disputed portion claimed to be under- or over-billed.

(2) The Regional Director will review the bimonthly fee assessment bill and the documentation provided by the processor, and will notify the processor of his/her determination within 60 days of the date of issuance of the bimonthly fee assessment bill. If the Regional Director determines a billing error has occurred, the processor's account will be rectified by credit or issuance of a corrected fee assessment bill. If the Regional Director determines that a billing error has not occurred, the outstanding payment on the bimonthly fee assessment bill will be considered past-due from the date 30 days from the date of issuance of the bill and late charges will be assessed under paragraph (g) of this section.

(3) If the processor does not dispute the amount of the fee assessment bill within 30 days of its issuance, the fee assessment will be final, and will be due to the United States.

(g) *Late charges.* The NOAA Office of the Comptroller shall assess late charges in the form of interest and administrative charges for late payment of fee assessments. Interest will accrue on the unpaid amount at a percentage rate established by the Federal Reserve Board and applied to funds held by the U.S. Treasury for each 30-day period, or portion thereof, that the payment is overdue. Payment received after 90 days from the due date will be charged an additional late payment penalty charge of 6 percent of the balance due.

(h) *Refund of the North Pacific Fishery Observer Fund (Observer Fund)*—(1) *General.*

(i) All monies in the Observer Fund will be refunded according to the refund procedure set out in paragraph (h)(2) of this section. The sum of all amounts refunded cannot exceed the amount available in the Observer Fund.

(ii) The monies in the Observer Fund include: Fee assessment payments as specified in paragraph (c) of this section, assessed late charges in the form of interest and administrative charges for late payment of fee assessments as specified in paragraph (g) of this section, and accrued interest. Until the time of refund, monies will remain deposited in the Observer Fund earning interest.

(iii) Without exception, full disbursement of the Observer Fund will occur to refund Research Plan processors. NMFS will not retain any funds either to reimburse programs for costs incurred to implement the Research Plan or to issue refunds.

(2) *Identification of the Research Plan refund recipient.*

(i) Except as indicated in paragraph (h)(2)(ii) of this section, Research Plan fees will be refunded to the person who was billed and made payment to NMFS. The recipient of the refund and the refund amount will be based on Federal processor permit records and Research Plan billing.

(ii) *Exceptions.* (A) If a refund recipient has died, the refund will be issued to the recipient's estate;

(B) If a refund recipient is a corporation and has gone bankrupt, successor-in-interest guidelines, as set forth in applicable state law, will be followed.

(3) *Calculation of the principal portion of refund.* All payment amounts as assessed under paragraphs (c) and (g) of this section, and paid by processors, will be verified by NMFS in the Research Plan billing records and will constitute the principal portion of the refund.

(4) *Calculation of the interest portion of refund*—(i) *General.* (A) The interest earned by the principal portion invested in the Observer Fund will be distributed among paying processors

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based on their proportional contribution to the Observer Fund. Contributions are based on two factors: The processor's total payment amount and the number of days the processor's total payment amount was on deposit.

(B) This method is necessary to ensure that the interest that is refunded does not exceed the interest amount that was earned and is available in the Observer Fund. Due to the administrative process used to invest the funds, certain delays existed between the date a processor made payment and the actual investment date. The date of payment is not the date the deposits were invested. Therefore, using the date of payment to calculate interest earned on an individual processor's payments will not accurately reflect the interest that was actually earned.

(C) NMFS has determined that the calculation specified in this paragraph (h)(4) is a fair and equitable way to distribute the interest earned on Observer Fund investments among the processors that made Research Plan payments. The interest portion of the refund will be calculated as follows.

(ii) *Processor's contribution.* A processor's total payment amount multiplied by the number of days the processor's total payment amount was on deposit equals the processor's contribution. The number of days is based on the payment receipt date at the First National Bank of Chicago. For example, if a processor's total payment amount was \$20,000 and this amount was on deposit for 150 days, then the processor's contribution is $\$20,000 \times 150 = \$3,000,000$;

(iii) *Processor's percent contribution to Observer Fund.* A processor's contribution divided by the total amount of all processor contributions multiplied by 100 equals the processor's percent contribution to the Observer Fund. For example, if the total amount of all processor contributions is \$750,000,000 ($\$5,000,000 \times 150$ days), then the processor's percent contribution is $\$3,000,000 / \$750,000,000 \times 100 = 0.4$ percent.

(iv) *Processor's interest portion of Research Plan refund.* A processor's percent contribution multiplied by the total amount of interest earned by the Observer Fund equals the processor's interest portion of the Research Plan

refund. For example, if the total amount of interest earned by the Observer Fund is \$200,000, then the processor's interest portion of the Research Plan refund is $0.4 \text{ percent} \times \$200,000 = \$800$.

(5) *Disinvestment of the Observer Fund.* The interest portion of the refund cannot be calculated until Observer Fund investments are withdrawn. Withdrawal of investments will occur just prior to the earliest possible issuance of refund checks in order to avoid unwarranted loss of interest. The actual amount of a processor's interest portion of the refund will be evident upon receipt of the refund check.

(6) *Notification to processors of refund amounts.* (i) NMFS will notify each processor by certified mail of a preliminary determination of the principal portion of the refund amount. The sum of the payment amounts received for each processor equals the principal portion of the Research Plan refund.

(ii) Final determination of a processor's principal portion is subject to resolution of all disputes received under paragraph (h)(7) of this section.

(iii) The notification letter to each processor will include the following itemized reference information:

(A) Payment amount received.

(B) Payment receipt date at the First National Bank of Chicago.

(C) Check number.

(D) Research Plan bill number to which the payment was applied.

(E) The fishery category to which the payment was applied.

(7) *Dispute process.* A processor that disagrees with any determination of the principal portion of the refund amount as described in paragraph (h)(3) of this section must sign the certified notification letter and return it to NMFS within 30 days of receipt of the certified letter, accompanied by documentation supporting the disputed principal portion of the refund amount.

(i) *NMFS review.* NMFS will review letters and documentation received under this paragraph (h)(7).

(ii) *NMFS determination.* (A) If NMFS determines an error exists in the calculation of the principal portion of refund amounts, NMFS will correct such calculations and notify the affected processors of its determination; or

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(B) If NMFS determines no error exists in the calculation of the principal portion of refund amounts, NMFS will notify the affected processors of its determination.

(8) *Disbursement of refund checks.* Once all disputes received under paragraph (h)(7) of this section have been resolved, NMFS will authorize and provide necessary documentation for refund checks to be disbursed by the U.S. Treasury.

§ 679.51 General observer requirements (applicable through December 31, 1996).

(a) *Coverage requirements for operators of GOA and BSAI groundfish vessels.* Observer coverage is required as follows:

(1) *Mothership.* A mothership of any length that:

(i) Processes 1,000 mt or more in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer aboard the vessel each day it receives or processes groundfish during that month.

(ii) Processes from 500 mt to 1,000 mt in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer aboard the vessel at least 30 percent of the days it receives or processes groundfish during that month.

(iii) Each mothership that receives pollock harvested by catcher vessels in the CVOA, defined in Figure 2 of this part, during the second pollock season that starts on August 15 under § 679.23, is required to have a second NMFS-certified observer aboard, in addition to the observer required under paragraphs (a)(1) (i) and (ii) of this section, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, 1996, whichever occurs first.

(2) *Catcher/processor or catcher vessel.* A catcher/processor or catcher vessel:

(i) Except for a vessel fishing for groundfish with pot gear as provided in paragraphs (a)(2) (iv) and (v) of this section, 125 ft (38.1 m) LOA or longer must carry a NMFS-certified observer during 100 percent of its fishing days while fishing for groundfish.

(ii) Equal to or greater than 60 ft (18.3 m) LOA, but less than 125 ft (38.1 m) LOA, must carry a NMFS-certified observer during at least 30 percent of its fishing days in each calendar quarter in which the vessel participates for more than 3 fishing days in a directed fishery for groundfish. Each vessel that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry a NMFS-certified observer during at least one fishing trip during that calendar quarter for each of the groundfish fishery categories defined under paragraph (b) of this section in which the vessel participates.

(iii) Fishing with hook-and-line gear that is required to carry an observer under paragraph (a)(2)(ii) of this section must carry a NMFS-certified observer during at least one fishing trip in the GOA Eastern Regulatory Area during each calendar quarter in which the vessel participates in a directed fishery for groundfish in the Eastern Regulatory Area.

(iv) Equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear must carry a NMFS-certified observer during at least 30 percent of its fishing days in each calendar quarter in which the vessel participates for more than 3 fishing days in a directed fishery for groundfish.

(v) Participating for more than 3 fishing days in a directed fishery for groundfish using pot gear must carry a NMFS-certified observer during at least one fishing trip during a calendar quarter for each of the groundfish fishery categories defined under paragraph (b) of this section in which the vessel participates.

(b) *Groundfish fishery categories requiring separate coverage.* Directed fishing for groundfish, during any fishing trip, results:

(1) *Pollock fishery.* In a retained catch of pollock that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (b).

(2) *Pacific cod fishery.* In a retained catch of Pacific cod that is greater than the retained catch of any other groundfish species or species group

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that is specified as a separate groundfish fishery under this paragraph (b).

(3) *Sablefish fishery.* In a retained catch of sablefish that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (b).

(4) *Rockfish fishery.* In a retained aggregate catch of rockfish of the genera *Sebastes* and *Sebastolobus* that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (b).

(5) *Flatfish fishery.* In a retained aggregate catch of all flatfish species, except halibut, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (b).

(6) *Other species fishery.* In a retained catch of groundfish that does not qualify as a pollock, Pacific cod, sablefish, rockfish, or flatfish fishery as defined under paragraphs (b) (1) through (5) of this section.

(c) *Assignment of vessels to fisheries.* At the end of any fishing trip, a vessel's retained catch composition of groundfish species or species groups for which a TAC has been specified under § 679.20, in round weight or round-weight equivalents, will determine to which of the fishery categories listed under paragraph (b) of this section the vessel is assigned.

(1) *Catcher/processor.* A catcher/processor will be assigned to a fishery category based on retained groundfish catch composition reported on the vessel's WPR submitted to the Regional Director under § 679.5.

(2) *Catcher vessel delivery in Federal waters.* A catcher vessel that delivers to motherships in Federal waters will be assigned to a fishery category based on the retained groundfish catch composition reported on the WPR submitted to the Regional Director for that week by the mothership under § 679.5.

(3) *Catcher vessel delivery in Alaska State waters.* A catcher vessel that delivers groundfish to a shoreside processor or to a mothership in Alaska State waters will be assigned to a fishery category based on the retained groundfish catch composition reported

on one or more ADF&G fish tickets as required under Alaska Statutes at A.S. 16.05.690.

(d) *Coverage requirements for managers of BSAI and GOA groundfish shoreside processors.* Observer coverage is required as follows. A shoreside processor:

(1) That processes 1,000 mt or more in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer present at the facility each day it receives or processes groundfish during that month.

(2) That processes 500 mt to 1,000 mt in round weight or round-weight equivalents of groundfish is required to have a NMFS-certified observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

(3) That offloads pollock at more than one location on the same dock; has distinct and separate equipment at each location to process those pollock; and that receives pollock harvested by catcher vessels in the CVOA during the second pollock season that starts on August 15, under § 679.23, is required to have a NMFS-certified observer, in addition to the observer required under paragraphs (d) (1) and (2) of this section, at each location where pollock is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, 1996, whichever occurs first.

(e) *Coverage requirements for vessel operators of BSAI king and Tanner crab.* An operator of a vessel that harvests or processes king or Tanner crab must have one or more State of Alaska-certified observers aboard the vessel whenever king or Tanner crab are received, processed, or on board the vessel in the BSAI if the operator is required to do so by Alaska State regulations at 5 AAC 34.035, 34.082, 35.082, or 39.645.

[61 FR 31230, June 19, 1996, as amended at 61 FR 49981, Sept. 24, 1996]

§ 679.52 Observer coverage requirements for Research Plan fisheries (applicable after December 31, 1996).

(a) *BSAI and GOA groundfish and halibut from convention waters off Alaska—*

(1) *Operators of vessels.* An operator of a vessel that catches and retains groundfish or halibut, or a vessel that processes groundfish or halibut, must carry one or more NMFS-certified observers aboard the vessel whenever fishing operations are conducted, if the operator is required to do so by the Regional Director under paragraph (c) of this section.

(2) *Managers of shoreside processors.* A manager of a shoreside processor that processes groundfish or halibut received from vessels regulated under this part must have one or more NMFS-certified observers present at the facility whenever groundfish or halibut are received or processed, if the manager is required to do so by the Regional Director under paragraph (c) of this section.

(b) *BSAI king and Tanner crab—*(1) *Operators of vessels.* An operator of a vessel subject to this part must carry one or more NMFS-certified observers or ADF&G employees aboard the vessel whenever fishing or processing operations are conducted, if the operator is required to do so by the Regional Director under paragraph (c) of this section.

(2) *Managers of shoreside processors.* A manager of a shoreside processor that processes king or Tanner crab received from vessels regulated under this part must have one or more NMFS-certified observers, or ADF&G employees, present at the facility whenever king or Tanner crab is received or processed, if the manager is required to do so by the Regional Director under paragraph (c) of this section.

(c) *Annual determination of coverage level.* The appropriate level of observer coverage necessary to achieve the objectives of the Research Plan, given the funds available from the North Pacific Fishery Observer Fund, will be established annually under procedures in § 679.53.

(d) *Inseason changes in coverage level.* (1) The Regional Director may increase or decrease the observer coverage re-

quirements for the Research Plan fisheries at any time to improve the accuracy, reliability, and availability of observer data, and to ensure solvency of the observer program, so long as the standards of section 313 of the Magnuson Act and other applicable Federal regulations are met, and the changes are based on one or more of the following:

(i) A finding that there has been, or is likely to be, a significant change in fishing methods, times, or areas, or catch or bycatch composition for a specific fishery or fleet component.

(ii) A finding that such modifications are necessary to improve data availability or quality in order to meet specific fishery management objectives.

(iii) A finding that any decrease in observer coverage resulting from unanticipated funding shortfalls is consistent with the following priorities:

(A) Status of stock assessments.

(B) Inseason management.

(C) Bycatch monitoring.

(D) Vessel incentive programs and regulatory compliance.

(E) A determination that any increased costs are commensurate with the quality and usefulness of the data to be derived from any revised program, and are necessary to meet fishery management needs.

(2) The Regional Director will consult with the Commissioner of ADF&G prior to making inseason changes in observer coverage level for the crab observer program.

(3) NMFS will publish changes in observer coverage requirements made under this paragraph (d) in the FEDERAL REGISTER, with the reasons for the changes and any special instructions to vessels required to carry observers, at least 10 calendar days prior to their implementation.

(e) *Responsibilities—*(1) *Vessel responsibilities.* An operator of a vessel must:

(i) *Accommodations and food.* Provide, at no cost to observers, the State of Alaska, or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(ii) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observers during the time observers are aboard the vessel, by adhering to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) Allowing observers to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers, the State of Alaska, or the United States.

(B) Ensuring that each mothership that receives pollock harvested in the CVOA, during the pollock non-roe season that starts on August 15, is equipped with INMARSAT Standard A satellite communication capabilities, cc:Mail remote, and the data entry software, provided by the Regional Director, for use by the observer. The operator of each mothership shall also make available for the observers' use the following equipment compatible therewith and having the ability to operate the NMFS-supplied data entry software program: A personal computer with a 486 or better processing chip and a DOS 3.0 or better operating system with 10 megabytes free hard disk storage and 8 megabytes RAM.

(C) Ensuring that the communication equipment that is on motherships as specified at paragraph (e)(1)(iii)(B) of this section, and that is used by observers to transmit data is fully functional and operational.

(iv) *Vessel position.* Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

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

(vi) *Prior notification.* Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing

the transfer, unless the observers specifically request not to be notified.

(vii) *Document access.* Allow observers to inspect and copy the vessel's DFL, DCPL, product transfer forms, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(viii) *Assistance.* Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observers with a safe work area adjacent to the sample collection site.

(C) Providing crab observers with the necessary equipment to conduct sampling, such as scales, fish totes, and baskets.

(D) Collecting bycatch when requested by the observers.

(E) Collecting and carrying baskets of fish when requested by observers.

(F) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(ix) *Embarking or debarking observer.* Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking observers.

(x) *Transfer at sea.* (A) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(2) *Shoreside processor responsibilities.* A manager of a shoreside processor must:

(i) *Safe conditions.* Maintain safe conditions at the shoreside processor for the protection of observers by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

(ii) *Operations information.* Notify observers, as requested, of the planned facility operations and expected receipt of groundfish, crab, or halibut prior to receipt of those fish.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) Allowing observers to use the shoreside processor's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers, the State of Alaska, or the United States;

(B) Ensuring that each shoreside processor that is required to have 100-percent observer coverage under § 679.51 and that receives pollock harvested in the CVOA, during the second pollock season that starts on August 15, under § 679.23, makes available to the observer the following equipment or equipment compatible therewith: A personal computer with a minimum of a 486 processing chip with at least a 9600-baud modem and a telephone line. The personal computer must be equipped with a mouse, Windows version 3.1, or a program having the ability to operate the NMFS-supplied data entry software program, 10 megabytes free hard disk storage, 8 megabytes RAM, and with data entry software provided by the Regional Director for use by the observers.

(C) Ensuring that the communication equipment that is in the shoreside processor as specified in paragraph (e)(3)(ii) of this section and that is used by observers to transmit data is fully functional and operational.

(iv) *Access.* Allow observers free and unobstructed access to the shoreside processor's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(v) *Document access.* Allow observers to inspect and copy the shoreside processor's DCPL, product transfer forms, any other logbook or document re-

quired by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.

(vi) *Assistance.* Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to:

(A) Assisting the observer in moving and weighing totes of fish.

(B) Cooperating with product recovery tests.

(C) Providing a secure place to store baskets of sampling gear.

(f) *Notification of observer contractors by processors and operators of vessels required to carry observers.* (1) Processors and operators of vessels required to carry observers under the Research Plan are responsible for meeting their observer coverage requirements. Processors and vessel operators must notify the appropriate observer contractor, as identified by NMFS, in writing or fax, at least 60 days prior to the need for an observer, to ensure that an observer will be available. Processors and vessel operators must notify the appropriate observer contractor again, in writing, fax, or by telephone, at least 10 days prior to the need for an observer, to make final arrangements for observer deployment.

(2) If observer contractors are not notified within the time periods set out at paragraph (f)(1) of this section, the availability of an observer to meet observer coverage requirements will not be guaranteed.

(3) Names of observer contractors, information for contacting contractors, and a list of embarkment/disembarkment ports for observers will be published in the FEDERAL REGISTER annually, prior to the beginning of the calendar year, pursuant to § 679.53.

(g) *Release of observer data to the public—(1) Summary of weekly data.* The following information collected by observers for each catcher processor and catcher vessel during any weekly reporting period may be made available to the public:

(i) Vessel name and Federal permit number.

(ii) Number of chinook salmon and "other salmon" observed.

(iii) The ratio of total round weight of halibut or Pacific herring to the

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total round weight of groundfish in sampled catch.

(iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls.

(v) The number of observed trawl hauls or fixed gear sets.

(vi) The number of trawl hauls that were basket sampled.

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2) *Haul-specific data.* (i) The information listed in paragraphs (g)(2)(i)(A) through (M) of this section and collected by observers from observed hauls on board vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(A) Date.

(B) Time of day gear is deployed.

(C) Latitude and longitude at beginning of haul.

(D) Bottom depth.

(E) Fishing depth of trawl.

(F) The ratio of the number of chinook salmon to the total round weight of groundfish.

(G) The ratio of the number of other salmon to the total round weight of groundfish.

(H) The ratio of total round weight of halibut to the total round weight of groundfish.

(I) The ratio of total round weight of herring to the total round weight of groundfish.

(J) The ratio of the number of king crab to the total round weight of groundfish.

(K) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish.

(L) Sea surface temperature (where available).

(M) Sea temperature at fishing depth of trawl (where available).

(ii) The identity of the vessels from which the data in paragraph (g)(2)(i) of this section are collected will not be released.

(3) *Disclosure.* In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted, or within a reasonable time thereafter,

that disclosure of the information listed in paragraphs (g)(1) and (2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

(h) *Vessel safety requirements.* Any vessel that is required to carry observers under paragraph (a)(1) or (b)(1) of this section or § 679.51(a) or (e) must have on board one of the following:

(1) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter III.

(2) A certificate of compliance issued pursuant to 46 CFR 28.710.

(3) A valid certificate of inspection pursuant to 46 U.S.C. 3311. NMFS will not station observers aboard vessels that do not meet this requirement.

[61 FR 31230, June 19, 1996, as amended at 61 FR 49981, Sept. 24, 1996]

§ 679.53 Annual Research Plan specifications.

(a) *Proposed Research Plan specifications.* Annually, after consultation with the Council, and, in the case of observer coverage levels in the crab fisheries, the State of Alaska, NMFS will publish for public comment in the FEDERAL REGISTER:

(1) *Standard exvessel prices.* Standard exvessel prices will be used in determining the annual fee percentage for the calendar year and will be the basis for calculating fee assessments. Standard exvessel prices for species harvested in Research Plan fisheries for each calendar year will be based on:

(i) Exvessel price information by applicable season, area, gear, and processing sector for the most recent 12-month period for which data are available.

(ii) Factors that are expected to change exvessel prices in the calendar year.

(iii) Any other relevant information that may affect expected exvessel prices during the calendar year.

(2) *Total exvessel value.* The total exvessel value of Research Plan fisheries will be calculated as the sum of the product of the standard exvessel prices established under paragraph

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(a)(1) of this section and projected retained catches, by species. The value of whole fish processed into meal product will not be included in this calculation.

(3) *Research Plan fee percentage.* The Research Plan fee percentage for a calendar year will equal the lesser of 2 percent of the exvessel value of retained catch in the Research Plan fisheries or the fee percentage calculated using the following equation:

Fee percentage = $[100 \times (\text{RRPC} - \text{FB} - \text{OF}) / \text{V}] / (1 - \text{NPR})$

Where:

(i) RRPC is the projection of recoverable Research Plan costs for the coming year.

(ii) FB is the projected end of the year balance of funds collected under the Research Plan.

(iii) OF is the projection of other funding for the coming year.

(iv) V is the projected exvessel value of retained catch in the Research Plan fisheries for the coming year.

(v) NPR is the percent (expressed as a decimal) of fee assessments that are expected to result in nonpayment.

(4) *Observer coverage.* For the period January 1, 1996, through December 31, 1996, observer coverage levels in Research Plan fisheries will be as required by § 679.51. After December 31, 1996, the level of observer coverage will be determined annually by NMFS, after consultation with the Council and the State of Alaska, and may vary by fishery and vessel or processor size, depending upon the objectives to be met for the groundfish, halibut, and king and Tanner crab fisheries. The Regional Director may change observer coverage inseason pursuant to § 679.52(d).

(5) *Embarkment/disembarkment ports.* Ports to be used to embark and disembark observers will be selected on the basis of convenience to the affected industry and on the availability of facilities, transportation, and accommodations deemed by the Regional Director to be necessary for the safe and reasonable deployment of observers.

(b) *Final Research Plan specifications.* NMFS will consider comments received on the proposed specifications and, following consultation with the Council, and with the State of Alaska, in the case of observer coverage in the crab

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fisheries, will publish the final total exvessel value; standard exvessel prices; fee percentage; levels of observer coverage for Research Plan fisheries, including names of observer contractors and information for contacting them; and embarkment/disembarkment ports in the FEDERAL REGISTER annually, prior to the beginning of the calendar year.

§ 679.54 Compliance.

The operator of any fishing vessel subject to this subpart, and the manager of any shoreside processor that receives groundfish, halibut, or king and Tanner crab from vessels subject to this subpart, must comply with the requirements of this subpart. The owner of any fishing vessel subject to this subpart, or any shoreside processor that received groundfish, halibut, or king and Tanner crab from vessels subject to this subpart, must ensure that the operator or manager complies with the requirements of this subpart and is liable, either individually or jointly and severally, for compliance with the requirements of this subpart.

Subpart F—Scallop Fishery Off Alaska

SOURCE: 61 FR 38104, July 23, 1996, unless otherwise noted.

§ 679.60 Gear and efficiency limits.

(a) *General.* Scallops may be taken only with dive gear or scallop dredge gear as defined at § 679.2.

(b) The inside ring diameter on all dredges used or carried by a vessel fishing for weathervane scallops (*Patinoplectin caurinus*) must be 4 inches (10.16 cm) or larger.

(c) The inside ring diameter on all dredges used or carried by a vessel fishing for scallops other than weathervane scallops must be 3 inches (7.62 cm) or larger.

(d) No person may use chafing gear or other devices that decrease the legal inside ring diameter of a scallop dredge.

(e) Except as provided in paragraph (f) of this section, no more than two scallop dredges may be operated at one time from a vessel, and the opening of

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a scallop dredge must be equal to or less than 15 ft (4.57 m) wide.

(f) In the Kamishak, Southern, and Central Districts of Scallop Registration Area H defined under § 679.61, no more than one scallop dredge may be operated at one time from a vessel, and the opening of a dredge may not be more than 6 ft (1.83 m) in width.

(g) Scallops must be shucked by hand only. A shucking machine must not be on board a vessel that is fishing for scallops or that has scallops on board.

(h) No vessel fishing for scallops in Federal waters may have aboard more than 12 persons, exclusive of ADF&G or NMFS observers.

§ 679.61 Registration areas.

For the purpose of managing the scallop fishery, the Federal waters off Alaska and adjacent State waters are divided into nine scallop registration areas. Three scallop registration areas are further subdivided into districts. The scallop registration areas and districts are defined as follows:

(a) *Registration Area A* (Southeastern) has as its southern boundary the international boundary at Dixon Entrance, and as its northern boundary Loran-C line 7960-Y-29590, which intersects the western tip of Cape Fairweather at 58°47'58" N. lat., 137°56'30" W. long., except for ADF&G District 16 defined under paragraph (b) of this section.

(b) *Registration Area D* (Yakutat) has as its western boundary the longitude of Cape Suckling (143°53' W. long.), and as its southern boundary Loran-C line 7960-Y-29590, which intersects the western tip of Cape Fairweather at 58°47'58" N. lat., 137°56'30" W. long., and ADF&G District 16 defined as all waters all waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

(c) *Registration Area E* (Prince William Sound) has as its western boundary the longitude of Cape Fairfield (148°50' W. long.), and its eastern boundary the longitude of Cape Suckling (143°53' W. long.).

(d) *Registration Area H* (Cook Inlet) has as its eastern boundary the longitude of Cape Fairfield (148°50' W.

long.) and its southern boundary the latitude of Cape Douglas (58°52' N. lat.).

(1) *Northern District*. North of a line extending from Boulder Point at 60°46'23" N. lat., to Shell Platform C, then to a point on the west shore at 60°46'23" N. lat.

(2) *Central District*. All waters between a line extending from Boulder Point at 60°46'23" N. lat., to Shell Platform C, to a point on the west shore at 60°46'23" N. lat., and the latitude of Anchor Point Light (59°46'12" N. lat.).

(3) *Southern District*. All waters enclosed by a line from Anchor Point Light west to 59°46'12" N. lat., 152°20' W. long., then south to 59°03'25" N. lat., 152°20' W. long., then in a northeasterly direction to the tip of Cape Elizabeth at 59°09'30" N. lat., 151°53' W. long., then from the tip of Cape Elizabeth to the tip of Point Adam at 59°15'20" N. lat., 151°58'30" W. long.

(4) *Kamishak Bay District*. All waters enclosed by a line from 59°46'12" N. lat., 153°00'30" W. long., then east to 59°46'12" N. lat., 152°20' W. long., then south to 59°03'25" N. lat., 152°20' W. long., then southwesterly to Cape Douglas (58°52' N. lat.). The seaward boundary of the Kamishak Bay District is 3 nautical miles seaward from the shoreline between a point on the west shore of Cook Inlet at 59°46'12" N. lat., 153°00'30" W. long., and Cape Douglas at 58°52' N. lat., 153°15' W. long., including a line three nautical miles seaward from the shorelines of Augustine Island and Shaw Island, and including the line demarking all state waters shown on NOAA chart 16640, 21st Ed., May 5, 1990 (Available from Alaska Region).

(5) *Barren Island District*. All waters enclosed by a line from Cape Douglas (58°52' N. lat.) to the tip of Cape Elizabeth at 59°09'30" N. lat., 151°53' W. long., then south to 58°52' N. lat., 151°53' W. long., then west to Cape Douglas.

(6) *Outer District*. All waters enclosed by a line from the tip of Point Adam to the tip of Cape Elizabeth, then south to 58°52' N. lat., 151°53' W. long., then east to the longitude of Alijo Point (149°44'33" W. long.), then north to the tip of Alijo Point.

(7) *Eastern District*. All waters east of the longitude of Alijo Point (149°44'33" W. long.), west of the longitude of Cape

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Fairfield (148°50' W. long.), and north of 58°52' N. lat.

(e) *Registration Area K* (Kodiak) has as its northern boundary the latitude of Cape Douglas (58°52' N. lat.), and as its western boundary the longitude of Cape Kumlik (157°27' W. long.).

(1) *Northeast District*. All waters northeast of a line extending 168° from the easternmost tip of Cape Barnabas, east of a line from the northernmost tip of Inner Point to the southernmost tip of Afognak Point, east of 152°30' W. long. in Shuyak Strait, and east of the longitude of the northernmost tip of Shuyak Island (152°20' W. long.).

(2) *Southeast District*. All waters southwest of a line extending 168° from the easternmost tip of Cape Barnabas and east of a line extending 222° from the southernmost tip of Cape Trinity.

(3) *Southwest District*. All waters west of a line extending 222° from the southernmost tip of Cape Trinity, south of a line from the westernmost tip of Cape Ikolik to the southernmost tip of Cape Kilokak and east of the longitude of Cape Kilokak (156°19' W. long.).

(4) *Semidi Island District*. All waters west of the longitude of Cape Kilokak at 156°19' W. long. and east of the longitude of Cape Kumlik at 157°27' W. long.

(5) *Shelikof District*. All waters north of a line from the westernmost tip of Cape Ikolik to the southernmost tip of Cape Kilokak, west of a line from the northernmost tip of Inner Point to the southernmost tip of Afognak Point, west of 152°30' W. long., in Shuyak Strait, and west of the longitude of the northernmost tip of Shuyak Island (152°20' W. long.).

(f) *Registration Area M* (Alaska Peninsula) has as its eastern boundary the longitude of Cape Kumlik (157°27' W. long.), and its western boundary the longitude of Scotch Cap Light. The registration area also includes all waters of Bechevin Bay and Isanotski Strait south of a line from the easternmost tip of Chunak Point to the westernmost tip of Cape Krenitzen.

(g) *Registration Area O* (Dutch Harbor) has as its northern boundary the latitude of Cape Sarichef (54°36' N. lat.), as its eastern boundary the longitude of Scotch Cap Light, and as its western

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boundary 171° W. long., excluding the waters of Statistical Area Q.

(h) *Registration Area Q* (Bering Sea) has as its southern boundary a line from Cape Sarichef (54°36' N. lat.), to 54°36' N. lat., 171° W. long., to 55°30' N. lat., 171° W. long., to 55°30' N. lat., 173°30' E. long., as its northern boundary the latitude of Point Hope (68°21' N. lat.).

(i) *Registration Area R* (Adak) has as its eastern boundary 171° W. long., and as its northern boundary 55°30' N. lat.

§ 679.62 General limitations.

(a) *Harvest limits*—(1) *General*. NMFS will establish TAC amounts and CBLs for the scallop fishery off Alaska according to the procedures described under this section. The total annual TAC amount for scallops off Alaska will be established within the OY range of 0 to 1.8 million lb (0 to 815.5 mt) of shucked scallop meat.

(2) *TACs*. (i) The annual TACs for scallops in each Registration Area or part thereof will be established as a weight in pounds of shucked scallop meat based on a review of the following:

(A) Assessments of the biological condition of each scallop species. Assessments will include, where practicable, updated estimates of MSY; historical catch trends and current catch statistics, reviews of alternative harvesting strategies; and relevant information relating to changes in scallop markets.

(B) Socioeconomic considerations that are consistent with the goals and objectives of the FMP.

(ii) Annual scallop TACs will be specified for the 12-month time period extending from July 1 through June 30 of the following year. An annual TAC amount is available for harvest only for the registration area or district specified, only during the applicable season set out in § 679.64, and only if no closure or other restriction or limitation is applicable.

(3) *CBLs*. (i) CBLs may be specified for red king crab and Tanner crab species for any registration area or district.

(ii) Except as provided under paragraph (a)(3)(iii) of this section, annual CBLs will be based on the biological

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condition of each crab species, historical bycatch rates in the scallop fishery, and other socioeconomic considerations that are consistent with the goals and objectives of the FMP.

(iii) Annual CBLs in Registration Area Q will equal the following amounts:

(A) The CBL for red king crab caught while conducting any fishery for scallops will be specified within the range of 500 to 3,000 crab based on the considerations listed in paragraph (a)(3)(ii) of this section.

(B) The CBL for *Chionoecetes opilio* Tanner crab caught while conducting any fishery for scallops is 0.003176 percent of the best available estimate of *C. opilio* abundance in Registration Area Q.

(C) The CBL for *C. bairdi* Tanner crab caught while conducting any fishery for scallops is 0.13542 percent of the best available estimate of *C. bairdi* abundance in Registration Area Q.

(iv) Annual CBLs will be specified for the 12-month time period from July 1 through June 30 of the following year. An annual CBL may be utilized only for the registration area or district specified, only if any applicable TAC amount is available for harvest, only during the applicable season set out in § 679.64, and only if no closure or other limitation or restriction is applicable.

(b) *Specifications.* The following procedure is established for specifying TAC amounts and CBLs:

(1) On an annual basis, prior to the April Council meeting, the Council will distribute a summary of the State's most recent TAC and CBL recommendations and supporting documentation to the public through its mailing list, as well as provide copies of the recommendations, documentation, and the annual SAFE report to the public upon request. The Council will notify the public of its intent to develop final recommendations at the April Council meeting and solicit public comment both before and during the April Council meeting.

(2) Following the April Council meeting, the Council will submit its TAC and CBL recommendations along with rationale and supporting information to NMFS for review and implementation.

(3) As soon as practicable after receiving recommendations from the Council, NMFS will publish in the FEDERAL REGISTER annual specifications of TAC amounts and CBLs for the succeeding 12-month period extending from July 1 through June 30 of the following year.

(c) *Closures.* (1) If the Director, Alaska Region, NMFS, determines that a TAC or CBL specified under paragraphs (a) and (b) of this section has been or will be reached, NMFS will publish notification in the FEDERAL REGISTER prohibiting the taking and retention of scallops in the Federal waters of the registration area or district where the notification is applicable.

(2) It is unlawful for any person to conduct any fishing for scallops contrary to the notification of closure issued pursuant to this paragraph.

(d) *Closed areas.* It is unlawful for any person to dredge for scallops in any Federal waters off Alaska that are closed to fishing with trawl gear or non pelagic trawl gear under § 679.22(a)(1)(i), (a)(2)(i), (a)(4), (a)(6), (a)(7) and (b).

§ 679.63 Inseason adjustments.

(a) Inseason adjustments may be issued by NMFS to implement the closure, extension, opening, or reopening of a season in all or part of a scallop registration area; and the adjustment of TAC amounts or CBLs.

(b) Determinations for any inseason adjustment authorized under paragraph (a) of this section must be consistent with § 679.25(a)(2).

(c) Procedures for making inseason adjustments are specified at § 679.25(c).

(d) It is unlawful for any person to conduct any fishing for scallops contrary to an inseason adjustment issued pursuant to this section.

§ 679.64 Seasons.

(a) Fishing for scallops in the Federal waters off Alaska is authorized from 0001 hours, A.l.t., July 1, through 2400 hours, A.l.t., June 30, subject to the other provisions of this part, except as provided in paragraphs (b) through (e) of this section.

(b) Fishing for scallops in the Federal waters of Scallop Registration Areas K, M, O, Q, and R is authorized from 1200 hours, A.l.t., July 1 through 1200 hours,

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A.l.t., February 15 of the following year, subject to the other provisions of this part.

(c) Fishing for scallops in the Federal waters of the Kamishak District of Scallop Registration Area H is authorized from 1200 hours, A.l.t., August 15 through 1200 hours, A.l.t., October 31, subject to the other provisions of this part.

(d) (Applicable January 1, 1997) Fishing for scallops in the Federal waters of Scallop Registration Areas A, D, and E is authorized from 1200 hours, A.l.t., January 10 through 2400 hours, A.l.t., June 30, subject to the other provisions of this part.

(e) (Applicable through December 31, 1996) Fishing for scallops in the Federal waters of Scallop Registration Area D is authorized from 1200 hours, A.l.t., August 1 through 2400 hours, A.l.t., De-

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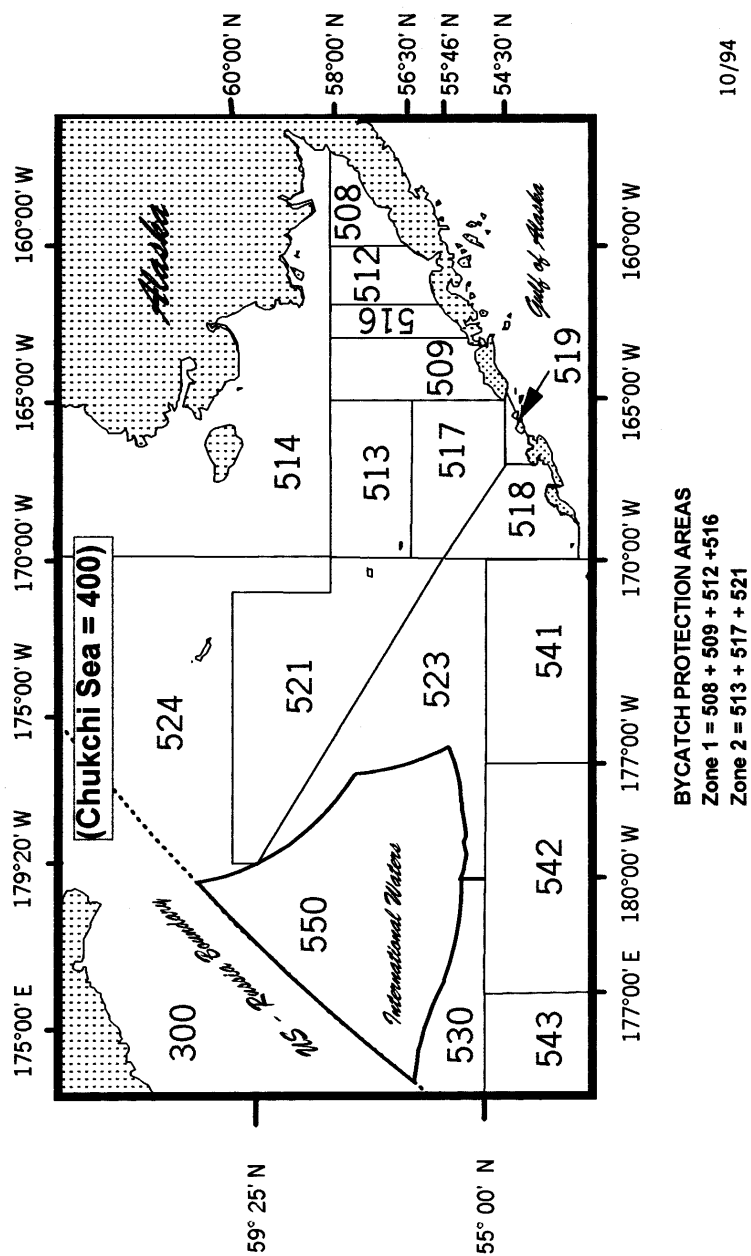
cember 31, subject to the other provisions of this part. Fishing for scallops in the Federal waters of Scallop Registration Areas A and E is not authorized.

§ 679.65 Observer requirements.

(a) Except as provided in paragraph (c) of this section, vessels must carry a NMFS-certified or ADF&G-certified scallop observer at all times while fishing for scallops in Federal waters.

(b) An operator of a vessel required to carry an observer must comply with all safety and conduct requirements set out at §679.7(g).

(c) Vessels less than 80 ft (24.4 m) LOA are exempt from the requirements of this section while fishing for scallops in the Federal waters of Registration Area H.



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FIGURE 1 TO PART 679—BSAI STATISTICAL AND REPORTING AREAS

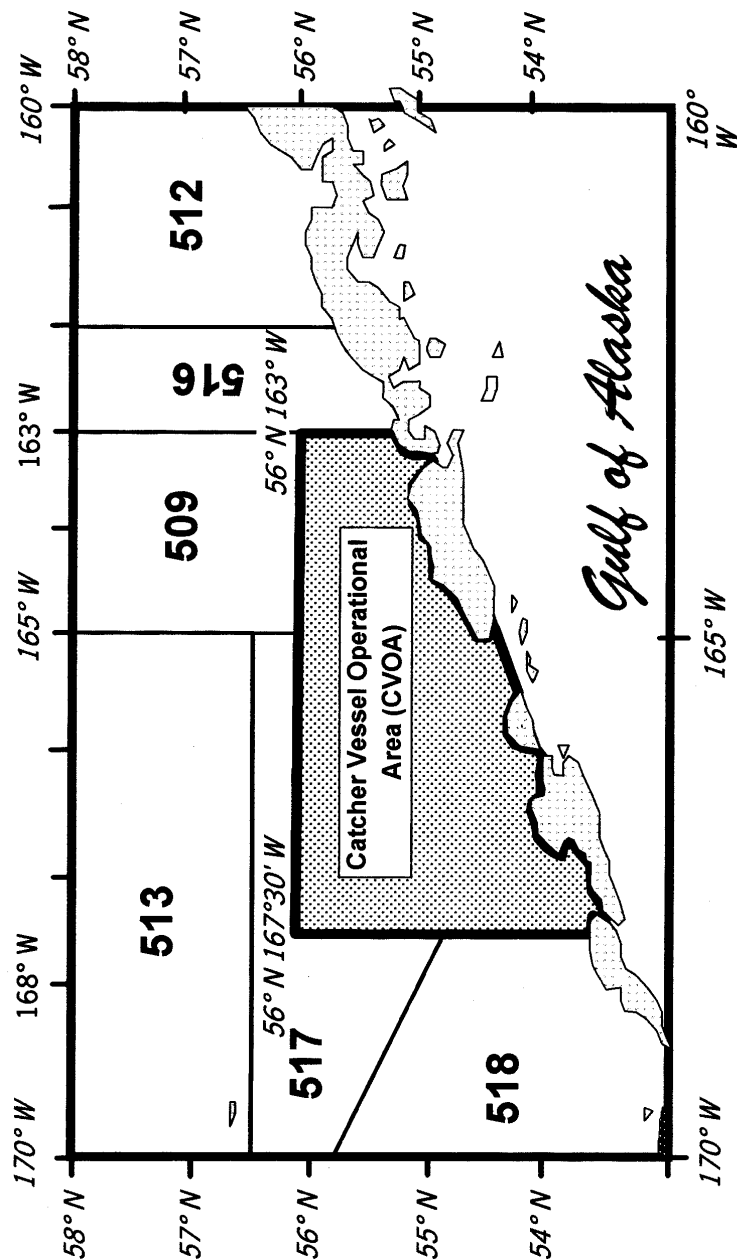
a. MAP

FIGURE 1 TO PART 679—BSAI STATISTICAL AND REPORTING AREAS

b. COORDINATES OF REPORTING AREAS

Code	Description
300	<i>Russian waters.</i> Those waters inside the Russian 200 mile limit as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart INT 814 Bering Sea (Northern Part).
400	<i>Chukchi Sea.</i> North of a diagonal line between 66°00' N, 169°42.5' W (Cape Dezhneva, Russia); and 65°37.5' N, 168°7.5' W (Cape Prince of Wales, Alaska) and to the limits of the U.S. EEZ as described in the current edition of NOAA chart INT 814 Bering Sea (Northern Part).
508	South of 58°00' N between the intersection of 58°00' N lat with the Alaska Peninsula and 160°00' W long.
509	South of 58°00' N lat between 163°00' W long and 165°00' W long.
512	South of 58°00' N lat, north of the Alaska Peninsula between 160°00' W long and 162°00' W long.
513	Between 58°00' N lat and 56°30' N lat, and between 165°00' W long and 170°00' W long.
514	North of 58°00' N to the southern boundary of the Chukchi Sea, area 400, and east of 170°00' W long.
516	South of 58°00' N lat, north of the Alaska Peninsula, and between 162°00' and 163°00' W long.
517	South of 56°30' N lat, between 165°00' W long and 170°00' W long; and north of straight lines between 54°30' N lat, 165°00' W long, 54°30' N lat, 167°00' W long, and 55°46' N lat, 170°00' W long.
518	<i>Bogoslof District.</i> South of a straight line between 55°46' N lat, 170°00' W long and 54°30' N lat, 167°00' W long, and between 167°00' W long and 170°00' W long, and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 52°49.2' N, 169°40.4' W, 52°49.8' N, 169°06.3' W, 53°23.8' N, 167°50.1' W, 53°18.7' N, 167°51.4' W.
519	South of a straight line between 54°30' N lat, 167°00' W long and 54°30' N lat, 164°54' W long; east of 167°00' W long; west of Unimak Island; and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 53°59.0' N, 166°17.2' W, 54°02.9' N, 166°03.0' W, 54°07.7' N, 165°40.6' W, 54°08.9' N, 165°38.8' W, 54°11.9' N, 165°23.3' W, 54°23.9' N, 164°44.0' W.
521	The area bounded by straight lines connecting the following coordinates in the order listed: 55°46' N, 170°00' W, 59°25' N, 179°20' W, 60°00' N, 179°20' W, 60°00' N, 171°00' W, 58°00' N, 171°00' W, 58°00' N, 170°00' W, 55°46' N, 170°00' W.
523	The area bounded by straight lines connecting the following coordinates in the order listed: 59°25' N, 179°20' W; 55°46' N, 170°00' W; 55°00' N, 170°00' W; 55°00' N, 180°00' W; and north to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
524	The area west of 170°00' W bounded south by straight lines connecting the following coordinates in the order listed: 58°00' N, 170°00' W 58°00' N, 171°00' W; 60°00' N, 171°00' W; 60°00' N, 179°20' W; 59°25' N, 179°20' W and to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
530	The area north of 55°00' N lat and west of 180°00' W long to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
541	<i>Eastern Aleutian District.</i> The area south of 55°00' N lat, west of 170°00' W long, and east of 177°00' W long and bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands).
542	<i>Central Aleutian District.</i> The area south of 55°00' N lat, west of 177°00' W long, and east of 177°00' E long and bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands).
543	<i>Western Aleutian District.</i> The area south of 55°00' N lat and west of 177°00' E long, and bounded on the south and west by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands).
550	<i>Donut Hole.</i> International waters of the Bering Sea outside the limits of the EEZ and Russian economic zone as depicted on the current edition of NOAA chart INT 813 Bering Sea (Southern Part).

Statistical Area. A statistical area is the part of a reporting area contained in the EEZ.



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FIGURE 2 TO PART 679—BSAI CATCHER VESSEL OPERATIONAL AREA

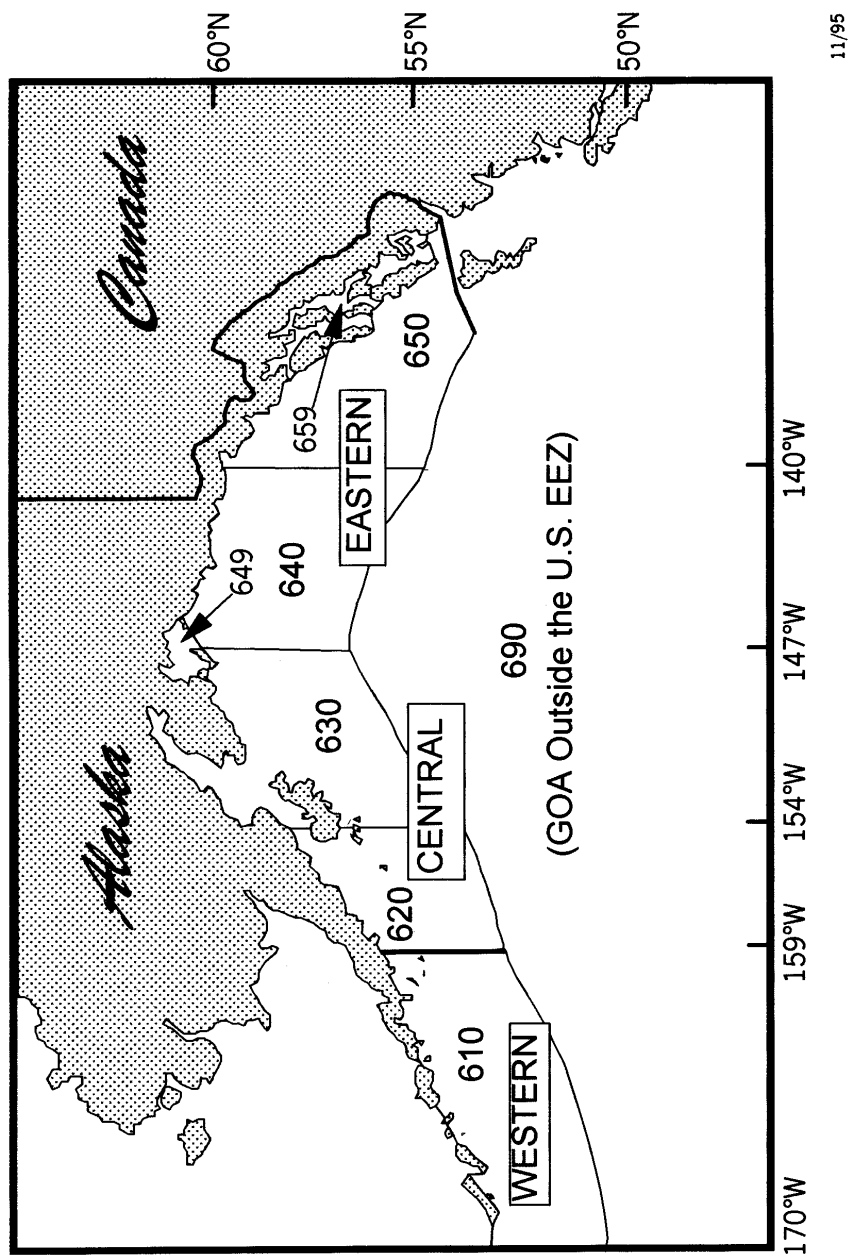


FIGURE 3 TO PART 679—GULF OF ALASKA STATISTICAL AND REPORTING AREAS

a. MAP

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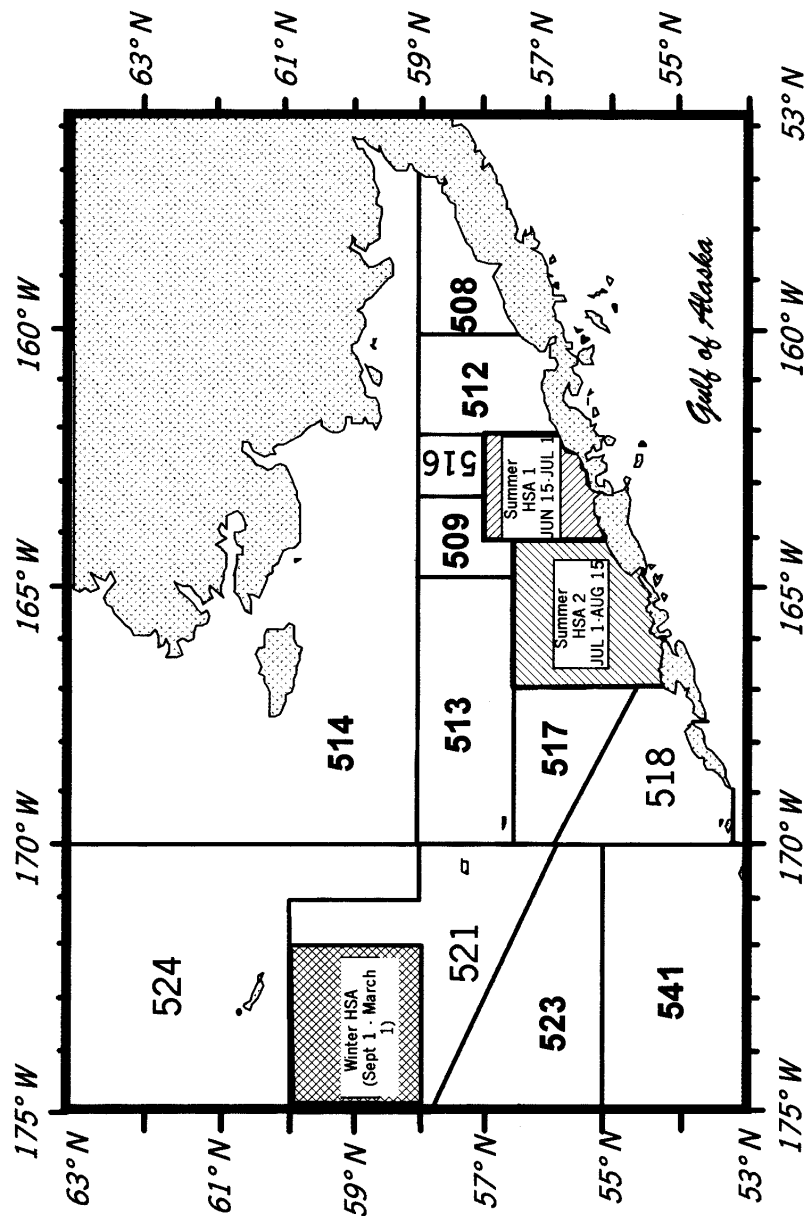
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FIGURE 3b TO PART 679—GULF OF ALASKA STATISTICAL AND REPORTING AREAS

b. COORDINATES OF REPORTING AREAS

Code	Description
610	<i>Western Regulatory Area, Shumagin District.</i> Along the south side of the Aleutian Islands and straight lines between the islands and the Alaska Peninsula connecting the following coordinates in the order listed: 52° 49.2' N, 169° 40.4' W; 52° 49.8' N, 169° 06.3' W; 53° 23.8' N, 167° 50.1' W; 53° 18.7' N, 167° 51.4' W; 53° 59.0' N, 166° 17.2' W; 54° 02.9' N, 166° 03.0' W; 54° 07.7' N, 165° 40.6' W; 54° 08.9' N, 165° 38.8' W; 54° 11.9' N, 165° 23.3' W; 54° 23.9' N, 164° 44.0' W; and southward to the limits of the US EEZ as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass), between 170° 00' W long and 159° 00' W long.
620	<i>Central Regulatory Area, Chirikof District.</i> Along the south side of the Alaska Peninsula, between 159° 00' W long and 154° 00' W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).
630	<i>Central Regulatory Area, Kodiak District.</i> Along the south side of continental Alaska, between 154° 00' W long and 147° 00' W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
640	<i>Eastern Regulatory Area, West Yakutat District.</i> Along the south side of continental Alaska, between 147° 00' W long and 140° 00' W long, and southward to the limits of the US EEZ, as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
649	<i>Prince William Sound.</i> Includes those waters of the State of Alaska inside the base line as specified in Alaska State regulations at 5 AAC 28.200.
650	<i>Eastern Regulatory Area, Southeast Outside District.</i> East of 140° 00' W long and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 659.
659	<i>Southeast Inside District.</i> As specified in Alaska State regulations at 5 AAC 28.105(a)(1) and (2).
690	<i>Gulf of Alaska outside the U.S. EEZ</i> as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).

Statistical Area. A statistical area is the part of a reporting area contained in the EEZ.



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FIGURE 4 TO PART 679—HERRING SAVINGS AREAS IN THE BSAI

a. MAP

[61 FR 31230, June 19, 1996; 61 FR 40481, Aug. 2, 1996]

FIGURE 4 TO PART 679—HERRING SAVINGS AREAS IN THE BSAI

b. COORDINATES

Name	Description and effective date
Summer Herring Savings Area 1	That part of the Bering Sea subarea that is south of 57° N. lat and between 162° and 164° W. long from 1200 hours, A.I.t., June 15 through 1200 hours, A.I.t. July 1 of a fishing year.
Summer Herring Savings Area 2	That part of the Bering Sea subarea that is south of 56° 30' N. lat and between 164° and 167° W. long from 1200 hours, A.I.t., July 1 through 1200 hours, A.I.t. August 15 of a fishing year.
Winter Herring Savings Area	That part of the Bering Sea subarea that is between 58° and 60° N. lat and between 172° and 175° W. long from 1200 hours, A.I.t. September 1 of the current fishing year through 1200 hours, A.I.t. March 1 of the succeeding fishing year.

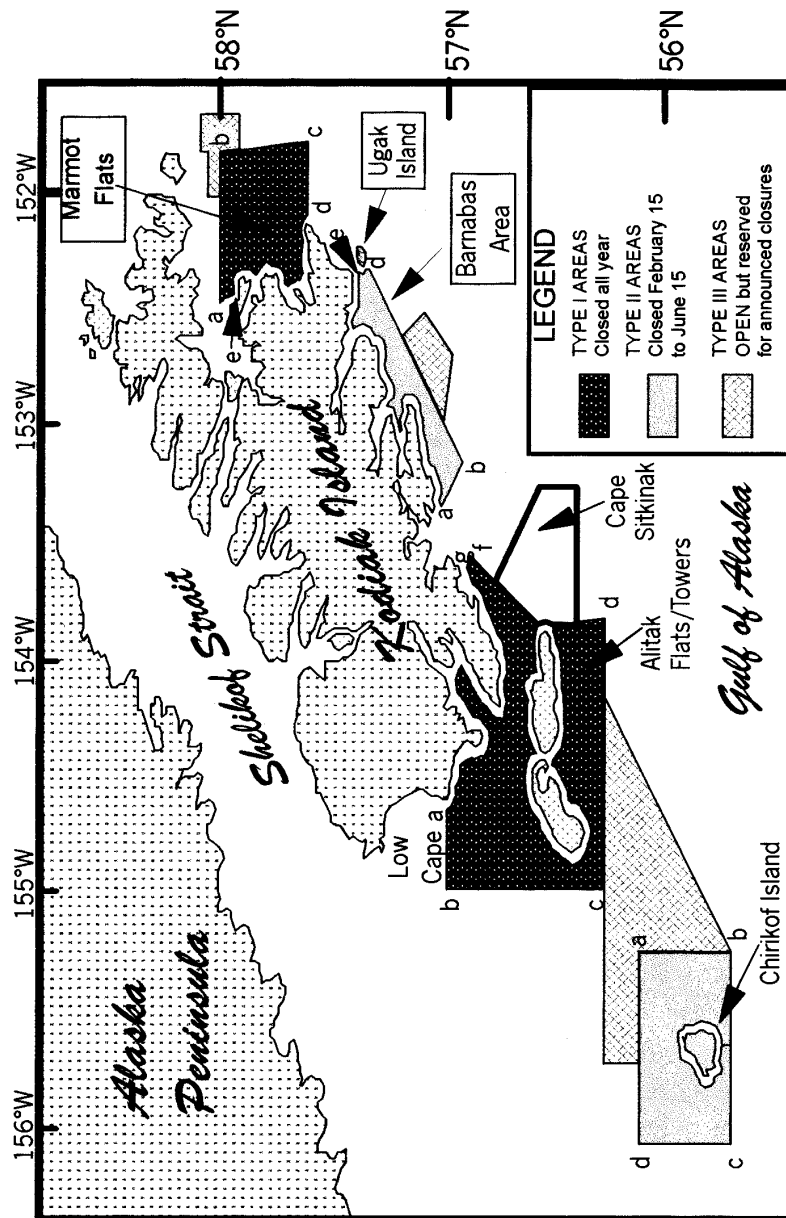


FIGURE 5 TO PART 679—KODIAK ISLAND AREAS CLOSED TO NONPELAGIC TRAWL GEAR

a. MAP

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FIGURE 5 TO PART 679—KODIAK ISLAND AREAS CLOSED TO NONPELAGIC TRAWL GEAR

b. COORDINATES

Name and description of reference area	North latitude/West longitude		Reference point
Alitak Flats and Towers Areas—All waters of Alitak flats and the Towers Areas enclosed by a line connecting the following 7 points in the order listed:			
a	56°59'4"	154°31'1"	Low Cape.
b	57°00'0"	155°00'0"	
c	56°17'0"	155°00'0"	
d	56°17'0"	153°52'0"	Cape Sitkinak. East point of Twoheaded Island. Kodiak Island, thence, along the coast- line.
e	56°33'5"	153°52'0"	
f	56°54'5"	153°32'5"	
g	56°56'0"	153°35'5"	
a	56°59'4"	154°31'1"	Low Cape.
Marmot Flats Area—All waters enclosed by a line connecting the following five points in the clockwise order listed:			
a	58°00'0"	152°30'0"	Cape Chiniak, then along the coastline of Kodiak Island to North Cape.
b	58°00'0"	151°47'0"	
c	57°37'0"	151°47'0"	
d	57°37'0"	152°10'1"	
e	57°54'5"	152°30'0"	
a	58°00'0"	152°30'0"	
Chirikof Island Area—All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter-clockwise order listed:			
a	56°07'0"	155°13'0"	
b	56°07'0"	156°00'0"	
c	55°41'0"	156°00'0"	
d	55°41'0"	155°13'0"	
a	56°07'0"	155°13'0"	
Barnabas Area—All waters enclosed by a line connecting the following six points in the counter clockwise order listed a57° 00' 0" 153° 18' 0" Black Point			
b	56°56'0"	153°09'0"	South Tip of Ugak Island. North Tip of Ugak Island. Narrow Cape, thence, along the coast- line of Kodiak Island.
c	57°22'0"	152°18'5"	
d	57°23'5"	152°17'5"	
e	57°25'3"	152°20'0"	Cape Kasick to Black Point, including inshore waters.
f	57°04'2"	153°30'0"	
a	57°00'0"	153°18'0"	

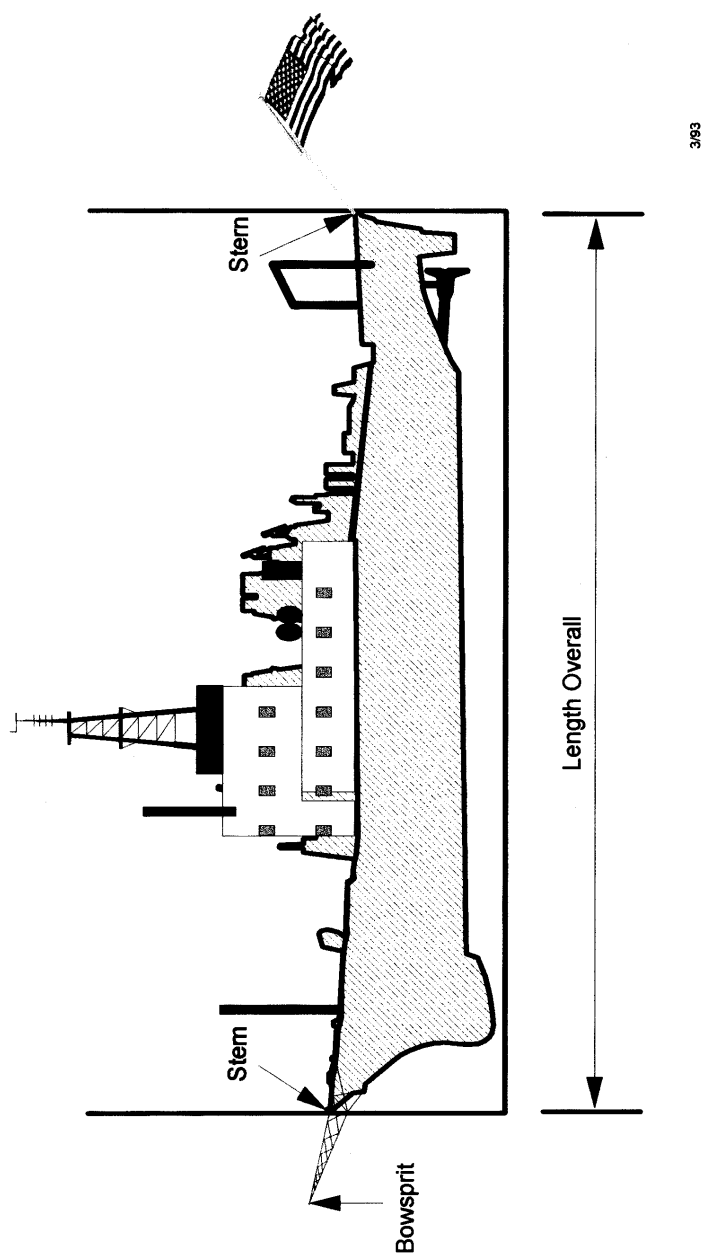


FIGURE 6 TO PART 679—LENGTH OVERALL OF A VESSEL

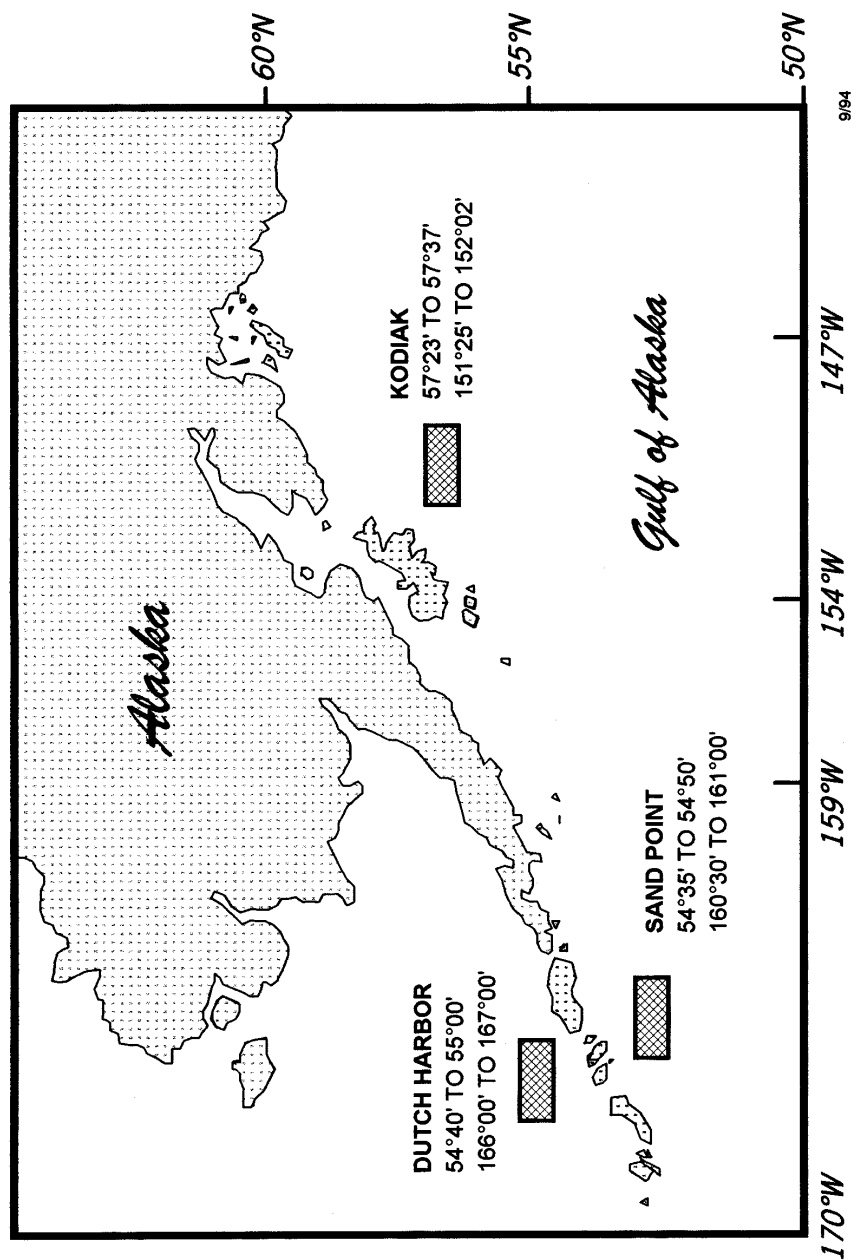


FIGURE 7 TO PART 679—LOCATION OF TRAWL GEAR TEST AREAS IN THE GOA AND THE BSAI

TABLE 1 TO PART 679—PRODUCT CODES

Fish product code	Description
1	<i>Whole fish/food fish.</i>
2	<i>Whole fish/bait.</i> Processed for bait.
3	<i>Bled only.</i> Throat, or isthmus, slit to allow blood to drain.
4	<i>Gutted only.</i> Belly slit and viscera removed.
6	<i>Head and gutted, with roe.</i>
7	<i>Headed and gutted, Western cut.</i> Head removed just in front of the collarbone, and viscera removed.
8	<i>Headed and gutted, Eastern cut.</i> Head removed just behind the collarbone, and viscera removed.
10	<i>Headed and gutted, tail removed.</i> Head removed usually in front of collar bone, and viscera and tail removed.
11	<i>Kirimi.</i> Head removed either in front or behind the collarbone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak.
12	<i>Salted and split.</i> Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted.
13	<i>Wings.</i> On skates, side fins are cut off next to body.
14	<i>Roe.</i> Eggs, either loose or in sacs, or skeins.
15	<i>Pectoral girdle.</i> Collar bone and associated bones, cartilage and flesh.
16	<i>Heads.</i> Heads only, regardless where severed from body.
17	<i>Cheeks.</i> Muscles on sides of head.
18	<i>Chins.</i> Lower jaw (mandible), muscles, and flesh.
19	<i>Belly.</i> Flesh in region of pelvic and pectoral fins and behind head.
20	<i>Fillets with skin and ribs.</i> Meat and skin with ribs attached, from sides of body behind head and in front of tail.
21	<i>Fillets with skin, no ribs.</i> Meat and skin with ribs removed, from sides of body behind head and in front of tail.
22	<i>Fillets with ribs and no skin.</i> Meat with ribs with skin removed, from sides of body behind head and in front of tail.
23	<i>Fillets, skinless/boneless.</i> Meat with both skin and ribs removed, from sides of body behind head and in front of tail.
24	<i>Deep-skin fillet.</i> Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets.
30	<i>Surimi.</i> Paste from fish flesh and additives.
31	<i>Minced.</i> Ground flesh.
32	<i>Fish meal.</i> Meal from fish and fish parts, including bone meal.
33	<i>Fish oil.</i> Rendered oil.
34	<i>Milt.</i> (in sacs, or testes).
35	<i>Stomachs.</i> Includes all internal organs.
36	<i>Octopus/squid mantles.</i> Flesh after removal of viscera and arms.
37	<i>Butterfly, no backbone.</i> Head removed, belly slit, viscera and most of backbone removed; fillets attached.
39	<i>Bones</i> (if meal, report as 32).
86	<i>Donated Salmon.</i> Includes salmon retained and donated under Salmon Donation Program.
97	<i>Other retained product</i>
DISCARD PRODUCT CODES	
92	<i>Discard, bait.</i> Whole fish used as bait on board vessel.
94	<i>Discard, consumption.</i> Fish or fish products eaten on board or taken off the vessel for personal use.
96	<i>Previously discarded fish (decomposed)</i> taken with trawl gear in current fishing efforts. Discarded.
98	<i>Discard, at sea.</i> Whole groundfish and prohibited species discarded by catcher vessels, Catcher/Processors, Motherships, or Buying Stations delivering to Motherships.
99	<i>Discard, dockside.</i> Discard after delivery and before processing; <i>Discard, at plant.</i> Inplant discard of whole groundfish and prohibited species by Shoreside Processors and Buying Stations delivering to Shoreside Processors before and during processing.
M99	<i>Discard, off site meal reduction plant.</i> Discarded fish that are transferred to any off site facility for reduction to fish meal, fish oil and/or discard at sea.
PRODUCT DESIGNATION	
A	<i>Ancillary.</i> Product made in addition to a primary product from the same fish.
P	<i>Primary.</i> Product made from each fish with the highest recovery rate.
R	<i>Reprocessed.</i> Product that results from processing a previously reported product.

Fishery Conservation and Management

Pt. 679, Table 2

TABLE 2 TO PART 679—SPECIES CODES

Code	Species
110	Pacific cod.
120	Miscellaneous flatfish (all flatfish without separate codes).
121	Arrowtooth flounder and/or Kamchatka flounder.
122	Flathead sole.
123	Rock sole.
124	Dover sole.
125	Rex sole.
126	Butter sole.
127	Yellowfin sole.
128	English sole.
129	Starry flounder.
131	Petrale sole.
132	Sand sole.
133	Alaska Plaice flounder.
134	Greenland turbot.
135	Greenstripe rockfish.
136	Northern rockfish.
137	Bocaccio rockfish.
138	Copper rockfish.
141	Pacific ocean perch (<i>S. alutus</i> only).
142	Black rockfish.
143	Thornyhead rockfish (all <i>Sebastes</i> species).
145	Yelloweye rockfish.
146	Canary rockfish.
147	Quillback rockfish.
148	Tiger rockfish.
149	China rockfish.
150	Rosethorn rockfish.
151	Rougheye rockfish.
152	Shortraker rockfish.
153	Redbanded rockfish.
154	Dusky rockfish.
155	Yellowtail rockfish.
156	Widow rockfish.
157	Silvergray rockfish.
158	Redstripe rockfish.
159	Darkblotched rockfish.
160	Sculpins.
166	Sharpchin rockfish.
167	Blue rockfish.
175	Yellowmouth rockfish.
176	Harlequin rockfish.
177	Blackgill rockfish.
178	Chilipepper rockfish.
179	Pygmy rockfish.
181	Shortbelly rockfish.
182	Splitnose rockfish.
183	Stripetail rockfish.
184	Vermilion rockfish.
185	Aurora rockfish.
193	Atka mackerel.
270	Pollock.
510	Smelt.
511	Eulachon.
516	Capelin.
689	Sharks.
700	Skates.
710	Sablefish.
870	Octopus.
875	Squid.
888	Mixed species tote (for use on Product Transfer Report only).

TABLE 2 TO PART 679—SPECIES CODES—Continued

Code	Species
GROUP CODES. These group codes may be used if individual species cannot be identified.	
144	<i>Slope rockfish</i> (aurora, blackgill, Bocaccio, redstripe, silvergray, chilipepper, darkblotched, greenstriped, harlequin, pygmy, shortbelly, splitnose, stripetail, vermillion, yellowmouth, sharpchin).
168	<i>Demersal shelf rockfish</i> (china, copper, quillback, rosethorn, tiger, yelloweye, canary).
169	<i>Pelagic shelf rockfish</i> (blue, dusky, yellowtail, widow).
171	Shortraker/rougheye rockfish.
PROHIBITED SPECIES CODES	
000	Unspecified salmon.
200	Pacific halibut.
235	Pacific herring.
410	Salmon, Chinook.
420	Salmon, Sockeye.
430	Salmon, Coho.
440	Salmon, Pink.
450	Salmon, Chum.
540	Steelhead trout.
920	Unspecified king crab.
921	Red king crab.
922	Blue king crab.
923	Gold/brown king crab.
930	Unspecified tanner crab.
931	Bairdi tanner crab.
932	Opilio tanner crab.

TABLE 3 TO PART 679—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES

FMP SPECIES	SPECIES CODE	PRODUCT CODE											
		WHOLE FOOD FISH	WHOLE BAIT FISH	BLEED	GUTTED	H&G WITH ROE	H&G WEST-ERN CUT	H&G EAST-ERN CUT	H&G W/O TAIL	KIRIMI	SALT-ED & SPLIT	WINGS	ROE
PACIFIC COD	110	1.00	2	3	4	5	6	7	8	9	10	11	12
ARROWTOOTH FLOUNDER	121	1.00	1.00	0.98	0.85	0.63	0.57	0.47	0.44	0.48	0.45		0.05
ROCKFISH¹	160	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62				0.08
SCULPINS	193	1.00	1.00	0.98	0.88		0.60	0.50					
ATKA MACKEREL	270	1.00	1.00	0.98	0.87		0.64	0.61					
POLLOCK	510	1.00	1.00	0.98	0.80	0.70	0.65	0.56	0.50				0.04
SMELTS	511	1.00	1.00	0.98	0.82		0.71						
EULACHON	516	1.00	1.00	0.98	0.82		0.71						
CAPELIN	689	1.00	1.00	0.98	0.89		0.78						
SHARKS	710	1.00	1.00	0.98	0.83		0.72						
SKATES	710	1.00	1.00	0.98	0.90			0.32				0.32	
SABLEFISH	870	1.00	1.00	0.98	0.89		0.68	0.63	0.50				
OCTOPUS		1.00	1.00	0.98	0.69								
Target species categories GOA only:													
DEEP WATER FLATFISH	118	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48			0.08
FLATHEAD SOLE	122	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48			0.08
REX SOLE	125	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48			0.08
SHALLOW WATER FLATFISH	119	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48			0.08
THORNYHEAD ROCKFISH	143	1.00	1.00	0.98	0.88	0.55	0.60	0.50					
Target species categories BSAI only:													
OTHER FLATFISH	120	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48			0.08
ROCK SOLE	123	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48			0.08
YELLOWFIN SOLE	127	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48			0.08
GREENLAND TURBOT	134	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48			0.08
SQUID	875	1.00	1.00	0.98	0.69								

¹ Rockfish means all species of *Sebastes* and *Sebastes*.

[61 FR 31297, June 19, 1996; 61 FR 40481, Aug. 2, 1996]

TABLE 3 TO PART 679—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES—Continued

FMP SPECIES	SPECIES CODE	PRODUCT CODE												MEAL
		PEC-TORAL GIR-DLE	HEADS	CHEEKS	CHINS	BELLY	FIL-LETS W/ SKIN & RIBS	FIL-LETS SKIN ON NO RIBS	FIL-LETS W/ RIBS NO SKIN	FILLETS SKINLESS/ BONELESS	FIL-LETS DEEP SKIN	SURIMI	MINCE	
		15	16	17	18	19	20	21	22	23	24	30	31	32
PACIFIC COD	110	0.05	.....	0.05	.....	0.01	0.45	0.35	0.25	0.25	.....	0.15	0.5	0.17
ARROWTOOTH FLOUNDER	121	.....	0.15	0.05	0.05	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
ROCKFISH .....	.....	.....	.....	.....	.....	0.10	0.40	0.30	0.33	0.25	.....	.....	.....	0.17
SCULPINS	160	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.15	.....	0.17
ATKA MACKEREL	193	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17
POLLOCK	270	.....	0.15	.....	.....	.....	0.35	0.30	0.30	0.21	0.16	0.16	0.22	0.17
SMELTS	510	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	0.17	.....	0.22
EULACHON	511	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	.....	.....	0.22
CAPELIN	516	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.22
SHARKS	689	.....	.....	.....	.....	.....	.....	0.30	0.30	0.25	.....	.....	.....	0.17
SKATES	700	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17
SABLEFISH	710	.....	.....	0.05	.....	.....	0.35	0.30	0.30	0.25	.....	.....	.....	0.22
OCTOPUS	870	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17
Target species categories at GOA only:														
DEEP WATER FLATFISH	118	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
FLATHEAD SOLE	122	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
REX SOLE	125	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
SHALLOW WATER FLATFISH	119	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
THORNYHEAD ROCKFISH	143	.....	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	.....	.....	.....	0.17
Target species categories at BSIA only:														
OTHER FLATFISH	120	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
ROCK SOLE	123	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
YELLOWFIN SOLE	127	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	0.18	.....	0.17
GREENLAND TURBOT	134	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
SQUID	875	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17

² Standard pollock surimi rate during January through June.³ Standard pollock surimi rate during July through December.

Fishery Conservation and Management
Pt. 679, Table 3
TABLE 3 TO PART 679—PRODUCT RECOVERY RATES FOR GROUND FISH SPECIES—Continued

FMP SPECIES	SPECIES CODE	PRODUCT CODE						
		OIL	MILT	STOM-ACHS	MAN-TLES	BUT-TER-FLY BACK-BONE RE-MOVED	DE-COM-POSED FISH	DIS-CARDS
		33	34	35	36	37	96	92, 94, 98, 99, M99
PACIFIC COD	110	.....	.....	.....	.....	0.43	0.00	1.00
ARROWTOOTH FLOUNDER	121	.....	.....	.....	.....	.....	0.00	1.00
ROCKFISH .....	.....	.....	.....	.....	.....	.....	0.00	1.00
SCULPINS	160	.....	.....	.....	.....	.....	0.00	1.00
ATKA MACKEREL	193	.....	.....	.....	.....	.....	0.00	1.00
POLLOCK	270	.....	.....	.....	.....	0.43	0.00	1.00
SMELTS	510	.....	.....	.....	.....	.....	0.00	1.00
EULACHON	511	.....	.....	.....	.....	.....	0.00	1.00
CAPELIN	516	.....	.....	.....	.....	.....	0.00	1.00
SHARKS	689	.....	.....	.....	.....	.....	0.00	1.00
SKATES	700	.....	.....	.....	.....	.....	0.00	1.00
SABLEFISH	710	.....	.....	.....	.....	.....	0.00	1.00
OCTOPUS	870	.....	.....	.....	0.85	1.00	0.00	1.00
Target species categories at GOA only:								
DEEP WATER FLATFISH	118	.....	.....	.....	.....	.....	0.00	1.00
FLATHEAD SOLE	122	.....	.....	.....	.....	.....	0.00	1.00
REX SOLE	125	.....	.....	.....	.....	.....	0.00	1.00
SHALLOW WATER FLATFISH	119	.....	.....	.....	.....	.....	0.00	1.00
THORNYHEAD ROCKFISH	143	.....	.....	.....	.....	.....	0.00	1.00
Target species categories at BSAI only:								
OTHER FLATFISH	120	.....	.....	.....	.....	.....	0.00	1.00
ROCK SOLE	123	.....	.....	.....	.....	.....	0.00	1.00
YELLOWFIN SOLE	127						0.00	1.00
GREENLAND TURBOT	134						0.00	1.00
SQUID	875				0.75	1.00	0.00	1.00

Pt. 679, Table 5

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TABLE 4 TO PART 679—BERING SEA SUBAREA STELLER SEA LION PROTECTION AREAS

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at part 227.12(a)(2) of this title				
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm).				
Sea Lion Rocks	55°28.0' N	163°12.0' W		
Ugamak Island	54°14.0' N	164°48.0' W	54°13.0' N	164°48.0' W
Akun Island	54°18.0' N	165°32.5' W	54°18.0' N	165°31.5' W
Akutan Island	54°03.5' N	166°00.0' W	54°05.5' N	166°05.0' W
Bogoslof Island	53°56.0' N	168°02.0' W		
Ogchul Island	53°00.0' N	168°24.0' W		
Adugak Island	52°55.0' N	169°10.5' W		
Walrus Island	57°11.0' N	169°56.0' W		
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under part 679, Trawling Prohibited Within 20 nm).				
Sea Lion Rocks	55°28.0' N	163°12.0' W		
Akun Island	54°18.0' N	165°32.5' W	54°18.0' N	165°31.5' W
Akutan Island	54°03.5' N	166°00.0' W	54°05.5' N	166°05.0' W
Ugamak Island	54°14.0' N	164°48.0' W	54°13.0' N	164°48.0' W
Seguam Island	52°21.0' N	172°35.0' W	52°21.0' N	172°33.0' W
Agligadak Island	52°06.5' N	172°54.0' W		

Note: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

TABLE 5 TO PART 679—ALEUTIAN ISLANDS SUBAREA STELLER SEA LION PROTECTION AREAS

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at part 227.12(a)(2) of this title				
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm).				
Yunaska Island	52°42.0' N	170°38.5' W	52°41.0' N	170°34.5' W
Seguam Island	52°21.0' N	172°35.0' W	52°21.0' N	172°33.0' W
Agligadak Island	52°06.5' N	172°54.0' W		
Kasatochi Island	52°10.0' N	175°31.0' W	52°10.5' N	175°29.0' W
Adak Island	51°36.5' N	176°59.0' W	51°38.0' N	176°59.5' W
Gramp Rock	51°29.0' N	178°20.5' W		
Tag Island	51°33.5' N	178°34.5' W		
Ulak Island	51°20.0' N	178°57.0' W	51°18.5' N	178°59.5' W
Semisopochnoi	51°58.5' N	179°45.5' E	51°57.0' N	179°46.0' E
Semisopochnoi	52°01.5' N	179°37.5' E	52°01.5' N	179°39.0' E
Amchitka Island	51°22.5' N	179°28.0' E	51°21.5' N	179°25.0' E
Amchitka Is./Column Rocks	51°32.5' N	178°49.5' E		
Ayugadak Point	51°45.5' N	178°24.5' E		
Kiska Island	51°57.5' N	177°21.0' E	51°56.5' N	177°20.0' E
Kiska Island	51°52.5' N	177°13.0' E	51°53.5' N	177°12.0' E
Buldir Island	52°20.5' N	175°57.0' E	52°23.5' N	175°51.0' E
Agattu Is./Gillion Pt	52°24.0' N	173°21.5' E		
Agattu Island	52°23.5' N	173°43.5' W	52°22.0' N	173°41.0' E
Attu Island	52°54.5' N	172°28.5' W	52°57.5' N	172°31.5' E
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under part 679.20. Trawling Prohibited Within 20 nm).				
Seguam Island	52°21.0' N	172°35.0' W	52°21.0' N	172°33.0' W
Agligadak Island	52°06.5' N	172°54.0' W		

Note: Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

Fishery Conservation and Management

Pt. 679, Table 6

TABLE 6 TO PART 679—GULF OF ALASKA STELLER SEA LION PROTECTION AREAS

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at part 227.12(a)(2) of this title				
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm).				
Outer Island	59°20.5' N	150°23.0' W	59°21.0' N	150°24.5' W
Sugarloaf Island	58°53.0' N	152°02.0' W		
Marmot Island	58°14.5' N	151°47.5' W	58°10.0' N	151°51.0' W
Chirikof Island	55°46.5' N	155°39.5' W	55°46.5' W	155°43.0' W
Chowiet Island	56°00.5' N	156°41.5' W	56°00.5' N	156°42.0' W
Atkins Island	55°03.5' N	159°18.5' W		
Chernabura Island	54°47.5' N	159°31.0' W	54°45.5' N	159°33.5' W
Pinnacle Rock	54°46.0' N	161°46.0' W		
Clubbing Rocks-N	54°43.0' N	162°26.5' W		
Clubbing Rocks-S	54°42.0' N	162°26.5' W		
Ugamak Island	54°14.0' N	164°48.0' W	54°13.0' N	164°48.0' W
Akun Island	54°18.0' N	165°32.5' W	54°18.0' N	165°31.5' W
Akutan Island	54°03.5' N	166°00.0' W	54°05.5' N	166°05.0' W
Ogchul Island	53°00.0' N	168°24.0' W		
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under part 679.20. Trawling Prohibited Within 20 nm).				
Akun I.	54°18.0' N	165°32.5' W	54°18.0' N	165°31.5' W
Akutan I.	54°03.5' N	166°00.0' W	54°05.5' N	166°05.0' W
Ugamak I.	54°14.0' N	164°48.0' W	54°13.0' N	164°48.0' W

Note: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

Pt. 679, Table 9

TABLE 7 TO PART 679—COMMUNITIES DETERMINED TO BE ELIGIBLE TO APPLY FOR COMMUNITY DEVELOPMENT QUOTAS (OTHER COMMUNITIES THAT DO NOT APPEAR ON THIS TABLE MAY ALSO BE ELIGIBLE)

Aleutian Region:	
1.	Akutan
2.	Atka
3.	False Pass
4.	Nelson Lagoon
5.	Nikolski
6.	St. George
7.	St. Paul
Bering Strait:	
1.	Brevig Mission
2.	Diomedes/Inalik
3.	Elim
4.	Gambell
5.	Golovin
6.	Koyuk
7.	Nome
8.	Savoonga
9.	Shaktoolik
10.	St. Michael
11.	Stebbins
12.	Teller
13.	Unalakleet
14.	Wales
15.	White Mountain
Bristol Bay:	
1.	Alegnagik
2.	Clark's Point
3.	Dillingham
4.	Egegik
5.	Ekuk
6.	Manokotak
7.	Naknek
8.	Pilot Point/Ugashi
9.	Port Heiden/Meschick
10.	South Naknek
11.	Sovonoski/King Salmon
12.	Togiak
13.	Twin Hills
Southwest Coastal Lowlands:	
1.	Alakanuk

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TABLE 7 TO PART 679—COMMUNITIES DETERMINED TO BE ELIGIBLE TO APPLY FOR COMMUNITY DEVELOPMENT QUOTAS (OTHER COMMUNITIES THAT DO NOT APPEAR ON THIS TABLE MAY ALSO BE ELIGIBLE)—Continued

2.	Chefornak
3.	Chevak
4.	Eek
5.	Emmonak
6.	Goodnews Bay
7.	Hooper Bay
8.	Kipnuk
9.	Kongiganak
10.	Kotlik
11.	Kwigilingok
12.	Mekoryuk
13.	Newtok
14.	Nightmute
15.	Platinum
16.	Quinhagak
17.	Scammon Bay
18.	Sheldon's Point
19.	Toksook Bay
20.	Tununak
21.	Tuntutuliak

[61 FR 31230, June 19, 1996, as amended at 61 FR 41745, Aug. 12, 1996]

TABLE 8 TO PART 679—Harvest Zone Codes for Use with Product Transfer Reports and Vessel Activity Reports

Harvest zone	Description
A	EEZ off Alaska.
D	Donut Hole.
F	Foreign Waters Other than Russia.
I	International Waters other than Donut Hole and Seamounts.
R	Russian waters.
S	Seamounts in International waters.
U	U.S. EEZ other than Alaska.

TABLE 9 TO PART 679—REQUIRED LOGBOOKS, REPORTS AND FORMS FROM PARTICIPANTS IN THE FEDERAL GROUND FISH FISHERIES

Name of logbook/Form	Catcher-vessel	Catcher-processor	Mothership	Shoreside processor	Buying station
Daily Fishing Logbook (DFL)	Yes	No	No	No	No
Daily Cumulative Production Logbook (DCPL)	No	Yes	Yes	Yes	No
Daily Cumulative Logbook (DCL)	No	No	No	No	Yes
Check-in/Check-out Report	No	Yes	Yes	Yes	Yes
U.S. Vessel Activity Report (VAR)	Yes	Yes	Yes	No	No
Weekly Production Report (WPR)	No	Yes	Yes	Yes	No
Daily Production Report (DPR)*	No	Yes	Yes	Yes	No
Product Transfer Report (PTR)	No	Yes	Yes	Yes	No

*When required by Regional Director.

[61 FR 31302, June 19, 1996; 61 FR 40481, Aug. 2, 1996]

TABLE 10 TO PART 679—GULF OF ALASKA RETAINABLE PERCENTAGES

	Basis species ¹						Bycatch species ¹					
	Pollock	Pacific Cod	Deep flatfish	Rex Sole	Flat-head Sole	Shal-low flatfish	Arrowtooth	Sable-fish	Aggre-gated rock-fish ²	DSR SEEO ⁴	Atka mack-erel	Other spe-cies
Pollock	³ na	20	20	20	20	20	35	1	5	10	20	20
Pacific cod	20	³ na	20	20	20	20	35	1	5	10	20	20
Deep flatfish	20	20	³ na	20	20	20	35	15	15	1	20	20
Rex sole	20	20	20	³ na	20	20	35	15	15	1	20	20
Flathead sole	20	20	20	20	³ na	20	35	15	15	1	20	20
Shallow flatfish	20	20	20	20	20	³ na	35	1	5	10	20	20
Arrowtooth	0	0	0	0	0	0	³ na	0	0	0	0	0
Sablefish	20	20	20	20	20	20	35	³ na	15	1	20	20
Pacific Ocean perch	20	20	20	20	20	20	35	15	15	1	20	20
Shortraker/roughye	20	20	20	20	20	20	35	15	15	1	20	20
Other rockfish	20	20	20	20	20	20	35	15	15	1	20	20
Northern rockfish	20	20	20	20	20	20	35	15	15	1	20	20
Pelagic rockfish	20	20	20	20	20	20	35	15	15	1	20	20
DSR-SEEO	20	20	20	20	20	20	35	15	15	³ na	20	20
Thornyhead	20	20	20	20	20	20	35	15	15	1	20	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	³ na	20
Other species	20	20	20	20	20	20	35	1	5	10	20	³ na
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	20

¹For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications.²Aggregated rockfish means rockfish of the genera Sebastes and Sebastolobus except in the southeast Outside District where demersal shelf rockfish (DSR) is a separate category.³na = not applicable.⁴SEEO = Southeast Outside District.

TABLE 11 TO PART 679—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

	Bycatch species ¹								Other species
	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rocksole	Flathead sole	
Pollock	³ na	20	20	35	20	20	20	20	20
Pacific cod	20	³ na	20	35	20	20	20	20	20
Atka mackerel	20	20	³ na	35	20	20	20	20	20
Arrowtooth	0	0	0	³ na	0	0	0	0	0
Yellowfin sole	20	20	20	35	³ na	35	35	35	20
Other flatfish	20	20	20	35	35	³ na	35	35	20
Rocksole	20	20	20	35	35	35	³ na	35	20
Flathead sole	20	20	20	35	35	35	35	³ na	20
Greenland turbot	20	20	20	35	20	20	20	20	20
Sablefish	20	20	20	35	20	20	20	35	20

TABLE 11 TO PART 679—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES—Continued

Basis species ¹	Bycatch species ¹												
	Pollock	Pacific cod	Atka mack- erel	Arrowtooth	Yellow- fin sole	Other flatfish	Rocksole	Flat- head sole	Green- land turbot	Sable- fish	Aggre- gated rock- fish ²	Squid	Other spe- cies
Other rockfish	20	20	20	35	20	20	20	20	35	15	15	20	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	15	20	20
Pacific Ocean perch	20	20	20	35	20	20	20	20	35	15	15	20	20
Sharpchin/Northern-AI	20	20	20	35	20	20	20	20	35	15	15	20	20
Shortraker/Rougheye-AI	20	20	20	35	20	20	20	20	35	15	15	20	20
Squid	20	20	20	35	20	20	20	20	1	1	5	3 na	20
Other species	20	20	20	35	20	20	20	20	1	1	5	20	3 na
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	5	20	20

¹ For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.² Aggregated rockfish of the genera Sebastes and Sebastolobus.³ na = not applicable.

Fishery Conservation and Management

§ 697.5

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Sec.

- 697.1 Purpose and scope.
- 697.2 Definitions.
- 697.3 Relation to the Magnuson Act.
- 697.4 Civil procedures.
- 697.5 Specifically authorized activities.
- 697.6 Prohibitions.

AUTHORITY: 16 U.S.C. 1851 note, 5101 *et seq.*

SOURCE: 61 FR 29321, June 10, 1996, unless otherwise noted.

§ 697.1 Purpose and scope.

The regulations in this part implement section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*, and section 6 of the Atlantic Striped Bass Conservation Act Appropriations Authorization, 16 U.S.C. 1851 note, and govern fishing in the EEZ on the Atlantic Coast for species covered by those acts.

§ 697.2 Definitions.

In addition to the definitions in § 600.10 of this chapter, the terms in this part have the following meanings:

Atlantic striped bass means members of stocks or populations of the species *Morone saxatilis* found in the waters of the Atlantic Ocean north of Key West, FL.

Block Island Southeast Light means the aid to navigation light located at Southeast Point, Block Island, RI, and defined as follows: Located at 40°09.2'N. lat., 71°33.1'W. long; is 201 ft (61.3 m) above the water; and is shown from a brick octagonal tower 67 ft (20.4 m) high attached to a dwelling on the southeast point of Block Island, RI.

Continuous transit means that a vessel remains continuously underway while in the EEZ.

Fish, when used as a verb, for the purposes of this part, means any activity that involves:

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

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

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Montauk Light means the aid to navigation light located at Montauk Point, NY, and defined as follows: Located at 41°04.3'N. lat., 71°51.5'W. long.; is shown from an octagonal, pyramidal tower, 108 ft (32.9 m) high; and has a covered way to a dwelling.

Point Judith Light means the aid to navigation light located at Point Judith, RI, and defined as follows: Located at 41°21.7'N. lat., 71°28.9'W. long.; is 65 ft (19.8 m) above the water; and is shown from an octagonal tower 51 ft (15.5 m) high.

Retain means to fail to return Atlantic striped bass or weakfish to the sea immediately after the hook has been removed or the fish has otherwise been released from the capture gear. *Weakfish* means members of the stock or population of the species *Cynoscion regalis*, found along the Atlantic coast from southern Florida to Massachusetts Bay.

§ 697.3 Relation to the Magnuson Act.

The provisions of sections 307 through 311 of the Magnuson Act, as amended, regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement apply with respect to the regulations in this part, as if the regulations in this part were issued under the Magnuson Act.

§ 697.4 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, permit sanctions, seizures, and forfeitures under the Atlantic Striped Bass Act and the Atlantic Coastal Act, and the regulations in this part.

§ 697.5 Specifically authorized activities.

NMFS may authorize, for the acquisition of information and data, activities that are otherwise prohibited by the regulations in this part.

§ 697.6

50 CFR Ch. VI (10-1-96 Edition)

§ 697.6 Prohibitions.

(a) *Atlantic Coast weakfish fishery.* In addition to the prohibitions set forth in § 600.725, the following prohibitions apply. It is unlawful for any person to do any of the following:

- (1) Fish for weakfish in the EEZ.
- (2) Harvest any weakfish from the EEZ.
- (3) Possess any weakfish in or from the EEZ.
- (4) Fail to return to the water immediately, with the least possible injury, any weakfish taken within the EEZ.

(b) *Atlantic striped bass fishery.* It is unlawful for any person to do any of the following:

- (1) Fish for Atlantic striped bass in the EEZ.
- (2) Harvest any Atlantic striped bass from the EEZ.

(3) Possess any Atlantic striped bass in or from the EEZ, except for the following area: The EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, NY, and Block Island Southeast Light, Block Island, RI; and west of a line connecting Point Judith Light, Point Judith, RI, and Block Island Southeast Light, Block Island, RI. Within this area, possession of Atlantic striped bass is permitted, provided no fishing takes place from the vessel while in the EEZ and the vessel is in continuous transit.

(4) Fail to return to the water immediately, with the least possible injury, any Atlantic striped bass taken within the EEZ.

EFFECTIVE DATE NOTE: At 61 FR 34746, July 3, 1996, in § 697.6 paragraph (a) was stayed, effective July 2, 1996.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Table of CFR Titles and Chapters
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Material Approved for Incorporation by Reference

(Revised as of October 1, 1996)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

50 CFR CHAPTER II (PARTS 600-END)

NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION, DEPARTMENT OF COMMERCE

50 CFR

Florida Marine Fisheries Commission

2540 Executive Center Circle West, Suite 106, Tallahassee, FL
32301; telephone (904) 487-0554

Florida Administrative Code, rules 62N-8.001 and 46-13.002(2)(e) 654.6(a)
and (f), all as in effect as of April 14, 1995.

Florida Administrative Code, rule 46-13.002(2)(b), in effect as of 654.20(b)
April 14, 1995.

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675.21 (a)(5), (b), (c), (d), (e) and (f) suspended; (a)(7), (g), (h), (i) and (j) added; interim emer- gency eff. 3-30-92 through 7- 2-92	11440
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